

**From:** Shivaji Shiva [Shivaji.Shiva@anthonycollins.com]  
**Sent:** 03 March 2015 18:20  
**To:** Mandy Wilcox  
**Subject:** RE: The Mary Stevens Charity CRM:0177008

Dear Mandy

I have received the response below from the Charity Commission.

Unsurprisingly, the Commission is seeking to question whether the use of the building is truly use as 'public offices' within the terms of the 1929 deed, but that argument is not put strongly.

I suggest we focus at this stage on providing clear and comprehensive responses to the other issues, that is:

- the history and constitution of the Ernest Stevens Trust Management Committee;
- how the Council manages conflicts of interest when making decisions about the Trust and the use of its assets;
- the way that the car parks are managed. (It may be that we can demonstrate that the approach taken is reasonable because, for example, it would be more expensive to police access to the car parks and the current capacity does not prevent problems – I would like to understand this better.)

Would it be helpful to schedule a call to discuss this before you request further information from colleagues?

Regards

Shivaji

**Shivaji Shiva**  
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**From:** FC Email Team (Queue) [<mailto:fcemailteam@charitycommission.gsi.gov.uk>]  
**Sent:** 03 March 2015 11:19  
**To:** Shivaji Shiva  
**Subject:** RE: The Mary Stevens Charity CRM:0177008

Dear Mr Shiva

The Mary Stevens Park – registered charity number 523195

Thank you for your email received 10 February and the helpful information contained therein.

Whilst I agree that there is no definition of the term 'public offices' within the 1929 deed of gift, it could be argued that clauses 2 and 8 (b) would not allow the Council as trustee to use the building for its statutory purposes in the way they are i.e. this would be over and above what was envisaged to be a public office in 1929. In making the decision to move the two departments into this building how did the Council as trustee manage the conflict of interest? Can you please provide details? When was the Ernest Stevens Trust Management Committee set up? How is this body constituted? It is stated that it comprises of 6 council members and operates under the oversight of the Council, how could this be said to be independent? Who appoints the council members to act on this committee? Are the inhabitants represented on this committee?

I note that the Council have 'explored options to use the charity buildings to generate income but has not yet found a way to enable the buildings to be used in a manner consistent with the purposes of the trust while also generating a better return for the charity'. It should be remembered that if it can be demonstrated that any of the charity buildings are not required to be used for the purposes of the charity and it would be in the best interest of the charity to dispose of such, then rather than the buildings being empty the trustees can consider seeking the authority of the Charity Commission to dispose of such for purposes outside of the trusts i.e. on a full commercial basis with a view to generating funds. Guidance on disposing charity property can be found on our website.

The Council occupy the building by way of licence and you mention that they do not pay a fee for the use of the charity buildings but uses statutory funds to maintain the park, recreation ground and buildings by way of an arrangement with charity 523196. It is stated that the Commission agreed in 2001 to this arrangement. Unfortunately I cannot find any reference to this and would be grateful if you could supply copies of this correspondence.

We note that as charity trustee some good work has been undertaken with the development of the park, visitor numbers are high and may increase with the new facilities provided through grant funding. It is our view that the car parks whilst as you state are open to all of the inhabitants of the area, should only be used by those who are actually using the charity facilities i.e. the public park and recreation ground. If the smaller car park is only available to the public and the larger car park is already full with Council staff using the car park (i.e. 300 staff to 100 spaces) there is a possibility that there are no spaces for the beneficiaries who arrive later in the day, this would be an unacceptable situation. The charitable purposes are paramount and the needs of the beneficiaries should take precedence over those of the Council in its statutory capacity. It is stated that the Council are reviewing options for a long term parking strategy; do you have any draft proposals? Are the council undertaking this in their statutory capacity or as charity trustee? Bearing in mind my comments above will any such plans include no or limited staff parking on charity land? If not why is it in the best interest of the charity to allow Council staff full use of the larger car park? If it can be demonstrated that it is in the best interest of the charity that further land be acquired for parking then who will pay for such, the Council or the charity? Will part of the park land be converted to a car park, if so under what authority would the Council pursue this? What considerations have been given to consulting the inhabitants of the area over any proposals regarding the car park arrangements?

I look forward to hearing from you in due course.

Yours sincerely

Colette Flood (Mrs)  
First Contact

----- Original Message -----

**From:** Shiva Shivaji  
**Received:** 10/02/2015 16:12

To: FC Email Team (Queue)

Subject: \*FAO Colette\* - Re: FAO the Trustees of the Mary Stevens Charity CRM:0177008

Dear Mrs Flood

The Mary Stevens Park – registered charity number 523195 ('the Charity')

This firm acts for Dudley Metropolitan Borough Council ('the Council') in relation to this matter, and we are instructed to respond to your email of 18 November 2014 on behalf of the Council (in its capacity as the sole corporate trustee of the Charity).

The Mary Stevens Park is, as its name suggests, a large park. It covers some 11 hectares and has extensive recreational facilities, areas of managed flower beds and grass, and a number of buildings.

In your email you asked for the Council's response to concerns raised by Margot James MP about the ability of members of the public to use the park, specifically the suggestion that:

- (i) some of the buildings on the Charity's land are being used by the Council's Department for Environment and Department for Children's Services in order to carry out the Council's statutory duties; and
- (ii) Council staff have unrestricted and free of charge use of the recreation ground car park to the detriment of the beneficiaries.

As you observed in your email, the Charity is governed by a deed of gift dated 6 December 1929. The Council is the full trustee of the charity and holds the park on the trusts declared in the second schedule to the deed of gift. The land is specie land: it must be used for the purposes of the charity.

The second schedule sets out at clause 2 the purposes for which buildings on the park may be used:

*"NO buildings shall be used or erected on the said land hereby assured other than ... for the use of the Public in visiting the Park and using the Recreation Ground or a free Public Reading Room Free Library Museum Picture Gallery Public Baths **Public Offices** Public Hall or any Public Memorial or any or all of them."*

(Our emphasis.)

The phrase 'public offices' is not defined in the deed of gift. It bears its ordinary meaning: buildings housing a government department or agency or used for civic business.

Clause 8(b) of schedule 2 goes on to provide that those of the buildings on the park that are used for public offices do not have to be opened to the public in the same way as the park, recreation ground and other buildings.

The buildings referred to in your email have, we understand, been used as offices of the Council and its predecessors since February 1930, shortly after the land was transferred to the Mayor Aldermen and Burgesses of the Borough of Stourbridge in 1929.

As you would expect, the particular activities carried out in the public offices has evolved between 1930 and 2015, but the buildings continue to be used as public offices (as well as for purposes necessary to the maintenance and public use of the park and recreation ground). Until recently the main building, known as the Council House, was used by the Council's Directorate of the Urban Environment. More recently, the Directorate of Children's Services has moved into the building.

You also raised a number of specific questions. We respond below to your four numbered queries:

1. Can you please confirm if the Council have disposed of any charity land or changed the use of any of the buildings erected thereon since the charities were established? If so under what authority? Did the Council as trustee obtain the relevant consents required by law at that time (currently section 117 of the Charities Act 2011)? I would

be grateful for full details of each instance together with the minutes of the meeting at which the trustees decided it was in the best interest of the charity to dispose of the land together with any professional received at that time.

No, there has been no disposal of charity land. The Council occupies buildings at the park as public offices under licence.

2. Are the Council using the property to take forward its statutory duties? If so under what authority within the governing document have they allowed the use of the buildings? Do the Council pay a fee for the use of these buildings? If so upon what terms?

Please see above. The Council occupies buildings at the park as public offices under licence.

The Council is aware of the Charity Commission's guidance to local authorities acting as charity trustees and is conscious of the potential for a conflict to arise between its duties as a charity trustee and its duties as a local authority. To help manage this risk and ensure that the assets of the Charity are managed independently and in accordance with the deed of gift, the Council has delegated the management of Mary Stevens Park to a committee – the Ernest Stevens Trust Management Committee – which comprises a total of six council members and operates under the oversight of the Council. The Council recognises that responsibility for its trusteeship of the Charity continues to rest with the whole Council.

The Council does not pay a fee for the use of the Charity's buildings. However, it uses its budget (and not charitable funds) to maintain the park, recreation ground and buildings. By doing so, it enables the Stevens Park and Recreation Ground charity (number 523196) to apply its income on purposes other than the maintenance of Mary Stevens Park. We understand this arrangement was considered, and approved, by the Charity Commission in 2001.

The cost of reactive maintenance to the building in recent years is as follows:

2011/12	£34,355
2012/13	£23,496
2013/14	£8,497
2014/15	£12,662 to date

The total annual maintenance costs for the whole of the site are significantly higher. In 2012/13 for example, they amounted to £112,172.

The Council as Trustee has explored options for using the Charity's buildings to generate income but has not yet found a way to enable the buildings to be used in a manner consistent with the purposes of the Trust while also generating a better return for the Charity.

3. Does the Council allow its staff exclusive free use of the recreation ground car park to the detriment of the beneficiaries of the parks? I believe that the inhabitants have made representations to the Council about the inability to park on the charity land to be able to use the facilities. Can you please provide me with the trustees' comments on whether this is correct, details of the current car park arrangements and what they

propose to do to resolve the current difficulties? Is part of the land held by Swinford Common charity an option?

The Council does not allow its staff exclusive free use of the recreation ground car park.

The car park on Mary Stevens Park provides approximately 100 parking spaces and is open to members of the public throughout the day, as is a second car park a little further from the offices (accessed via Heath Road). The second car park (approximately 30 spaces) is for the sole use of the public – Council staff are advised by the managers of the offices not to use that facility. Both car parks are free to use and there are no barriers or signs deterring the public from using either of them.

If there are parking difficulties, they do not appear to be deterring visitors to the park; it attracts around 900,000 visitors each year. The Council is, however, currently reviewing the options for a long term parking strategy for the park. The options to be considered will include extending existing car parks and/or acquiring land adjacent to the park to increase the number of parking spaces. When the review is complete the Trust will be consulted on the options that emerge.

4. Charity 523195 is up to date with its submissions however records a nil income and expenditure each year with the exception of 2008 where we did receive some accounts showing income and expenditure for a number of charities. Charity 523197 also shows nil income and expenditure and its latest submission is overdue. On this basis I would be grateful if you could please provide me with separate copies of the last five years accounts for each charity.

We attach the last five years accountants for the Mary Stevens Park and will forward separately copies of the last five years' accounts for Swinford Common. We can confirm that for the reasons referred to above neither charity has had any income in the last five years. Of the four charities managed by the Council as a result of donations from Ernest Stevens only the Stevens Park and Recreation Ground (523196) has investments generating income.

You also refer to the allegation that:

5. In order to alleviate this problem (by which we assume you mean a shortage of space for car parking) the Council propose to use some of the land owned by Swinford Common charity as an additional car park facility.

As explained above the Council is reviewing its car parking strategy for Mary Stevens Park. In deciding how to proceed it will consider the terms on which the land of the two charities is held and seek specialist advice where appropriate.

We trust the above information allays your concerns. If you do have any further queries please do not hesitate to call me at the number below.

Yours sincerely

Shivaji Shiva

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----- Charity trustees need to report actual or suspected serious incidents to the Commission and should do so as soon as they are aware of them. If trustees fail to report a serious incident, the Commission may consider this to be mismanagement and take regulatory action. Find out more at : [www.gov.uk/how-to-report-a-serious-incident-in-your-charity](http://www.gov.uk/how-to-report-a-serious-incident-in-your-charity) Consider the environment. Please don't print this e-mail unless you really need to. -----

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