CHARITY COMMISSION
FOR ENGLAND AND WALES

Inquiry Report

Saint Stephen the Great Charitable Trust

Registered Charity Number 1109008

Saint Stephen the Great

Registered Charity Number 1119839

A statement of the results of an inquiry into Saint Stephen the Great Charitable Trust (registered charity number 1109008) ('the trust') and Saint Stephen the Great (registered charity number 1119839) ('the company').

Published on 11 August 2016.

The trust and the company

The trust was registered with the Charity Commission ('the commission') on 12 April 2005. It was governed by a declaration of trust dated 4 November 2004 and amended by a deed dated 19 August 2007.

The trust's entry on the register of charities can be found on **GOV.UK**.

The trust's main activities were purchasing disused churches in order to ensure their future use as churches within the Orthodox Christian faith. From 12 April 2005 until 30 October 2006 activity had focussed on one church in Poole and one in Bradford, although the Bradford church had not been in constant use. Both churches had been acquired from the Church of England at a nominal price on the basis that they would be used primarily for Christian worship.

The company was registered with the commission on 27 June 2007. It was governed by a memorandum and articles of association dated 16 February 2007 and amended on 15 June 2007. The company's objects were identical to those set out in the trust's amended declaration of trust.

On 27 July 2007 the trust and the company were united with a 'Uniting Direction' under section 96 of the Charities Act 1993. This was reflected on the register of charities, with both charities having the same registration number (1119839). The uniting was done for accounting and registration purposes; the trust and the company remained separate legal entities.

On 11 December 2009 the commission issued a direction to distinguish between the trust and the company as they were no longer providing the same charitable services. Following this direction the trust was given a new registration number 1109008 and the company kept the registration number 1119839.

The company dissolved and was removed from the register of charities on 24 June 2013.

The trust was removed from the register of charities on 10 March 2014 as it had ceased to exist.

Issues under investigation

On 1 November 2006 the trust entered into an agreement ('the agreement') with the Society for Promoting Christian Knowledge (SPCK), registered charity number 231144. SPCK agreed to transfer 22 Christian bookshops ('the shops') to the trust for nil consideration. The terms of the agreement entered into by the trust and SPCK included requirements for the trust to:

- purchase a minimum number of publications from SPCK for each of the shops
- keep the shops operational as Christian bookshops

- stock a wide variety of religious texts
- not bring SPCK's reputation into disrepute

SPCK transferred 5 freehold shops, granted leases of 6 shops at peppercorn rents and assigned 11 further leasehold interests to the trust.

After the establishment of the company the intention was that the interests in the properties would be transferred from the trust to the company and it would manage their ongoing operation. On 1 July 2007 the trust agreed to pass the operation of the shops to the company.

The commission received a number of complaints from members of the public raising the following concerns:

- in February 2008 the company or trust appeared to have transferred £31,800 to a company in the United States of America of which some of the trustees where directors
- in June 2008 the company had filed for bankruptcy in the United States of America Bankruptcy Court in Texas, leaving staff and creditors of the trust and the company with concerns that they would not be paid
- at around the same time the trust transferred management of the shops from the company to 3 separate management companies; this led to former employees bringing claims against the trust and the company for unfair dismissal
- in September 2008 the trust had sold a freehold property, potentially in breach of the agreement
- SPCK expressed concerns that the trust had failed to comply with the terms of the agreement
- there were allegations that the churches owned by the trust were not operating and the shops were failing
- the trust and the company were exposed to substantial financial liabilities

On 17 July 2008 the commission opened a Regulatory Compliance Case into the trust and the company. Information gathered during this case suggested that potentially serious misconduct or mismanagement might have occurred in the administration of the trust and the company which had put both of their assets or beneficiaries at risk.

On 26 September 2008 the commission opened a statutory inquiry into the company and the trust under the then section 8 of the Charities Act 1993 (now S46 Charities Act 2011). The substantive part of the inquiry closed on 10 March 2014.

The inquiry examined the following issues:

- conflict of interest/loyalty, trustee benefit and self-dealing
- exposure to financial liability of the company and the trust
- bankruptcy proceedings in the United States of America
- potential damage to public trust and confidence

Findings

Conflict of interest/loyalty, trustee benefit and self-dealing

The commission found that on 1 February 2007 the company's directors had passed a resolution to contract with another American company which would provide management services at a fee of £20,000 a month. The resolution did not clearly differentiate between the company and the trust or address how the company's directors managed the conflict of interest as some of the trustees were also directors of the American company.

On 6 February 2008 the company's directors resolved for the company and/or the trust to accept a loan from the American company. It was unclear from the paperwork as to whether the loan was intended for the trust or the company.

The trust and company's directors were 3 members of the same family. One of the trustees and another member of the family were also directors of the 3 management companies who had taken over the running of the shops and another family member was the secretary. One of the trustees was also a director of the American company contracted to provide services and a principal at the legal firm providing advice to the company. Therefore there were many occasions which raised conflict of interest and loyalty issues. The inquiry also identified the potential for trustee benefit and self-dealing by some trust and company trustees.

Thirty four of the shops' ex-employees submitted redundancy claims. The defendants were the trust, the company and one of the new management companies, which placed all the trustees in conflict of interest in relation to claims brought against all 3 entities. The inquiry identified concerns about the trustees' abilities to identify and manage conflicts of interest relating to the ex-employee claims and generally when discharging both the trust's and the company's liabilities.

The inquiry found the trustees were unable to demonstrate that they were properly managing conflicts of interests and loyalty.

Exposure to financial liability of the company and the trust

The inquiry found that the trust's trustees did not appear to have undertaken due diligence or taken independent advice before entering into the agreement with SPCK. The trust was now faced with claims arising from the employment tribunal and other creditors.

The inquiry found that none of the property interests held by the trust were transferred to the company and it was also not clear whether staff and stock were transferred to the company. Whilst the trust held the property titles, it had contracted out shop management first to the company and then to 3 newly-set up management companies. The inquiry established that the company was inactive and had no funds.

The inquiry established that there were 30 claims against the trust at the employment tribunal. The tribunal had not yet determined if the trust was the employer of the employees that brought the claims to the tribunal.

The trust considered that it had transferred employee contracts to the company before June 2008 and that any liabilities from the tribunal would fall to the company, albeit the company had no funds to meet the claims.

SPCK believed that the trust had forfeited 6 peppercorn leases through breaching lease agreements. SPCK had indicated its intention to bring legal action to enforce restrictive covenants to which the shops were subject.

It was alleged that one of the shops had been sold in breach of a restrictive covenant. The trust's solicitors holding the sale proceeds of the shop agreed that for 2 months they would not dispose of these without the commission's consent. The solicitors were then ordered not to part with the sale proceeds without the commission's prior approval. During this time the commission declined requests from the trust's trustees for funds for loan repayments and expenses where it was unclear that these were in the interests of the trust or were properly due from charitable funds.

The trust's trustees were also unable to provide the inquiry with information to demonstrate decision-making regarding the movement of funds between connected organisations and the trust or with up to date financial information.

On 2 April 2009 the commission took steps to vest the trust's interests in land, including property, in the Official Custodian for Charities, preventing the sale of the properties without consent by way of an order from the commission. This was to reduce the risk to charitable funds as a result of the commission's findings.

Public trust and confidence

The inquiry found that the trust and company trustees were not meeting statutory and public accountability requirements in that they had failed to file annual returns and accounts with the commission since March 2006. This increased the risk of damage to the reputation of the trust and the company and to charity generally.

The inquiry had also attracted public and media attention.

Bankruptcy proceedings in the United States of America

The inquiry established that the company had filed for bankruptcy in the United States, although it appeared that the bankruptcy proceedings had been dismissed.

Interim manager's activities

On 28 April 2009 the commission appointed an interim manager to manage and administer the trust. The interim manager had no responsibilities regarding the company; the company had no funds or other assets. Appointing the interim manager to the trust to take responsibility for the trust and its decisions also managed the conflict of interest issues.

The interim manager:

- took over the management and administration of the trust and its property to the exclusion of the trustees, except that the trustees kept the strategic management of the use of and activities in the Bradford and Poole churches
- discharged the functions of the trust's trustees in relation to ongoing litigation
- established the assets, liabilities and creditors of the trust, including any disputed claims, and assessed how such liabilities could be met out of the trust's funds
- determined the trust's relationship with various companies and whether 2 loans had been properly transferred to and were repayable by the trust
- assessed whether any of the shops owned or rented by the trust were financially and operationally sustainable

- produced management accounts for the trust as a basis for producing statutory accounts for 2006-07, 2007-08 and 2008-09
- explored whether the trustees had identified and managed conflicts of interests and loyalty and whether any decisions or contracts were voidable as a result of unmanaged conflicts or lack of quorum
- assessed whether it was possible to recruit new trustees to bring the trust back on a secure footing
- considered the future viability of the trust

Settlement of the redundancy claims from ex-shop employees was made and claims were paid in 2009 and 2010.

The interim manager explored settlement options relating to SPCK's claim against the trust for the trust's alleged defaulting under the agreement. After a lengthy period of negotiation which resulted in formal mediation in October 2011, the parties signed an agreement in March 2012. Under the terms of the agreement:

- SPCK's solicitors were to remit to the trust the proceeds of the sale of the shop that they were holding
- the trust was to transfer the remaining shops and/or sale proceeds to SPCK's control
- SPCK would hold some funds for 6 months in case the interim manager needed these to meet the trust's obligations
- the trust was to pay £100,000 to an Orthodox Christian charity or charities and transfer Bradford Church or its sale proceeds similarly
- once the trust had met all its valid creditor claims it would be wound up with residual funds going to SPCK

Freehold shops were sold between 2010 and 2012. Some leasehold shops where SPCK had the freehold were also sold.

Poole Church was gifted to the Poole based Greek Orthodox community with commission consent in March 2011. It was not possible to find a Christian community to take over Bradford Church and its sale was completed in February 2013 with commission and Church of England consent.

Interim manager's findings

Conflict of interest/loyalty, trustee benefit and self-dealing

The trustees had made decisions to make payments to or on behalf of organisations that were under the sole control of one or more of the trustees or family members. It did not appear that such decisions could be quorate or validly undertaken. There was no evidence that independent advice had been taken regarding conflicts of interest.

There was no attempt to separate trust and company affairs and it appeared that there had been attempts to use trust funds to meet other companies' liabilities.

There was no evidence that the trust had formally authorised such transactions or that conflicts of interest had been considered in deciding if the transactions were in the trust's interests. The interim manager found that transactions committing charitable funds to connected entities appeared to constitute self-dealing.

Exposure to financial liability of the trust

The interim manager established that the trust had sufficient funds to manage the churches' operations and day-to-day costs but insufficient to meet the claims from SPCK, ex-shop employees and others. It was intended that the shops were to be transferred from the trust to the company but the interim manager understood that the transfer did not happen. It was unclear whether the shops' employees and stock had transferred to the company. The trust had entered into a contract with the company to this effect but due to potentially unmanaged conflicts of interest the interim manager's view was that the contract may have been void or voidable.

There was no evidence that the trust had kept proper books and records since June 2008 or earlier and the information available was insufficient to construct reliable records. The lack of clear documentation relating to events and communications made it difficult to reach agreement with claimants. It was also difficult for the interim manager to know what expenses had not been paid or whether expense claims were valid.

The interim manager found that many of the claims from an individual and various companies appeared to be for reimbursing costs that an individual had borne personally. In some cases there appeared to be no proper authorisation of agreements and conflicts of interest had not been dealt with. The interim manager advised the individual that he did not consider that such claims were payable by the trust.

The interim manager found that there were problems in agreeing the status of claims made against the trust. The transfer of the trade and operations of the shops to the company on 1 July 2007 was not clearly communicated to, or agreed by, suppliers and other commercial partners and possibly not to staff.

Conclusions

The interim manager concluded that the trustees had mismanaged the trust. There were unmanaged conflicts of interest and loyalty related to directorships of associated companies and contracts entered into by some of the trustees.

The inquiry considered that some conflicts were so intrinsically linked to the trust's administration that they could not be managed. The inquiry was concerned that the trustees' lack of ability to manage conflicts of interest and loyalty arising from their involvement in connected organisations could lead them to consider it appropriate to use the trust's funds to satisfy the liabilities of the other entities.

The inquiry highlighted poor governance, lack of due diligence and inadequate record keeping on the part of the trust trustees and the company directors. Trustees are under a duty to be prudent with the charity's assets, the lack of prudence in this case and the lack of trustee awareness of their responsibilities has led to the demise of the trust and the company.

The interim manager concluded that it would be expensive and risky for the trust to restart managing the shops. There was no prospect of new trustees wishing to manage the trust and no evidence that beneficiaries or interested parties wished the trust to continue. It was in the trust's best interest for it to be wound up with surplus assets transferred to charities with similar objectives.

The inquiry concluded that there had been serious mismanagement and misconduct of the trust and company by the trustees.

Regulatory action taken

The commission used the following information gathering and protective powers contained in the then Charities Act 2006:

- one order made under the then section 18(1) (vii) appointing an interim manager
- one order made under the then section 89 (5) varying the terms of the order appointing the interim manager
- 10 orders made under the then section 9(1) (b) to order and obtain bank records and financial information of the trust
- one order made under the then section 18(1) (iv) freezing the trust's client account with a solicitors firm
- 22 orders made under the then section 18(in) (iii) vesting the trust's property in the Official Custodian for Charities
- 9 orders made under the then section 26 authorising the sale of the trust's property

The commission used the following power contained in the Charities Act 2011:

- 2 orders made under section 105 authorising the sale of the trust's property

One of the trustees requested a decision review of the interim manager's appointment. The review took place under the then section18 (13) of the Charities Act 1993. The outcome, announced on 3 February 2010, was a decision to uphold the order appointing the interim manager on the basis that it was necessary or desirable to act to protect the trust's property.

A decision to vest property in the Official Custodian was also reviewed and upheld by the decision review.

Impact of regulatory action

As a direct result of the commission's intervention the trust's assets were safeguarded from exposure to significant liabilities. Substantial assets were recovered and safeguarded, complex and large claims were settled by agreement and the trust's objectives were furthered by payments to Orthodox congregations. A number of properties were sold and a number of leasehold properties were surrendered to SPCK. The trust's church at Poole was transferred to another charity so that it could continue to be used for charitable purposes. The trust's church at Bradford was sold and, after a payment to the Church of England, sale proceeds were applied for charitable purposes by passing them to Orthodox communities.

Trust assets of £3,226,100 were safeguarded by the appointment of the interim manager and claims of £4,171,710 were managed. £1,928,853 was disbursed in settlement of claims and £144,486 was disbursed to Orthodox communities. The interim manager was then able to confirm that the trust's accounts had a nil balance and that the trust was no longer operating.

Interim manager costs

The costs relating to the interim manager's appointment were as follows:

- the cost of the work of the interim manager £259,218
- interim manager costs relating directly to the administration and management of the charity and its properties £46,602
- year-end accounts work and liaison with independent examiner £13,500
- VAT on all the above £55,648

Issues for the wider sector

Trustees must act only in the best interests of the charity and actively manage any conflicts of interest. They should step back from or avoid any situation where a conflict exists or is likely to arise if it is clear the conflict cannot be adequately managed, even if this means, for example, that additional disinterested trustees are appointed or that the affected trustees resign. Conflicts of interest are more likely when there are only a small number of trustees on the board, when trustees are closely related or when the charity has dealings with organisations in which the trustees have interests. It is vital that trustees avoid becoming involved in situations in which their personal interests may be seen to conflict with their duties as trustees. The trustees should put in place policies and procedures to identify and manage such conflict. Further guidance and advice can be found in **Conflicts of interest: a guide for charity trustees (CC29)**.

When considering certain complex, significant or high risk decisions it is difficult to see how trustees could discharge their legal duties without taking and properly considering professional advice as they would be exposing the charity and its property to significant risk by failing to do so. Donors and beneficiaries have a right to expect trustees to take appropriate steps to protect property of the charity or any property coming to the charity. Trustees have legal duties to their charity. Trustees entering into contracts with commercial and other organisations should give due consideration, and where appropriate seek professional advice, to ensure they are satisfied that the arrangements are advantageous to the charity. Further advice on trustee duties in decision making can be found in **The essential trustee: what you need to know, what you need to do (CC3)**.

Trustees are required to keep accounting records for their charity. Every charity's accounting records must be sufficient to show and explain its transactions and disclose with reasonable accuracy its financial position. Therefore, in order to show that they are complying with their legal duties, trustees must keep records and an adequate audit trail to show that the charity's money has been properly spent on furthering the charity's purposes for the benefit of the public.

There are legal requirements for charities relating to the preparation of charity accounts and annual reports, the audit or independent examination of accounts and the submission of these to the commission. Trustees must familiarise themselves with the appropriate requirements. Registered charities are required by law to provide annual returns and accounts to the commission. The duty to file accounts and the trustees' annual report with the commission applies to all registered charities whose gross income exceeds £25,000 per year.

There are also wider duties for directors under the Companies Act 2006 and at common law for directors of companies and for trustees. Trustees should take professional advice as necessary if they are uncertain as to their responsibilities.