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£232,708 payment to chief executive of charity considered ‘misconduct’ by regulator

The Office of the Scottish Charity Register (OSCR) has ruled this week that a discretionary redundancy payment of £232,708 should not have been paid to the chief executive of a charity in the process of winding up.

A severance package was offered to the chief executive of the charity consisting of three elements. The first was a statutory redundancy payment which the charity was required to pay. The second was a payment to the chief executive’s pension scheme which was an agreed condition of employment and therefore this payment was also required. The final element consisted of a discretionary payment to augment the chief executive’s period of membership of the pension scheme and the OSCR found that this element was agreed by the charity trustees in recognition of his role within the charity.

In its plans for closure, the charity presented the first two elements of payment as required by law. The trustees however failed to disclose the discretionary payment in recognition of the chief executive’s role in the sum of £232,708.

The OSCR published a report on 15 January 2013 holding that the trustees had breached their general duties to act with care and diligence in the interests of the charity to ensure that all of the charity’s assets were used to further its purposes. In deciding to make a discretionary payment, the OSCR considered this was “misconduct in the administration of the charity”.

The regulator based this conclusion on the size of the payment, the lack of advice sought before making the payment, the prior remuneration in recognition of the chief executive’s achievements and the lack of evidence that the money was spent in the interests of the charity.

The OSCR considered that since the payment had already been made, they had no powers to recoup this money. While the actions of the trustees were held to be in serious breach of their duties, the final recommendation was not to disqualify but to suggest training to ensure that the trustees understood their duties going forward.

This case serves as a useful reminder to charity trustees that discretionary redundancy payments beyond the employee’s legal entitlement may only be justified where it is expedient and in the interests of the charity to do so. In an Operational Guidance note published in March 2012, the Charity Commission state that a redundancy payment of this nature “might serve the interests of a charity by confirming it as a good employer and making it easier to attract and retain employees of high calibre in the future”. However, Charity Commission consent should be sought before agreeing to make this type of payment and the guidance indicates that legal advice should be sought in such cases. Even modest enhancements should be properly documented including trustee reasons for believing they will serve the interests of the charity which is likely to be particularly difficult where the organisation is proposing to wind up and the guidance specifically refers to this.

[*Charity Commission Operational Guidance OG 11 B1 – 14 March 2012* http://www.charitycommission.gov.uk/About_us/OGs/g011b001.aspx]

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