

24 September 2020

The Charity Commission  
102 Petty France,  
Westminster,  
London SW1H 9AJ

Dear Sir/Madam,

**Coram's Fields And The Harmsworth Memorial Playground, Charity Number 302963 (the "Charity")**

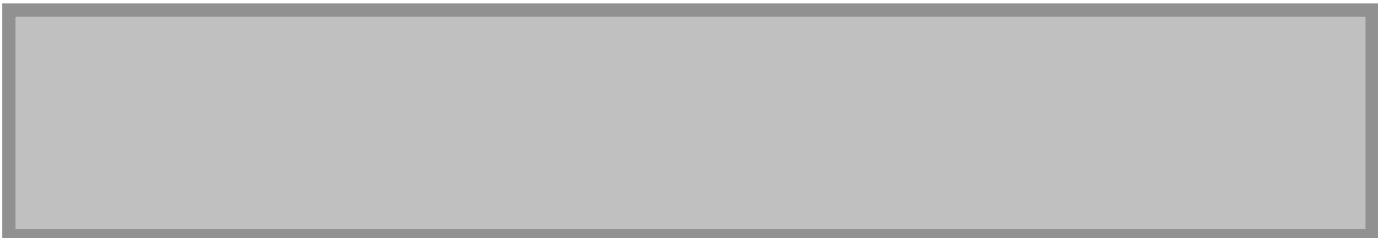
We are instructed to write to you on behalf of our client, the Coram's Fields User Group (our "**Client**"), to make a serious complaint in relation to "Coram's Fields and the Harmsworth Memorial Playground", Charity Number 302963 (the "**Charity**").

After thorough investigation and various attempts to resolve matters directly with the Charity (evidence of which is being provided herewith), our Client remains of the view that, as currently operated, the Charity does not follow the law with damaging consequences to its reputation and public trust in charities generally. We are therefore seeking you to make an order or provide advice or guidance to the Charity to remedy the issues that are the subject matter of this complaint (the "**Issues**") within a reasonable period of time. In the event that the Charity fails to remedy the Issues in accordance with your guidance, we would request that you consider using one of the other remedial regulatory powers available.

Our client is conscious that you do not have jurisdiction to deal with issues relating to fundraising but, to the extent that our Client believes the Charity to have misstated the way it operates in fundraising materials, it reserves its rights to make parallel complaints to the Fundraising Regulator and/or the Advertising Standards Authority; for the avoidance of doubt, no such complaints have been made at the time of writing. More generally, while the Issues are not currently the subject of legal proceedings, our Client reserves all of its rights.

**The Complaint**

Our Client is concerned that certain of the commercial activities permitted to take place on the Coram's Fields site in Central London (the "**Site**") by Coram's Fields Company Trustee Limited, the current corporate trustee of the Charity (the "**Trustee**") and the directors of the Trustee (the "**Directors**") are outside of the powers granted to the Trustee(s) pursuant to the Charity's trust deed dated 12 December 1935 (the "**Trust Deed**"), as supplemented by the deed of variation dated 7 September 2016 (the "**Deed of Variation**" and, together with the Trust Deed, the "**Governing Documents**"), making them effectively unlawful. Such commercial activities also undeniably breach the stated long-established rule in relation to the Site that "Adults allowed only if accompanied by a child" (as stated at entrance points



to the Site, referred to in the Charity's annual reports and reported to the Charity Commission, e.g. at <https://bit.ly/2FxJ16t>) and all promotional, fundraising and marketing materials of the Charity.

Such activities effectively displace the Charity's beneficiaries, namely children and young persons, (a) significantly reducing their ability to use the Site for the purpose of the Charity set out in the Governing Documents, and contravening the rationale for the Charity's and the Site's establishment and existence; and (b) alienating such persons in relation to their ability to use the Site by the continued and repeated non-compliance of the Charity with its Governing Documents, with damaging consequences to its reputation and public trust in charities generally.

### **Communication with the Charity**

Our Client instructed us to communicate with the Trustee and the executive of the Charity after a long history of seeking to resolve the Issues directly with the Charity. We wrote to the Charity and explained the Issues and provided our reasoning (and offered the opportunity to discuss the Issues directly with the Charity and/or the Trustee) under cover of a letter of 30 June 2020 ("**Our Letter**").

The Charity's Chief Executive Officer responded on behalf of the Charity and the Directors and sought to refute our arguments under cover of a letter of 28 August 2020 (the "**CF Letter**").

After careful review, our Client believes that – whether intentionally or otherwise – the CF Letter fails substantively to engage with any of the material Issues and, given previous history of communications between our Client and the Charity and given the CF Letter failed to engage with our proposal for a direct discussion, it is vital that the Issues are now referred directly to the Commission.

### **The Main Issue**

Our Client believes that the main Issue is a comparatively simple one:

- a) the Charity was set up so (and its Governing Documents provide) that the Site be used as a perpetual open space for the benefit of children and young people; and
- b) the Charity has instead engaged in a long-standing pattern of using material portions of the Site for commercial activities and the generation of revenue at precisely the times of the day and week when the Site would be most likely to be used by children and young people, with such displacement use only expanding over time,

(the "**Main Issue**").

While you will see that we have significant concerns with the way in which the revenue from the activities in (b) is subsequently used, the use of the monies raised by such commercial activities is not of primary relevance: it is simply not open to the Charity to use the Site contrary to the provisions of its Governing Documents (even if it then separately used the revenues to further its Objects).



As stated above, the activities in (b) continue to discourage the Charity's proper beneficiaries as they find themselves repeatedly turned away or otherwise unable to use the Site in accordance with the Charity's stated purposes, eventually discouraging further attempts to do so and giving rise to a perception that the Charity is just another "for-profit" organisation and damaging its reputation and public trust in charities generally.

### **Supporting Documents**

In support of our complaint, we are providing a copy of Our Letter (Schedule A to this letter) and the CF Letter (Schedule B to this letter).

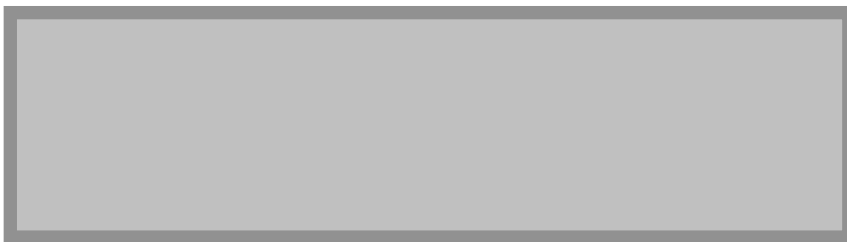
Despite – or, perhaps, because of – the comparative simplicity of the Main Issue, the CF Letter seeks to provide pages of supporting information in no particular order, none of which engages substantively with the Main Issue and/or the other Issues in Our Letter.

Nonetheless, to aid comprehension and provide additional clarification, we are also providing a document (Schedule C to this letter) that seeks to map relevant aspects of the CF Letter to the Issues and, where relevant, provides additional comments from our Client.

We are conscious of the need to be concise in this complaint and have thus not sought to provide additional information at this stage – however, our Client would be only too happy to engage directly with the Commission and provide additional information and evidence to the extent there is any doubt as to any of the assertions that our Client makes.

### **Further Communication**

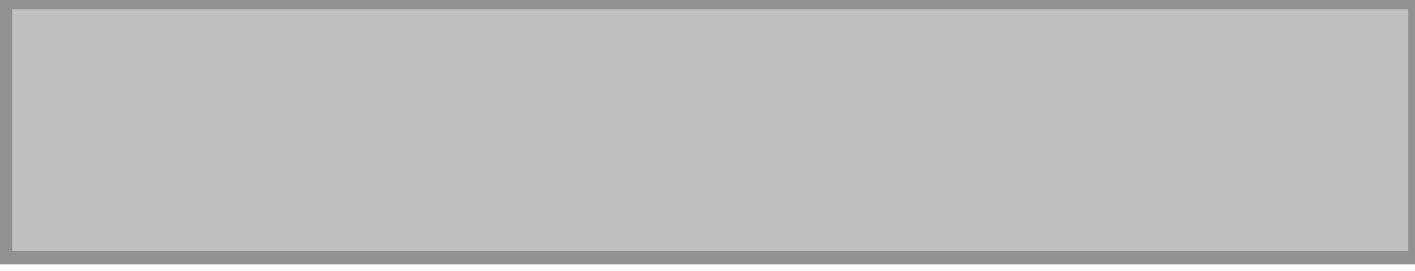
We would be grateful if the Commission address any further communication in relation to this matter to our Client courtesy of its Secretary, Veljko Zizic ([veljko.zizic@gmail.com](mailto:veljko.zizic@gmail.com)), with a copy to us at 



cc: Coram's Fields User Group (Attn: Veljko Zizic); Coram's Fields And The Harmsworth Memorial Playground (Attn: Stuart Woods)



**SCHEDULE A  
OUR LETTER**



30 June 2020

Stuart Woods, CEO and Deirdre Carty, Acting Chair of the Trustee  
Coram's Fields And The Harmsworth Memorial Playground  
93 Guilford Street  
London  
WC1N 1DN

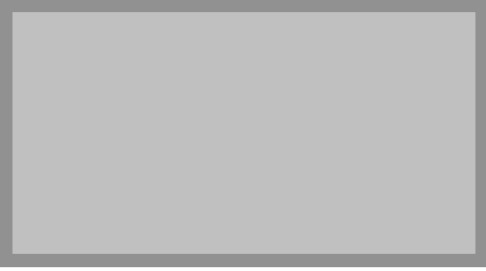
Dear Mr Woods and Ms Carty,

**Coram's Fields And The Harmsworth Memorial Playground (the "Charity")**

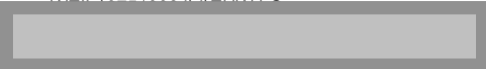
We are writing on behalf of our client, Coram's Fields User Group ("CFUG") in connection with the use and management of Coram's Fields (the "Site") by Coram's Fields Company Trustee Limited (the "Trustee"), its directors (the "Directors") and persons authorised by them.

Our client is concerned that certain of the commercial activities permitted to take place on the Site by the Trustee and the Directors are outside of the powers granted to the Trustee(s) pursuant to the trust deed dated 12 December 1935 (the "Trust Deed"), as supplemented by the deed of variation dated 7 September 2016 (the "Deed of Variation" and, together with the Trust Deed, the "Governing Documents"), making them effectively unlawful. Furthermore, and as discussed further in the schedule hereto (the "Schedule"), such activities effectively displace the Charity's beneficiaries, namely children and young persons, significantly reducing their ability to use the Site for the purpose of the Charity set out in the Governing Documents and in the Schedule, and contravening the rationale for the Charity's and the Site's establishment and existence.

The section entitled '*Proposed Remedies*' in the Schedule provides an explanation of the steps we propose to be taken to remedy the Trustee's unauthorised conduct. While the Proposed Remedies are not legally binding (and it will ultimately be up to the Directors to direct the Trustee as to how it should rectify the unauthorised conduct), we request that you respond to us within one calendar month of the date of this letter, at a minimum committing the Trustee and the Charity to acting within the Purpose and its powers set out in the Governing Documents and ceasing the Displacement Activities (as defined in the Schedule). Please send your response to:



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30 June 2020

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If we do not receive such a response and/or such a commitment or if, after receiving such a commitment, our client fails to see satisfactory evidence of such a commitment being effectively implemented, our client proposes to refer the matter, along with all supporting documentation, to the Charity Commission for its consideration and inviting it to take further steps to ensure that the Charity acts within its powers and Purpose going forward.

In the interim, we would be happy to organise a meeting (on Zoom or a similar platform) if this would be helpful to discuss the contents of this letter and your proposed course of action.

We would be grateful if you could please confirm receipt of this letter by email in the interim, our client reserves all of its rights.



Yours faithfully,



cc: Coram's Fields User Group (Attn: Veljko Zizic)



## SCHEDULE

### 1. THE TRUSTEE'S DUTIES

The Trustee's articles of association (the "**Articles**") and the Governing Documents (referred to in the Articles as the 'Constitution') provide that the Trustee must act and administer the Site in accordance with the purpose of the Charity, referred to in the Governing Documents and Articles as the 'Objects' (the "**Purpose**"), as set out in the Governing Documents (Clause 6(i)) of the Trust Deed and Clauses 3.1 and 3.2 of the Deed of Variation). These both state that "*the Trustee must use the income and may use the capital of the Charity in promoting the charitable objects of the Charity, which are:*

- *to hold the Property for use as a perpetual open space for such purposes primarily in connection with the education of children and young persons under the age of 18 as are indicated in Section 86 (b) and (c) of the Education Act 1921; and*
- *subject thereto to hold the Property as a perpetual open space for the use and welfare of the said children and young persons as the Trustee may from time to time determine."*

Moreover, the Deed of Variation explicitly states that, when making the Site available to persons other than children and young persons (the "**Beneficiaries**"), the Trustee must ensure that:

- i. Clause 14.2.2 - "*the provision of such facilities shall not interfere with the Objects*"; and
- ii. Clause 14.2.3 - "*such facilities shall not be required at the time for the purposes of the Charity*".

It is therefore the Trustee's duty in exercising its powers and managing the Site to ensure that the Site is maintained as a perpetual open space for the education, use and welfare of children and young persons, with any incidental use not being permitted to interfere with the Purpose. As such, the Site (or any part of it) must not be in use, or have a reasonable prospect of being used, by the Beneficiaries at the time of any proposed use by adults.

### 2. BREACH OF THE TRUSTEE'S DUTIES

#### *A. Displacement rental activity*

Although it is clear that any provision of facilities on the Site for use by adults must not (and cannot lawfully) interfere with the use of the Site by Beneficiaries or displace the Beneficiaries as users of the Site ("**Displacement Activities**"), such interference has in fact been permitted (and encouraged) by the Trustee for some time. Indeed, since 2013, our client estimates that there has been at least a twofold increase in the rental of sports facilities on the Site to adults, resulting in displacement of the Beneficiaries that would otherwise be able to use such facilities. Moreover, much of the increased rental coincides with key hours of potential use by Beneficiaries (Monday to Friday between 4-8pm and at weekends), exacerbating the extent of displacement. Additional displacement occurs as a result of private events, including open-air cinema and corporate Christmas parties, permitted to take place on the Site, as well as at least one instance of the closure of the Site (on 29 August 2016, a bank holiday) for a

private wedding party. Such private events typically entirely exclude Beneficiaries (or involve only incidental attendance by them) and the infrastructure installed for them impinges upon Beneficiary usage at all times whilst it remains in place, increasing pollution and causing damage to facilities on the Site (detailed further in the position paper presented by CFUG in December 2017). Such damage often means that interruption to Beneficiaries' proper use of the Site continues long after the event in question has concluded and the infrastructure for them has been removed.

The Displacement Activities do not promote – and typically directly contravene – the Purpose. Permitting annual displacement rental to occur and continue therefore constitutes a breach of the Directors' and Trustee's duties under the Governing Documents and, as the Trustee is obliged to act and administer the Site in accordance with the Governing Documents, its powers pursuant to the Articles.

*B. Use of revenue generated by displacement rental*

Our client is very conscious of the difficult environment that has existed and continues to exist for charities seeking to raise funds for the furtherance of their objects. The Trustee and Directors have previously justified the displacement activities listed above as being used to raise amounts for the operation of the Charity. However, it is unclear that all such funds are being applied in furtherance of the Purpose in accordance with the Deed of Variation. We note that the amount attributed to salaries in the Charity's accounts increased by over 60% (£477,309) during the period in which displacement rental activity has increased (i.e. between 2013 and 2019) without an obvious increase in the facilities or opportunities provided for Beneficiaries in accordance with the Purpose. Similarly, the amount attributed to management salaries has increased significantly during the same period.

Notwithstanding the fact that displacement rental activity contravenes the Purpose, it appears that revenue from such activity may have been used to fund increases in the salaries of existing staff members and create new positions extraneous to the Purpose. All Charity revenue should be applied exclusively in furtherance of the Purpose in accordance with the Deed of Variation. If, however, the additional revenue has been wholly or partly used to fund salary increases or salaries for staff which, but for the displacement rental activity, are not required by the Charity, then this represents an additional breach of the Trustee's duties.

### **3. PROPOSED REMEDIES**

In light of the apparent breaches by the Trustee of its duties under the Governing Documents, we propose the following measures be implemented by the Trustee as soon as reasonably practicable:

- i. The Trustee should cease to permit displacement rental of any facilities on the Site. For the avoidance of doubt, this would not preclude use of such facilities by non-Beneficiaries. Rather, any such rental activity should take place at times when the Beneficiaries do not typically and could not reasonably be expected to use the sports facilities (such as later in the evening), provided that use by the Beneficiaries, including where represented by youth sports clubs and educational institutions, is given priority at all times.





- ii. The Trustee should conduct a thorough review into rental of the Site for private events and implement a policy which ensures that such events are only permitted where no interference with the Purpose and use by Beneficiaries would result. Events that cause damage to the facilities and infrastructure of the Site must not be permitted and minimal damage that does occur (such as damage to lawns) should be promptly rectified at the user's expense.
- iii. The Trustee should conduct a thorough review into the use of revenue from displacement rental activity since 2013. If it is determined that such revenue was applied to: (a) employ staff that, but for the displacement rental activity taking place, would not otherwise be required; or (b) fund disproportionate salary increases, this should be rectified. For the avoidance of doubt, any revenue raised by commercial rental should in future be used entirely in furtherance of the Purpose.



**SCHEDULE C  
COMPILED RESPONSES**

This document contains the verbatim Issues, as originally provided to the Charity in Our Letter of 30 June 2020. These are in black. Where the Charity attempted to address these in the CF Letter of 28 August 2020, we have sought to include such responses in red and have stated where in the CF Letter we have extracted these from. Our Client has provided further responses in green below these.

## 1. TRUSTEE'S DUTIES

The Trustee's articles of association (the "Articles") and the Governing Documents (referred to in the Articles as the 'Constitution') provide that the Trustee must act and administer the Site in accordance with the purpose of the Charity, referred to in the Governing Documents and Articles as the 'Objects' (the "Purpose"), as set out in the Governing Documents (Clause 6(i) of the Trust Deed and Clauses 3.1 and 3.2 of the Deed of Variation). These both state that "*the Trustee must use the income and may use the capital of the Charity in promoting the charitable objects of the Charity, which are:*

- *to hold the Property for use as a perpetual open space for such purposes primarily in connection with the education of children and young persons under the age of 18 as are indicated in Section 86 (b) and (c) of the Education Act 1921; and*
- *subject thereto to hold the Property as a perpetual open space for the use and welfare of the said children and young persons as the Trustee may from time to time determine."*

Moreover, the Deed of Variation explicitly states that, when making the Site available to persons other than children and young persons (the "Beneficiaries"), the Trustee must ensure that:

- i. Clause 14.2.2 - "*the provision of such facilities shall not interfere with the Objects*"; and
- ii. Clause 14.2.3 - "*such facilities shall not be required at the time for the purposes of the Charity*".

It is therefore the Trustee's duty in exercising its powers and managing the Site to ensure that the Site is maintained as a perpetual open space for the education, use and welfare of children and young persons, with any incidental use not being permitted to interfere with the Purpose. As such, the Site (or any part of it) must not be in use, or have a reasonable prospect of being used, by the Beneficiaries at the time of any proposed use by adults.

**Introduction, Paragraph 3:** The core purpose of Coram's Fields, enshrined in our Trust Deed and our Articles of Association, is to promote the welfare and education of children and young people.

**CFUG Response:** The Charity's Purpose, as set out above, is to hold the Site "as a perpetual open space" for the education, use and welfare of children and young persons under the age of 18. The Governing Documents therefore envisage that **the Site itself** will be used directly by the Beneficiaries, as opposed to merely the broader 'promotion' of welfare and education of children and young persons.

**It is important to note that the provisions of the Articles are not themselves relevant to the way the Charity is governed: they merely permit the Trustee, in the abstract, to perform certain actions. Such permission does not and cannot remove, amend or affect such restrictions on the Trustee and the Site as exist under the Governing Documents of the Charity itself.**



Section I, Paragraph 1: Your letter seeks to extend the restrictions that our constitutional documents place on revenue-generating commercial activity by asserting that we cannot use any part of the site at any time when there is a reasonable prospect of use by a young person. Such an extension would not allow the Trustees discretion to manage the Charity in the interest of its beneficiaries.

CFUG Response: Both of these sentences are incorrect.

In relation to the first: the Deed of Variation explicitly states, as set out above, that revenue-generating commercial activity should not interfere with the Charity's Purpose, and that any such activity should not take place at a time when the Site is required for the Purpose (i.e. for use by the Beneficiaries). On this basis, there has been no 'extension' of the restrictions to which the Trustee and the Charity is subject. Managing the Charity in accordance with these restrictions accords both with the interests of the Beneficiaries (by ensuring that Beneficiary access to the site is not unduly limited) and with charities law in England.

Secondly, it is something of a leap to argue that merely requiring the Trustee to operate the Site in accordance with the law is an undue fetter on its discretion. It is, as for all charity trustees and executives, open and incumbent on the Trustee and the executive of the Charity to make the multitude of choices that are required to operate the Charity *in accordance with its Governing Documents*.

Section I, Paragraph 2: All Trustees are very conscious of the duties laid on them by the Trust Deed, the Deed of Variation and the Articles, as quoted in your letter. Trustees are equally aware of their duty to ensure that Coram's Fields is a viable going concern, able to fulfil its charitable purpose. Charity law requires us to keep these principles in proper balance.

CFUG Response: This is manifestly incorrect: the restrictions on the use of Charity property laid out in the Governing Documents and English charities law are not subject to "balance" based on extraneous factors: even if the Charity were entirely unable to fundraise (which is not the case), this would not permit the Trustee to engage in *ultra vires* use of Charity property for fundraising purposes.

Section I, Paragraph 2: It is entirely appropriate and consistent with our charitable purpose that we should use our facilities to raise funds in furtherance of our core purpose, when necessary, and our Articles of Association envisage this (Art 5.10 and 5.29).

CFUG Response: As already mentioned, the Articles are not and cannot be relevant to the interpretation of the Governing Documents.

In any case, whilst a duty of prudence does exist in relation to the management of charities by their trustees, such duty does not permit trustees to exceed their powers and trustees must act in accordance with the objects specified in the relevant charity's governing documents. The restrictions set out in the Governing Documents do not prohibit use of the Site for fundraising activities. Instead, they prohibit any such activities which interfere the Charity's Purpose or take place at a time when the Site is required for the Purpose. The powers contained within the Articles referred to above must be exercised in furtherance of the Purpose (Article 5).

Section I, Paragraph 3: It is a practical necessity in today's difficult climate, with the near extinction of state and local authority support, for charities to seek ways of generating additional revenue to sustain their charitable work.

CFUG Response: We take no issue with the requirement for a certain level of fundraising or commercial activities in accordance with the Governing Documents (such as, for example, the rental of space to schools where it actually occurs or the potential use of parts of the Site for commercial events that are primarily for children).

Section I, Paragraph 3: Finding the right balance is a continual challenge for the Board and we pay close attention to feedback from users, including CFUG, in setting policy. Two examples may demonstrate how we manage this:

- When the London Borough of Camden (LBC) informed us that our core funding was being substantially reduced, they advised us to maximise our income by an energetic policy of hiring out the park for events. We declined to follow that advice as we did not consider that such a strategy would be consistent with our charitable purpose.

CFUG Response: Advice from the London Borough of Camden has no bearing on the governance of the Charity by the Trustee: regardless of any such advice, the Trustee must act in accordance with the Governing Documents. In any case, we do not believe that the London Borough of Camden will have suggested hiring out land that exists explicitly for the use of children for events *solely to adults*; were it to do so and were the Charity to accept such a recommendation, this would contravene the Governing Documents.

- When we reviewed our pitch usage policy and our general approach to park hires in 2018-19, we set very stringent criteria for assessing requests from external users: where the proposed use does not deliver a direct benefit to children or young people, it must be demonstrable that the indirect benefit to those beneficiaries (which may be a result of the Charity being able to fund more services or better facilities) exceeds any loss of amenity that they may suffer.

CFUG Response: These criteria are nonetheless less stringent than the legal limits in the Governing Documents which, again, provide that fundraising activities should not intervene with the Charity's Purpose. Where they do so, such activities are *ultra vires* regardless of the secondary benefits that the Trustee sees them as providing.

## 2. BREACH OF THE TRUSTEE'S DUTIES

### A. Displacement rental activity

Although it is clear that any provision of facilities on the Site for use by adults must not (and cannot lawfully) interfere with the use of the Site by Beneficiaries or displace the Beneficiaries as users of the Site ("**Displacement Activities**"), such interference has in fact been permitted (and encouraged) by the Trustee for some time.

#### *Pitches*

Indeed, since 2013, our client estimates that there has been at least a twofold increase in the rental of sports facilities on the Site to adults, resulting in displacement of the Beneficiaries that would otherwise be able to use such facilities. Moreover, much of the increased rental coincides with key hours of potential use by Beneficiaries (Monday to Friday between 4-8pm and at weekends), exacerbating the extent of displacement.

Section II, Paragraph 3: The costs of the park and playground (as well as of our other services) have continued to rise. Our fundraised and earned income has needed to keep pace. Specifically, we no longer receive regular support from LBC to pay for the costs of the park and playground or for the general running costs of the Charity, relying instead on fundraising and commercial activities.

CFUG Response: The Charity's accounts show numerous examples of direct grants for e.g. pitch repair. In any case, even if they did not, the Trustee has not adequately addressed the core issue of Displacement Activities. Such activities are outside of the Trustee's and Charity's powers.

Section IV, 'Pitch Hire', Paragraph 1: The largest increase in commercial income is attributable to football pitch hire fees (from £163k in 2012-13 to £445k in 2019-20, an increase of 172%). Our football pitches were refurbished in 2013 at a cost of £366k and there has since been a steady increase in fees received for their hire.

CFUG Response: To be clear: this cost was covered by Sports England, the Marathon Trust and Camden Council, with the Charity contributing only £10,000 (source: FOI, Sport England). Indeed, the application documents submitted by Coram's Fields to get these grants at the time show budgeted rental revenue at £160,000 per year (for the entire 5 years - 2013-2018 - post refurbishment). We know now this rental has in fact almost tripled to £445k.

**In other words, the Charity's pitch refurbishment was financed on a charitable basis by third party charities, on the premise of marginal commercial rental to adults; in practice, the refurbished pitches have become a commercial arm of the Charity, focused on adult rental.**

Section IV, 'Pitch Hire', Paragraph 4: As well as increasing the availability of pitches for young people at weekends and in the school term (particularly the summer term), we introduced an option for local young adults to make use of the pitches at certain times at a subsidised rate.

CFUG Response: We do not accept that the provision of areas of the Site in accordance with the Governing Documents and the Charity's Purpose represents an "increase" or an achievement by the Trustee.

### *Marquee*

Additional displacement occurs as a result of private events, including open-air cinema and corporate Christmas parties, permitted to take place on the Site, as well as at least one instance of the closure of the Site (on 29 August 2016, a bank holiday) for a private wedding party. Such private events typically entirely exclude Beneficiaries (or involve only incidental attendance by them) and the infrastructure installed for them impinges upon Beneficiary usage at all times whilst it remains in place, increasing pollution and causing damage to facilities on the Site (detailed further in the position paper presented by CFUG in December 2017). Such damage often means that interruption to Beneficiaries' proper use of the Site continues long after the event in question has concluded and the infrastructure for them has been removed.

Section IV, 'Marquee', Paragraph 1: Coram's Fields has hosted a winter marquee for well over a decade. The marquee takes up a significant amount of the park for six weeks in mid-winter, but it sits on the west lawn, which is dead space at that time of year and hosts visitors after the park is shut.

CFUG Comment: While not directly stated, the suggestion that there has been a winter marquee on the site for “well over a decade” seems to be designed to justify the practice through custom/repetition. We would contend that this merely underlines how long-standing the breaches by the Charity’s trustees have been. In any case, our Client has raised concerns in relation to such practices for a number of years.

As explained above, CFUG believes it is precisely the extensive damage caused to the Site by the winter marquee which renders the west lawn and parts of the area surrounding it a ‘dead space’ for the rest of the year – not the other way around. The extensive damage caused to the west lawn on an annual basis by the winter marquee is evident from the photograph below. Moreover, the area remained cordoned-off until the beginning of September 2020, meaning that the exclusion of Beneficiaries persisted eight months into 2020 as a result of the winter marquee.



*West lawn, Coram’s Fields (10 March 2018)*

*Incidentally, the park has looked like this throughout 2020 (and most of 2019) and the orange fencing has only just been taken down in September 2020, meaning almost one quarter of the park has been out of action for almost an entire year.*

If this form of Displacement Activity were no longer permitted, and the consequent damage prevented, the Trustee would have an incentive to further develop the west lawn for the benefit of Beneficiaries such that it no longer represents a ‘dead space’. Indeed, the west lawn could be used to provide festive events and activities for Beneficiary users, rather than the non-Beneficiary attendees of corporate events.

### *General Displacement Activities*

The Displacement Activities do not promote – and typically directly contravene – the Purpose. Permitting annual displacement rental to occur and continue therefore constitutes a breach of the Directors’ and Trustee’s duties under the Governing Documents and, as the Trustee is obliged to act and administer the Site in accordance with the Governing Documents, its powers pursuant to the Articles.

Section II, Paragraph 2: Your concept of displacement activity does not reflect what happens at Coram's Fields day to day. Your analysis distorts the situation by isolating the increase in gross proceeds from commercial activities as mere "displacement activity" without reference to the overall increase in service provision and the costs involved in delivering the additional services.

CFUG Response: Reliance on Displacement Activities, regardless of whether the revenue from such activity is used to fund the provision of ‘additional services’, contravenes the restrictions set out in the Governing Documents as described above. Any such ‘additional services’ which are supplementary to the Purpose should be funded from non-Displacement Activity sources, such as donations, local authority grants and rental of the Site which does not interfere with the Purpose.

Section II, Paragraph 3: The increase in Coram's Fields' cost base over the last eight years is largely a reflection of our providing more activities to promote the welfare and education of young people. We now provide six core services, the costliest of which is provision and maintenance of the park and playground. This is also the service that receives the lowest level of direct funding. The other five core services are our: Nursery; Children's Centre/Under 5s Service; Out of School Club (OSC); Youth Centre; and Sports Services.

CFUG Response: We believe that the Nursery is largely paid for by users; the Out of School Club is funded by the local council and parental fees; the other services also involve a substantial element of self-funding; however, even if this were not the case, this would not permit the Charity to breach its Governing Documents.

Appendix, Paragraph 2: One of the key principles of the policy is prioritising young people, including a commitment that no less than 65% of the total pitch availability is for them.

CFUG Comment: We do not accept that either aspect of (a) 65% or (b) “availability” is an appropriate aim. First, we would contend that 65% is too low given the stated aims and Purpose of the Charity; secondly, “availability” is a clear attempt to mask the high proportion of **actual usage** of the pitches by adults at key times for the Beneficiaries.

Tellingly, the Charity does not anywhere provide the hours of “allocation” to use by children; we believe that this is because much of this “allocation” is at times that would make use of the pitches difficult for both children as the proper beneficiaries of the Site (such as during school hours) AND for other non-Beneficiary users (because of work commitments). Effectively, prime hours (after school, weekends) are predominantly “allocated” to commercial rental and other times – during school time and other hours when children would struggle to access the Site in significant numbers – are being “allocated” to children to pad out the numbers and reach the 65% “allocation” figure. **Figures for actual use would provide a more precise picture.**

Appendix, Paragraph 2: Based on the consultation exercise, we included in this an allowance for subsidised access for local young adults (20-25 years old), many of whom will have spent their



childhoods at Coram's Fields and whom we judge to have an ongoing need but without necessarily the ability to hire on a fully commercial basis.

CFUG Comment: Given that the Beneficiaries are children up to the age of 18, we believe “young adult” (i.e. those aged between 20-25) is just another term for “adult” and seeks to mask some of the improper use of the Site.

Appendix, Paragraph 3: The resulting overall annual pitch allocation between our user groups is set out below (see *Table 5 of CF Letter*).

CFUG Comment: Again, we believe that discussion of “allocation” is an attempt to mask the **actual usage** of the pitches by adults, which in fact far exceeds the proportion “allocated” to them due to the hours allocated.

Appendix, Table 5: Total Pitch Allocation

	<b>Hours</b>	<b>% of Total</b>
Young people 0-19 years	4,629	38%
Young (local) adults 20-25 years	798	7%
Schools	2,969	24%
Commercial	3,718	31%
<b>Total</b>	<b>12,114</b>	<b>100%</b>

CFUG Comment: While the Charity has sought to mask the scale of actual adult **usage** of the pitches, it does provide us with the hours “allocated” to adults: 4,516.

To fill the figures out: the hours “allocated” to schools must broadly be during the school day. Indeed, with 190 school days per year, 2 pitches (out of the 3 available) and perhaps 7 hours per day being 2,660 hours, that gets us close to the figure in the table. Anecdotally and from long-term observation by CFUG members, these “allocated” hours are in fact rarely used and would in any case be largely unused (whomever they are “allocated” to).

Given this “allocation” to schools and other commitments, adults could only realistically use the pitches for perhaps 7 hours per day on average (more on some days, less on others); multiplying the number of available days over the year (355) by the number of pitches (2) multiplied by these 7 possible hours gives a figure of 4,970. Indeed, all available evidence and direct observation confirms that after-school hours are dominated by adults, with over 60% actual usage.

In other words – and contrary to the Charity’s assertion - the prime hours for free play and “turn up and use” time for children are in fact “allocated” to (and used by) adults first, with the allocation to schools and of sub-prime hours being used to pad out the numbers and get to the stated “65% allocated to young people” aim.

Even where time IS allocated to children and young people, the systems required to book the pitches effectively favour adults (who tend to plan ahead) rather than children (who are more likely to want to just turn up and play).

The treatment of adults contrasts with the treatment of Beneficiaries aged between 16-18. This age group is currently not allowed onto the site (the Charity's website (<https://www.coramsfields.org/>) states that "Coram's Fields is a children's only park, for children under 16 years old") but can, however, book the pitches for free at restricted hours. Therefore, whereas adults appear to enjoy access to sports pitches at prime times, the 16-18 age group is both excluded from the site at large and often only able to book the pitches at sub-prime hours.

#### *B. Use of revenue generated by displacement rental*

Our client is very conscious of the difficult environment that has existed and continues to exist for charities seeking to raise funds for the furtherance of their objects. The Trustee and Directors have previously justified the displacement activities listed above as being used to raise amounts for the operation of the Charity. However, it is unclear that all such funds are being applied in furtherance of the Purpose in accordance with the Deed of Variation. We note that the amount attributed to salaries in the Charity's accounts increased by over 60% (£477,309) during the period in which displacement rental activity has increased (i.e. between 2013 and 2019) without an obvious increase in the facilities or opportunities provided for Beneficiaries in accordance with the Purpose. Similarly, the amount attributed to management salaries has increased significantly during the same period.

Notwithstanding the fact that displacement rental activity contravenes the Purpose, it appears that revenue from such activity may have been used to fund increases in the salaries of existing staff members and create new positions extraneous to the Purpose. All Charity revenue should be applied exclusively in furtherance of the Purpose in accordance with the Deed of Variation. If, however, the additional revenue has been wholly or partly used to fund salary increases or salaries for staff which, but for the displacement rental activity, are not required by the Charity, then this represents an additional breach of the Trustee's duties.

**Section V, Paragraph 1: In your letter you suggest that income from commercial hire has been used to justify an unnecessarily increased salary bill. In fact, staff costs as a proportion of total expenditure have remained constant at under 70% throughout the last eight years.**

**CFUG Response: There seems to be an implication that, even if true, this is appropriate or justified. However, we do not accept that – for example – an almost-threefold increase in the rental of pitches contrary to the Charity's Purpose would automatically justify a proportionate rise in the Charity's wage bill. Indeed, it is the core of this element of our complaint that this is inappropriate: it would not take three times more people to deal with bookings just because they increased threefold.**

**Section V, Paragraph 1: Although staff costs have increased by £604k in the period between 2012-13 and 2019-20, overall expenditure on services, in response to growing local need, increased from £1.14m to just over £2m over the same period.**

**CFUG Response: Again, we do not accept that the £850k increase in overall costs justifies the £604k increase in staff costs.**

Section V, Paragraph 2: The apparent increase in combined central staff costs and central support costs between 2015-16 and 2016-17 is largely the result of a change in accounting policy. In the earlier years, a significant element of both staff and non-staff central costs were re-charged to the separate services. With effect from 2016-17 these recharges were no longer made, so while the revised accounting policy makes it easier to identify the direct costs of each service, as well as to understand the true costs of central support, it has the effect of making the cost of services appear higher in the early years, and lower in the later years.

Section V, Paragraph 3: There has also been a significant increase in fundraising and central staff costs since 2016-17 as a result of the creation of two new roles: an Operations Manager and a Fundraising Manager. The Operations Manager has provided central supervision for the office, finance and maintenance teams at a time when increased delivery of services has created additional pressures, and has also overseen the refurbishment of the park toilets, playground, lawns, basketball courts and cafe. The Fundraising Manager, hired in direct response to financial challenges resulting from the loss of LBC funding, has been instrumental in increasing revenue income from Trusts and Foundations from £184k in 2015-16 to £454k in 2019-20 and has more recently spearheaded a successful emergency fundraising campaign, securing £93k from public donations and a further £211k of unrestricted Trust and Foundation support.

Section V, Paragraph 5: During this time, we have also maintained our commitment to being a London Living Wage Employer and where possible, have increased salaries in line with the cost of living. However, financial pressures have limited our ability to do this consistently and average salary increases over the last eight years have been a modest 1.5%, some way below the average cost of living increase during the same period.

CFUG Response: Coram's Fields has not adequately addressed CFUG's concern in respect of salary increases between 2012-13 and 2019-20. The change in accounting policy between 2015-16 and 2016-17 resulted in a modest increase in total annual staff costs of £33,091, compared with an overall increase between 2012-13 and 2019-20 of £604,630. Moreover, it is unclear how this overall increase can be accounted for by the creation of two new roles (Operations Manager and Fundraising Manager) or average salary increases of 1.5%. If the overall increase is indeed attributable to an increased provision of services to the local community, as opposed to salary rises greater than 1.5% for certain of Coram's Fields employees, such services should be provided in furtherance of the Purpose in accordance with the Governing Documents. As explained above, it is clear that this is not the case.

### **3. PROPOSED REMEDIES**

In light of the apparent breaches by the Trustee of its duties under the Governing Documents, we propose the following measures be implemented by the Trustee as soon as reasonably practicable:

- i. The Trustee should cease to permit displacement rental of any facilities on the Site. For the avoidance of doubt, this would not preclude use of such facilities by non-Beneficiaries. Rather, any such rental activity should take place at times when the Beneficiaries do not typically and could not reasonably be expected to use the sports facilities (such as later in the evening), provided that use by the Beneficiaries, including where represented by youth sports clubs and educational institutions, is given priority at all times.
- ii. The Trustee should conduct a thorough review into rental of the Site for private events and implement a policy which ensures that such events are only permitted where no interference with the Purpose and use by Beneficiaries would result. Events that cause damage to the

facilities and infrastructure of the Site must not be permitted and minimal damage that does occur (such as damage to lawns) should be promptly rectified at the user's expense.

- iii. The Trustee should conduct a thorough review into the use of revenue from displacement rental activity since 2013. If it is determined that such revenue was applied to: (a) employ staff that, but for the displacement rental activity taking place, would not otherwise be required; or (b) fund disproportionate salary increases, this should be rectified. For the avoidance of doubt, any revenue raised by commercial rental should in future be used entirely in furtherance of the Purpose.

CFUG Response: For the avoidance of doubt, nothing in the CF Letter has eliminated, changed or affected any of the concerns that were outlined in Our Letter and we continue to have major concerns about the operation of the Charity.