

## Letter from the Charity Commission, 15<sup>th</sup> September 2018

*(Trustees's clarifications in square brackets)*

Our view is that the entity is broadly charitable but that the Indenture [*i.e. Conveyance*] dated 13 August 1930 is unsatisfactory.

The 1930 Indenture states that the grantees [*i.e. the Trustees*] 'will forever hereafter hold and use the lands and hereditament hereby conveyed as and for the purpose aforesaid' and the purpose aforesaid is 'for such purposes for the benefit of the parishioners of Clapham Parish as the Grantees may from time to time determine'. What has been determined is not without doubt. Also, it is impossible to know in clear legal terms what has been determined.

There has been some disagreement locally about how to use the entity's property. However, all seem to be in agreement that this is a charity.

Therefore, in order to produce purposes that are exclusively charitable, the Commission could consider making a *cy près* [*i.e. 'as close as possible'*] scheme. A *cy près* scheme is a legal document which would provide the charity with new purposes. This would then sit alongside the 1930 Indenture as the charity's governing document.

In order to consider making this scheme, the trustees will need to make an application to the Commission. You may want to take legal advice to help with this but this is a matter for you. There is much more advice on *cy près* schemes and the application process in the attached document.

We note that there is some interest locally in wanting a shop on the charity's property. The trustees may decide that they want to proceed with this. If only a small part of the land will be used for this purpose, then the trustees may decide to dispose of that part of the land [NB 'disposals' include leases]. However, while this may be a good community use, it is not a charitable use and so would need to be on market terms.

As you know, the Commission had received some concerns about the charity linked to the shop and we have responded to provide the above view.

In summary, the Commission's view is that this is a charity but that its purposes are unsatisfactory and a *cy près* scheme is required to allow this charity to continue to act lawfully. You should understand that as we are agreeing that the land is held on charitable terms and that a *cy près* scheme is needed, this will result in the trustees' decisions having to be made entirely within the charitable sphere.