

## Complaint:

Whilst there is a long history of gross mismanagement of Ellingham United Charities (255749) by both the trustees and the Charity Commission, this complaint relates to two very recent incidents which **the Charity Commission has refused to investigate:**

1. Failure by the trustees over a number of years to keep proper accounts for the charities. The accounts to 2016 will provide an example.
2. Failure by the Charity Commission to hold the trustees to account for a breach of trust that continued for decades but rather, it assisted the trustees in this illegal act by issuing changes to the 1918 Scheme of Governance. This complaint concerns the way in which the new Scheme was introduced and a major flaw in the new Scheme, issued (secretly) 16<sup>th</sup> April 2014, which will allow the St Mary's Parochial Church Council (PCC) to take money that should go to the poor.

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1. The 1918 Scheme of Governance for Ellingham United Charities (EUC) is quite specific concerning the distribution of land and assets between the three sections of the charity: Estate, Church and Town and Poor. It is necessary for the accounts to be managed so that the proceeds of each section of the charity can be allocated to the correct recipients. A failure to keep accounts in accordance with the 1918 Scheme has resulted in many thousands of pounds being taken from the Town and Poor section of EUC to be given to St Mary's PCC. As can be seen from the following copy of accounts, no attempt has been made to distinguish between the income and outgoings for each section of EUC. **This is a clear breach of trust which has been going on for some years. The Charity Commissioners have been made aware of this and have failed to act.**

Ellingham United Charities

April 2016

### Statement of Accounts 2015/31<sup>st</sup> January 2016

Surplus Carried Forward to 2016

£ 1061.04

#### INCOME

COIF Investments

3010.26

Rents	3439.00	
Wayleave	36.06	
Donation	10.00	<u>6495.32</u>
		<b>7556.36</b>
<b><u>OUTGOINGS</u></b>		
<b>Donations</b>		
Parish Council (Play Field Refurb)	1750.00	
Kirby Cane Memorial Hall	1000.00	
Knit & Natter	200.00	
<b>Donations Private</b>		
	3 x £500.00	
	6 x £300.00	
	1 x £50.00	
<b>Expenses</b>		
Hall Hire	15.00	
Indemnity Insurance.	283.28	<u>6598.28</u>
		<b>958.08</b>
<b><u>PROVISIONS</u></b>		
Emergency assistance.	500.00	
Contingency Fund.	500.00	<u>1000.00</u>
		<b>-41.92</b>
Cash in bank at 4/01/2016		3891.30
Cash in bank at 4/01/2016 (Business Saver)		<u>.06</u>
		3891.36
Un-presented Cheques		2033.28
<b>Available Surplus Cash in Bank</b>		<b><u>1858.08</u></b>

## 2.

In breach of trust and Clause 39 of the 1918 Scheme, the trustees of EUC rented land to one of its number for decades.

*39. Trustees not to be personally interested.—No Trustee shall/(take or hold any interest in property belonging to the Charities otherwise than as a Trustee for the purposes thereof, and no Trustee shall receive any remuneration, or be interested in the supply of work or goods, at the cost of the Charities.*

When this breach of trust was reported to them, Charity Commission decided to overlook it and, instead of investigating the breach, decided to abet the trustees in this wrong doing. This abetting resulted in the preparation of a new Scheme

to remove Clause 39 of the 1918 Scheme, forbidding a trustee to rent land managed by the charity, and replace it with a Scheme that allowed the practise to be legalised.

The Charity Commission guidance for the introduction of a new Scheme of Governance for a charity is given here:

*Guidance: Changing your charity's governing document (CC36)*

*4.4 How does a scheme come into effect?*

***The short answer***

*Generally, once the commission has agreed the contents of the scheme with the trustees it will sign authorise the scheme so that it comes into effect. Where the commission thinks it would be helpful to seek wider views, comments and objections it will require the scheme to be publicised before it decides whether to authorise it.*

***In more detail***

*Many draft schemes will be judged by the commission and by trustees to be unlikely to be the source of controversy or challenge, and will therefore be authorised without any requirements for publicity. Trustees are consulted at the beginning of the scheme process about whether they are aware of opposition to it or controversy that is likely to arise. The vast majority of schemes will not be contentious.*

*In potentially contentious cases, trustees are expected to have carried out a consultation of their own (most likely with supporters, beneficiaries and others with an interest in the charity) before applying for a scheme. In many cases this will avoid the need for publicity at a later stage.*

*In some instances – where there is an anticipated high level of public controversy, for example - public notice may be necessary or desirable. In the event of publicity being required, the commission can choose the length of notice period and where publicity should be given. When the publicity period is complete, the commission must consider any representations made in response to it. If the commission decides that changes are needed it will tell the trustees and agree a final draft of the scheme. If the commission does not see a need for any changes, the draft scheme will go forward as drafted. The commission will then bring the scheme into effect.*

**This guidance was completely ignored by trustees and the Charity Commission when introducing the new 16<sup>th</sup> April 2014 Scheme:**

**In introducing a new Scheme both the Charity Commission and the trustees were very well aware of opposition to it or controversy that is likely to arise. There is no evidence for trustees to have carried out a consultation of their own (most likely with supporters, beneficiaries and others with an interest in the charity) before applying for a scheme. There is no evidence, despite serious local concerns, for publicity (where there is an anticipated high level of public controversy, for example - public notice may be necessary or desirable) concerning the new Scheme; in point of fact the whole matter has been subject to secrecy between the Charity Commission, the trustees and Kirby Cane and Ellingham Parish Council.**

There is a mistake in the drafting of the new Scheme issued 16<sup>th</sup> April 2014; on the front page Ellingham United Charities are now described as **Ellingham United Charities, Estate Charity (255749)**:

*THE CHARITY COMMISSION FOR ENGLAND AND WALES*  
*Under the power given in the Charities Act 2011*  
*Orders that from today, the*  
*16 April 2014*  
*this*  
*SCHEME*  
*will alter or affect the existing trusts of the charity*  
*known as*  
**ELLINGHAM UNITED CHARITIES, ESTATE CHARITY (255749)**  
*at*  
*Ellingham, Norfolk*

As mentioned above, the 1918 Scheme is quite specific about the distribution of funds and allows the Estate Branch to take 50% of income for St Mary's PCC:

1918 Scheme:

*APPLICATION OF INCOME.*

*As to Estate Charity:*

*32. Expenses of Management.—The cost of repairs and insurance, and all other charges and outgoings payable in respect of the property of the Estate Charity and all the proper costs, charges and expenses of and incidental to the administration and management of the said property shall be first defrayed by the Estate Trustees out of the income thereof.*

*33. Application of Income.—Subject to the payments aforesaid, the yearly income of the Estate Charity shall be divided by the Estate Trustees into two equal parts, whereof one part shall be paid to the Trustees for the time being of the Church Branch for application by them as the income of that Branch as herein-after prescribed, and the remaining part shall be paid to the Trustees for the time being of the Town and Poor's Branch for application by them as part of the income of that Branch as hereinafter prescribed.*

By renaming Ellingham United Charities as *Ellingham United Charities, Estate Charity (255749)* the Charity Commission opens up the whole of the income from Ellingham United Charities to St Mary's PCC to take a 50% share of. This is a wholly unacceptable state of affairs.

I am in receipt of an email 24.10.16. from Mrs Paula McNicholas at the Charity Commission (see above) showing that no action will be taken by them on these matters so now wish to register this official complaint. I will send a copy to my MP Mr Richard Bacon.

R W Cooke

30.12.16.

### **Background information for a complaint to Charity Commission 30.12.16.**

Secret dealings by Kirby Cane and Ellingham Parish Council and Ellingham United Charities and the Charity Commissioners AGAIN. Papers can be seen at [www.kirbycaneandellingham.com](http://www.kirbycaneandellingham.com) click on ELLINGHAM UNITED CHARITIES AND KC&EPC CONTINUE TO HIDE MATTERS FROM THE PUBLIC.

In April 2014 Ellingham United Charities made changes their Scheme of Governance in order to make legal a situation of Breach of Trust which had been going on for decades. (See Clause 39 below) A Breach of Trust is unlawful, particularly as in this case it involved all of the trustees and many thousands of pounds. The question has to be asked: **Why have the Charity Commission allowed this to happen?** The question is indeed being asked.

Unfortunately, the changes that have been made to the Scheme have a glaring mistake being headed *Ellingham United Charities, Estate Charity (255749)*

A matter that is still with the Charity Commissioners concerns money being taken from the Poor's Charity and placed into the Church funds. This was done by confusing the Estate Charity with the Poor's Charity. Now it seems that the whole of the charities funds will become subject to the church taking half at the expense of the poor; not for the first time either. **Note: the Charity Commissioners have done nothing to correct this loss of funds to the Poor's Charity!**

The changes to the Scheme were known to Kirby Cane and Ellingham Parish Council in March 2015 for the AGM that year. The details never appeared as papers for the meeting, did not appear in the minutes and were never published by the Parish Council! (See link above)

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A copy of the new Scheme is attached on separate PDF file.

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Copy of email from Charity Commissioners:

## *Ellingham United Charities - 255749 CRM:0331503*

*24/10/2016 - 13:20*

*Dear Mr Cooke*

*Further to my email dated 14/9/2016, I can now provide a response.*

*With regard to the allegations of misappropriation and breach of trust, as Mrs Wilkins-Jones advised in her letter of 18 August 2016, the Commission does not provide details of the actions that we have taken. We will take forward any regulatory concerns where it is appropriate for us to do so.*

*With regard to your concerns relating to a trustee of the charity renting the charity's land at a low rate. The Commission has provided advice and guidance to the charity trustees.*

*Our records show that the governing documents of the charity are a scheme of 8 January 1918 as amended by a scheme of 27 January 1920 and a scheme of 16 April 2014.*

*You have asked whether the Commission checks the filed accounts with what the scheme of governance requires of those accounts. On 30 September 2016, there were 166,311 registered charities in England and Wales. The Commission does not have the resources to check the accounts of all registered charities. Therefore, we partly regulate through making charities accountable and transparent. We place accounts we receive on our website so that the public can check the accounts of charities they are considering supporting. We also make it clear where charities that are legally obliged to do so have not submitted accounts.*

*You have also asked a number of further questions regarding how the Commission regulates. The Commission has a duty to target its resources to the areas of the highest risk and to where they will have most impact. Further information regarding how the Commission regulates please see our published Risk Framework and our guidance CC47 – Complaints about Charities which can be found on our website at:*

*[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/507499/Risk\\_framework\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507499/Risk_framework_2016.pdf)*

*[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/346056/CC47-PDF.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346056/CC47-PDF.pdf)*

*We hope this information is satisfactory.*

*Yours sincerely*

*Mrs Paula McNicholas*

*Charity Commission – Permissions and Compliance Team*

**Of course the information is not *satisfactory*; a very serious breach of trust occurred, was admitted too and recognised as such by the Charity Commission. I reported this breach of trust to the Charity Commission but am not allowed to know the outcome of the matter. This is quite preposterous and reinforces the argument for much more transparency from the Charity Commissioners.**

As to the accounts of EUC; the Charity Commissioners completely ignore that the trustees have not filed correct accounts for years. I have been charged for copies of accounts that are in breach of trust, the Charity Commissioners know about this and fail to act to put matters right.

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1918 Scheme Clause:

*39. Trustees not to be personally interested.—No Trustee shall/(take or hold any interest in property belonging to the Charities otherwise than as a Trustee for the purposes thereof, and no Trustee shall receive any remuneration, or be interested in the supply of work or goods, at the cost of the Charities.*

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