

Investigating UK Charity Payments to Former Employees: Red Flags and Due Diligence

Understanding the Risks

When UK charities pay former employees for services, it creates potential conflicts of interest and opportunities for abuse. These arrangements can mask inappropriate benefits, inflate costs, or circumvent proper procurement processes. Here's how to investigate these relationships thoroughly.

Legal Framework and Requirements

Charity Commission Rules

- **Trustee benefit:** Former trustees cannot receive payments without explicit Charity Commission authority
- **Connected person benefits:** Payments to people connected to trustees require specific conditions to be met
- **Duty of care:** Trustees must ensure all payments represent value for money and further charitable purposes
- **Transparency:** Significant payments must be disclosed in annual accounts

Key Legal Tests

1. **Charitable benefit:** Does the arrangement benefit the charity's purposes?
2. **Value for money:** Are rates competitive and reasonable?
3. **Proper process:** Was procurement conducted appropriately?
4. **No undue benefit:** Is the former employee receiving inappropriate personal advantage?

Where to Find Information

Public Sources

Annual Accounts and Trustee Reports

- Notes to accounts showing related party transactions
- Details of payments exceeding £60,000 to any individual
- Trustee expenses and benefits
- Professional fees and consultancy costs

Charity Commission Database

- Annual returns and accounts (usually 2-3 years available)

- Serious incident reports
- Regulatory correspondence
- Constitutional documents showing charitable objects

Companies House (if applicable)

- If charity has trading subsidiaries
- Director appointments and resignations
- Inter-company transactions
- Person with significant control information

Requesting Information Directly

Information Charities Must Provide

- Most recent annual accounts and trustee report
- Constitutional documents (governing document)
- Details of how to complain about the charity

Information You Can Request

- Policies on conflicts of interest
- Procurement procedures
- Details of significant contracts (though specifics may be refused)
- Meeting minutes (though these are often refused)

Red Flags Analysis Framework

Timing Red Flags

Suspicious Patterns

- Consultancy contracts starting immediately after employment ends
- Long-term contracts agreed just before employee departure
- Payments continuing for extended periods without clear deliverables
- Renewal of contracts without competitive tendering

Employment Transition Issues

- Large redundancy payments followed by immediate consultancy contracts
- "Garden leave" payments that appear excessive
- Settlement agreements that include ongoing service provisions
- Consultancy rates that exceed previous salary levels significantly

Financial Red Flags

Rate Analysis

- Daily rates exceeding reasonable market rates for the sector/specialism
- Rates significantly higher than current employee costs for similar work
- No evidence of rate benchmarking or market testing
- Automatic annual increases without performance review

Volume and Scope Concerns

- Contracts for excessive numbers of days per year
- Vague or overly broad service descriptions
- Work that could reasonably be done by permanent staff
- Multiple concurrent contracts with the same individual

Payment Pattern Issues

- Large upfront payments or retainers
- Payments for work not yet completed
- Invoicing patterns that don't match claimed work
- Payments continuing during periods when no work is documented

Governance Red Flags

Process Failures

- No competitive tender process for significant contracts
- Trustee approval without proper documentation
- Contracts not reviewed by independent trustees
- No monitoring of deliverables or outcomes

Relationship Issues

- Former CEO or senior staff receiving contracts soon after departure
- Family members or friends of trustees receiving work
- Multiple former employees receiving similar arrangements
- Lack of separation between decision-makers and beneficiaries

Investigating Competitiveness of Pricing

Market Rate Research

Benchmarking Sources

- Specialist recruitment agencies for day rate ranges
- Professional body salary surveys
- Gov.uk guidance on consultancy rates for public sector
- Similar charities' accounts showing comparable payments
- Freedom of Information requests to public bodies for similar services

Calculation Methods

1. **Employment Cost Comparison:** Calculate former employee's daily rate when employed (including benefits, pension, NI) vs. consultancy rate
2. **Market Rate Analysis:** Compare against 3-5 similar providers in the market
3. **Value Analysis:** Assess whether premium (if any) is justified by specialist knowledge
4. **Efficiency Review:** Compare cost of consultancy vs. permanent employee for ongoing work

Procurement Analysis

Proper Process Indicators

- Written specification of requirements
- Multiple quotes obtained and documented
- Evaluation criteria clearly defined
- Decision rationale documented
- Contract terms proportionate to value and risk

Warning Signs

- Single source procurement without justification
- Specifications written to favor particular provider
- Evaluation criteria applied inconsistently
- No documentation of procurement process
- Retrospective approval of contracts

Assessing Substance of Work

Documentation Review

Contract Analysis

- Clear, specific deliverables with deadlines
- Measurable outcomes and success criteria

- Appropriate intellectual property clauses
- Reasonable termination provisions
- Performance monitoring arrangements

Work Evidence

- Reports, recommendations, or other deliverables
- Meeting attendance records
- Communication trails showing active engagement
- Evidence of expertise being utilized
- Outcomes achieved and impact measured

Value Assessment Questions

Strategic Value

- Does the work align with charitable objects?
- Could the work be done by existing staff or volunteers?
- Is specialist expertise genuinely required?
- Are outcomes proportionate to cost?

Operational Efficiency

- Is the work being completed within agreed timeframes?
- Are deliverables of appropriate quality?
- Is there evidence of proper project management?
- Are there measurable benefits to the charity?

Investigation Methodology

Phase 1: Initial Assessment

Data Gathering

1. Download last 3 years of accounts from Charity Commission
2. Review trustee reports for related party disclosures
3. Check Companies House for any trading subsidiaries
4. Search for any regulatory correspondence or incidents
5. Review charity's website for governance policies

Red Flag Screening

- Map former employees receiving payments

- Calculate payment rates and compare to market
- Identify timing patterns and relationship issues
- Note any governance process failures

Phase 2: Detailed Analysis

Financial Investigation

- Calculate total payments over 3-year period
- Analyze payment patterns and frequency
- Compare rates to benchmarks
- Assess proportion of total charity expenditure

Governance Review

- Map trustee relationships and conflicts
- Review approval processes
- Check for transparency in reporting
- Assess compliance with Charity Commission guidance

Phase 3: Evidence Building

Documentation Strategy

- Screenshot relevant web pages
- Download and save all public documents
- Create timeline of employment/payment relationships
- Document rate comparisons with sources
- Record any public statements about arrangements

Verification Steps

- Cross-check information across multiple sources
- Verify employment dates through LinkedIn/public sources
- Confirm market rates through multiple benchmarks
- Check consistency of public statements

Legal Compliance Check

Charity Law Requirements

Trustee Duties

- Acting in charity's best interests
- Avoiding conflicts of interest
- Ensuring charitable benefit
- Exercising reasonable care and skill

Specific Obligations

- Related party transaction disclosure
- Competitive procurement for significant contracts
- Value for money assessment
- Proper authorization and documentation

Regulatory Compliance

Charity Commission Guidance

- CC11: Trustee expenses and payments
- CC20: Charities and fundraising
- CC14: Investment of charitable funds
- Operational guidance on conflicts of interest

Potential Breaches

- Unauthorized trustee benefit
- Breach of duty of care
- Misuse of charitable funds
- Failure to act in charity's best interests

Building Your Case

Evidence Categories

Financial Evidence

- Payment amounts and timing
- Rate comparisons and benchmarks
- Procurement documentation (or lack thereof)
- Value for money analysis

Governance Evidence

- Conflict of interest issues
- Process failures

- Lack of transparency
- Trustee decision-making problems

Impact Evidence

- Effect on charitable purposes
- Opportunity cost of arrangements
- Stakeholder concerns
- Reputational damage

Documentation Standards

Factual Accuracy

- All claims backed by evidence
- Sources clearly cited
- Calculations shown and verified
- Timeline accuracy confirmed

Professional Presentation

- Clear executive summary
- Logical structure and flow
- Supporting appendices
- Recommendations for action

Taking Action

Internal Escalation

Trustee Engagement

1. Written complaint to trustee board
2. Request for trustee meeting to discuss concerns
3. Formal request for governance review
4. Demand for improved transparency and controls

Stakeholder Mobilization

- Alert major donors to concerns
- Engage with beneficiary groups
- Contact partner organizations

- Raise at Annual General Meeting

External Reporting

Charity Commission

- Serious incident report if applicable
- Regulatory compliance concern
- Request for investigation
- Whistleblowing protection available

Other Authorities

- HMRC for tax issues
- National Audit Office for public funding concerns
- Relevant professional bodies for qualified individuals
- Police for potential fraud (serious cases only)

Prevention and Reform

Recommended Controls

Procurement Controls

- Mandatory competitive tendering above set thresholds
- Independent evaluation panels
- Documented decision rationale
- Regular contract reviews

Governance Improvements

- Clear conflicts of interest policy
- Independent trustee oversight
- Regular governance audits
- Transparency commitments

Monitoring Systems

- Performance measurement frameworks
- Regular value for money reviews
- Stakeholder feedback mechanisms
- Annual governance reporting

Conclusion

Investigating charity payments to former employees requires systematic analysis combining financial scrutiny, governance review, and legal compliance checking. The key is building a factual case based on evidence while understanding both the legal framework and practical realities of charity operations.

Remember that not all arrangements with former employees are inappropriate - legitimate consultancy relationships can provide valuable expertise to charities. However, the special trust placed in charities and their tax advantages mean higher standards of transparency and accountability are required.

The goal should be ensuring charitable resources are used effectively for their intended purposes, while maintaining public confidence in the charity sector's integrity.

This guide is for informational purposes. Consider consulting legal professionals specializing in charity law for specific cases involving potential legal violations.