



**Inquiry Report made under Section 33 of the Charities and
Trustee Investment (Scotland) Act 2005**

Jobs and Business Glasgow SC023930

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Executive summary

Jobs and Business Glasgow (JBG) is a registered charity and an 'Arm's Length External Organisation' (ALEO) linked to Glasgow City Council (GCC). An ALEO is a body that is formally separate from a local authority but subject to its control or influence.

We opened an inquiry into JBG in December 2015 when we became aware of issues relating to the 'decommitment' of funding paid to JBG from two funding streams, namely the European Structural Fund (ESF) and European Regional Development Fund (ERDF).

We identified four areas of regulatory interest:

1. Whether there was a lack of appropriate governance and record keeping within the charity resulting in weaknesses in the financial oversight by the charity trustees.
2. Whether the charity trustees acted in the interests of the charity and exercised the appropriate level of care and diligence when they made their decision to repay £4.3 million to GCC from the charity's assets.
3. Whether the charity trustees understood and dealt appropriately with the conflict of interest between the charity and GCC.
4. The role of a body corporate as sole member of a charitable company.

As a result of our inquiry, we have found the following:

1. The funding model used by the charity necessitated robust procedures and controls being in place to ensure compliance with the terms of the funding agreements and provide appropriate assurance to the charity trustees. The controls that were put in place were not sufficient and this was ultimately the responsibility of the charity trustees.
2. We note that that in making the decision to repay the £4.3 million to GCC, the charity trustees individually felt that they were acting in the interests of the charity. We found that there was significant deliberation and challenge by the charity trustees in their consideration of the decommitment issue.
3. While it was appropriate to seek advice on the potential conflict of interest between the charity and GCC, the minutes of the charity's meetings do not evidence that this advice was followed.
4. The effect of GCC's actions in amending the charity's constitution to resolve a quorum issue on 27 January 2016, which removed the requirement for at least two independent trustees to be present during any transactions of business, was

potentially to compromise the independence of the trustees' decision-making process.

On balance, it is our view that the actions of the charity trustees were lacking in some areas where we would have expected there to be strong controls and oversight. It is important for charity trustees to understand the expectations that their legal duties place on them and to act accordingly. However, we acknowledge that upon notification of the failure in compliance with the terms of the funding agreements the charity trustees implemented a number of new controls and arrangements. We also acknowledge that individually the charity trustees believed that they were acting in the interests of the charity

Councillors have a duty to act in the interests of the Council in accordance with the Code of Conduct for Councillors. Where councillors are appointed as charity trustees of ALEOs there is an inherent risk that they may put the needs of the local authority before that of the charity, particularly where there are matters relating to local authority contracts. We consider the governance structure of an ALEO in such circumstances makes it difficult for a separation of interests to be appropriately managed and demonstrated and leads to greater risk of a failure to act in the interests of the charity. It is therefore important that an ALEO charity ensures policies and procedures are put in place to deal with this potential conflict of interest.

Background

Jobs and Business Glasgow (JBG) is a company limited by guarantee that was granted charitable status on 28 April 1999. Its charitable purposes are fully set out in its governing document and include the relief of poverty and unemployment among residents of the area served by Glasgow City Council (GCC).

According to the charity's governing document, membership of the charity is only open to GCC.

The governing document caps the number of Directors (who are the charity trustees) at eleven. Of that number a maximum of five shall be 'Partner Directors' (GCC councillors); a maximum of five shall be 'Independent Directors' and no more than one shall be the Executive Director (the charity's Chief Executive).

As the sole member of JBG, GCC has a number of powers in respect of the charity, including:

- The power to appoint or remove up to five Partner Directors (who must be councillors within GCC)
- The power to appoint up to five 'Independent Directors', guided by a nomination committee
- The power to make a decision to issue directions to the Directors (the charity trustees)
- The power to alter the governing document of the charity.

The original governing document identified that the quorum of charity trustees for the transaction of business would be four, two of which must be Independent Directors. The governing document was varied by GCC on 27 January 2016 to remove the requirement for two Independent Directors to be present in order for a meeting to be quorate and allow the transaction of business to be competent.

JBG is an Arm's-Length External Organisation (ALEO). An ALEO is a body that is formally separate from a local authority but subject to its control or influence. ALEOs can register as charities if they have charitable purposes and undertake activities in furtherance of these purposes.

Reason for OSCR's inquiry

In December 2015 we became aware, from media reports and correspondence sent to OSCR on behalf of GCC, of issues with the possible 'decommitment' of European Structural Fund (ESF) and European Regional Development Fund (ERDF) monies that had been received by JBG. The funding was paid to JBG through GCC, which was accountable to Scottish Government for this and other ESF and ERDF funding. There were concerns regarding compliance by JBG with the terms of funding of the Enterprise Creation in Disadvantaged Communities (ECDC) project. An audit carried out by Scottish Government found that some JBG employees had claimed 100% of their time had been spent on the ECDC project when in fact they had spent some of their time working on a project funded by the Department of Work and Pensions.

'Decommitment' is the withdrawal of funding previously awarded and paid; the amount 'decommitted' then requires to be repaid. In this case, funding totalling £4.3 million was withdrawn from the charity under the rules of the European Structural and Investment funds. The Scottish Government (SG) is the managing authority of Scotland's EU structural funds. When the funding was decommitted GCC was required to repay £4.3 million to the SG and then reclaim the funding from JBG.

EU funding operates on a matched funding principle. EU funding can contribute up to a maximum of 40% of the cost of each project; the remaining funding is supplied by the organisation running the project and/or a third party.

We opened our inquiry to determine whether there had been misconduct in the management and control of the charity in making the payment of £4.3 million from the charity's assets, in line with our statutory function of identifying and investigating apparent misconduct.

We identified four areas of regulatory interest:

1. Whether there was a lack of appropriate governance and record keeping within the charity resulting in weakness in the financial oversight by the charity trustees.
2. Whether the charity trustees acted in the interests of the charity and exercised the appropriate level of care and diligence when they made their decision to repay £4.3 million to GCC from the charity's assets.
3. Whether the charity trustee understood and dealt appropriately with the conflict of interest between the charity and GCC.

4. The role of a body corporate as sole member of a charity.

We are publishing this report on the outcome of our inquiry due to the public interest in the matter and to make our findings available to the wider charitable sector.

Our inquiry

We reviewed a considerable amount of complex evidence provided to us during the course of our inquiry.

Having considered the documentary evidence we sought meetings with the individuals who were charity trustees at the relevant time and other key participants. The interviews that took place were based on personal recollection of key events and meetings that had occurred some considerable time ago. We then considered fully all the information we had gathered.

We note the full cooperation we received from the charity, former charity trustees and others involved.

Our findings in relation to each of the four areas of regulatory interest:

1. Whether there was a lack of appropriate governance and record keeping within the charity resulting in weakness in the financial oversight by the charity trustees.

The charity's governance structure included various sub-committees, one of which was the Finance & Audit Committee whose delegated responsibilities included financial oversight of the organisation on behalf of the board. The Director of Finance & Commercial Services was responsible for managing and directing the activities of the Finance and Commercial Contracts Department and for preparing regular reports on the financial position of the charity for the charity trustees. These reports were initially provided to the Finance and Audit Committee for discussion. The post holder was also to be actively involved in the preparation of funding applications, particularly where the charity was seeking to obtain funding to cover all costs of particular projects.

The Committee also relied on internal audit work to report any discrepancies and identify any weaknesses.

The Committee was chaired by one of the Independent Directors and met at regular intervals. Reports and minutes of each meeting were provided to the charity trustees.

The charity's internal auditors conducted regular audits of the project work undertaken by JBG, but did not examine the accuracy of timesheets and funding claims until concerns regarding compliance with the terms of funding and the legitimacy of the projects were highlighted to the charity following an audit by the Scottish Government (SG). JBG relied on internal and external audit reports as part of their overall governance strategy to provide assurance and identify any weaknesses that needed action.

Both the charity's internal auditors and Scottish Government found that there was a lack of appropriate training of and oversight by relevant staff of claims being made for funding. Staff project time recorded and claimed did not reflect the actual time spent, resulting in the European funding being over-claimed. The charity trustees have accepted that things could have been done differently and on notification of the issue took action to mitigate the risk of this arising again by the introduction of a new time keeping system, adding it to their internal risk register and including it as a standing agenda item at all Finance and Audit Committee and Board meetings.

The charity began disciplinary procedures in relation to three senior members of staff following the reported issue of funding over-claims being made. Before the conclusion of these procedures, GCC instructed the board to suspend the disciplinary procedure, to undertake further investigations into the breach in grant conditions and to suspend the senior managers.

We acknowledge there were governance controls in place, through the existence and role of the Finance & Audit Committee, the remit of the Director of Finance and the internal audit process. However, we conclude that errors occurred as a consequence of poor controls over timesheet completion reflecting the allocation of front line staff resource to particular projects. On notification of the issue the charity trustees tightened up the governance, financial controls and monitoring arrangements in relation to the areas of responsibility that they had delegated in respect of record keeping and compliance with the funding terms and conditions. This aimed to mitigate the risk of this issue arising again in the future.

2. Whether the charity trustees acted in the interests of the charity and exercised the appropriate level of care and diligence when they made their decision to repay £4.3million to Glasgow City Council from the charity's assets.

We understand the circumstances surrounding the final decision to repay in full the decommitted funds made it a challenging decision, and that the decision was not taken lightly by the charity trustees. We note all charity trustees individually felt they were acting in the best interests of the charity at all times.

The evidence available to us indicates that there was a significant amount of deliberation and challenge by the charity trustees in their consideration of this decommitment issue. We are satisfied that charitable assets were only used for charitable purposes and the projects to which grants were originally awarded were advancing the employment of the people of Glasgow and therefore in pursuit of the charity's purposes.

3. Whether the charity trustees understood and dealt appropriately with the conflict of interest between the charity and Glasgow City Council.

Councillors have a duty to act in the interests of local authority in accordance with the Code of Conduct for Councillors. We consider that there is potential for conflict of interest in the current structure of the charity, where the local authority is also the sole member of the charity. Any situation where such a conflict arises would require careful management and the risks identified and managed appropriately. We previously identified this in our [Who's in Charge](#) guidance and in our [ALEO Report](#) published in January 2015.

We consider that the JBG charity trustees' decision to take legal advice on any potential conflict of interest involved in the 'decommittal' of funds was appropriate. The charity received two pieces of legal advice. The first was requested on instruction from the board. The second piece of advice was requested by the Chair of the board who has advised us that she did not agree with the first piece of advice.

The two pieces of advice differed in terms of the weight they gave to whether or not charity trustees who were also councillors needed to refrain from participating in discussions regarding the potential decommittal of funds. However, both pieces of advice clearly identified the need to ensure processes and procedures were in place to deal with the potential conflict of interest and that how this was actually handled at any meeting should be recorded formally in the minutes.

The minutes of board meetings following the two pieces of legal advice being provided do not record any discussion of conflict of interest, though these were meetings at which significant decisions were made about the decommittal of funds.

4. The role of a body corporate as sole member of a charity registered as a company limited by guarantee with Companies House

GCC as the sole member has the power to vary the charity's governing document. Prior to 27 January 2016, the governing document stated that the minimum number of directors required to make a quorate decision at board meetings was four, two of which were required to be Independent Directors.

A board meeting of the charity trustees was held on 27 January 2016 at which the charity trustees present were informed the meeting was not quorate because the required minimum of two Independent Directors were not present. The company secretary contacted GCC during the meeting to seek advice and was informed that GCC as sole

member of the company had passed a resolution to vary the charity's governing document, removing the requirement for at least two Independent Directors to be present at such meetings. Companies House records show that the resolution was passed on 27 January 2016. GCC's actions resulted in the meeting being quorate since four charity trustees were present.

In Chapter 3 of our [Who's in Charge](#) guidance we consider whether a linked body should be able to appoint some or all of a charity's trustees; we recommend that a charity's board should have a majority of independent trustees. The charity's governing document previously reflected the good practice as set out in our guidance. However, the effect of the resolution was potentially to compromise the independence of the charity trustees' decision making process in the management and control of the charity.

We have no regulatory powers under the Charities and Trustee Investment (Scotland) Act 2005 in relation to a sole member of a charity.

Our conclusions

When we examine the actions of charity trustees, we consider whether these have been in line with the legal duties set out in charity law.

Charity trustees must act in the interests of the charity and must in particular:

- Ensure that the charity acts in a manner which is consistent with its charitable purposes
- Act with the care and diligence that is reasonable to expect of a person managing the affairs of another person
- Manage any conflict of interest between the charity and any person or organisation who appoints the charity trustees.

Any failure to meet these legal duties is considered to be misconduct in the administration of the charity. Misconduct includes mismanagement.

In considering the four areas of regulatory interest, our conclusions were as follows:

1. The funding model used by the charity necessitated robust procedures and controls being in place to ensure compliance with the terms of the funding and provide appropriate assurance to the charity trustees. The controls that were put in place were not sufficient and this was ultimately the responsibility of the charity trustees.
2. We note that that in making the decision to repay the £4.3 million to GCC, the charity trustees individually felt that they were acting in the interests of the charity. We found that there was significant deliberation and challenge by the charity trustees in their consideration of the decommitment issue.
3. While it was appropriate to seek advice on the issue of potential conflict of interest between the charity and GCC, the minutes of the charity's meetings do not evidence that this advice was followed.
4. The effect of GCC's actions in amending the charity's constitution to resolve a quorum issue on 27 January 2016 was potentially to compromise the independence of the trustees' decision-making process.

On balance, it is our view that the actions of the charity trustees were lacking in some areas where we would have expected there to be strong controls and oversight. It is important for charity trustees to understand the expectations that their legal duties place on them and to act accordingly. However, we acknowledge that upon notification of the

time recording error the charity trustees implemented a number of new controls and arrangements. We acknowledge that individually the charity trustees believed that they were acting in the interests of the charity.

Wider lessons for the charitable sector

- ALEOs that are charities should have a comprehensive conflict of interest policy and accompanying procedures to ensure that conflicts are appropriately identified and managed. This is important where both the local authority and charity have an interest in a specific matter.
- Charity trustees need to understand and be able to have confidence in the charity's policies, procedures and control measures.
- Where legal advice has been obtained regarding a matter of significance involving potential reputational or other consequences for the charity, the charity trustees should ensure they have fully considered all the potential risks and benefits to the charity prior to making a decision.
- It is good practice to ensure key Board considerations are fully recorded in the minutes of any meeting held.

Published 28 May 2020

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