



CHARITY COMMISSION
FOR ENGLAND AND WALES

Inquiry Report

Kingsway International Christian Centre

Registered Charity Number 1102114

A statement of the results of an inquiry into Kingsway International Christian Centre (registered charity number 1102114).

Published on 14 December 2016.

The charity

Kingsway International Christian Centre ('the charity') is a company limited by guarantee which was incorporated on 5 February 2004 and registered with the Charity Commission ('the commission') on 16 February 2004.

It is governed by a memorandum and articles of association dated 5 February 2004, as amended by special resolutions dated 12 January 2008 and 20 May 2012.

The charity's objects are:

- the advancement of the Christian faith
- the furtherance of the charitable work of the charity by the advancement of such other charitable purposes as the trustees shall from time to time decide

It is a large, growing evangelical church. It operates 19 places of worship and owns a 24 acre facility in Kent where it runs its headquarters from. Its senior pastor, since 1992, is Pastor Matthew Ashimolowo. The charity runs a television and radio station ministry.

Background and issues under investigation

The commission noted that the charity's accounts for the year ended 31 March 2010 ('the accounts') referred to £3 million of investments being made with a trustee (referred to in this report as 'the ex-trustee'). The accounts stated that the ex-trustee was a 'qualified independent trader' who was 'in a position to provide the services of an investment manager by investing in financial markets.' The commission contacted the Financial Services Authority ('FSA', relevant functions now carried out by the Financial Conduct Authority) to verify this. The FSA informed the commission that the ex-trustee was not in such a position in that he was not, nor had he ever been, authorised to carry on regulated activities in a personal capacity.

The commission's concerns as a result were that the charity made substantial investments through the ex-trustee. The commission's enquiries also suggested that the money for the investments was paid into the ex-trustee's personal bank account and that a substantial sum of money might have been lost. The investments appeared to be speculative and high risk in nature.

As a result, on 11 February 2011 the commission opened a statutory inquiry ('the inquiry') into the charity under the then section 8 of the Charities Act 1993 (now section 46 of the Charities Act 2011). The inquiry closed on 14 December 2016 with the publication of this report.

The issues under investigation were:

- the prudence of judgement and decision making of the trustees in making such large investments and what information and advice the trustees based their decision on
- how any potential conflicts of interest in relation to the decision to invest through the ex-trustee were managed
- the conduct of the ex-trustee
- what other investments the trustees had made and what their future investment plans were
- whether the charity's assets were at risk and whether the trustees were taking all appropriate steps to protect the charity

Findings

Issue 1) - the prudence of judgement and decision making of the trustees in making the investments and information and advice relied upon

The inquiry established that between June 2009 and June 2010 the then trustees (referred to in this report as the 'decision making trustees') invested £5 million of the charity's funds with the ex-trustee, who at the time was a trustee, to undertake foreign exchange trades. The investment was made in 4 tranches between 1 June 2009 and 30 June 2010.

An investment agreement ('investment agreement') between the charity and the ex-trustee signed on 16 May 2009 stated that 'The guaranteed level of monthly profit under this agreement is 5% per month with the exception of the months of August and December where the guaranteed level of monthly profit is 2.5%.'

The inquiry established that in practice however, the investments resulted in a net loss of £3.9 million to the charity. This loss included a sum paid to HMRC due to some of the investment losing tax exemptions as the expenditure was classified by HMRC as non-charitable expenditure.¹

When making decisions in order to comply with their duties trustees must:

- act within their powers
- act in good faith and only in the interests of the charity
- make sure they are sufficiently informed
- take account of all relevant factors
- manage conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make

¹ HMRC tax exemptions are restricted where a charity incurs non-charitable expenditure or gains income from non-charitable trading and investment activities. A charity will lose tax exemptions on the equivalent spend on income and gains from non-charitable activity. See HMRC guidance on investments at <https://www.gov.uk/government/publications/charities-detailed-guidance-notes/annex-iii-approved-charitable-investments-and-loans>

Trustees must be able to show how they have followed these principles. Part of ensuring they are sufficiently informed is being able to demonstrate decisions are based on sufficient and appropriate evidence, including deciding whether or not to take advice from a suitably qualified person.

Before deciding to make the initial investment the decision making trustees considered a written proposal from the ex-trustee and asked the charity's senior management team to prepare a written report. The inquiry established that they questioned the ex-trustee on his methodology and excluded him from the decision as to whether to go ahead. However, the decision making trustees did not verify his qualifications or experience or obtain independent professional advice before deciding to invest. Given the proposed rate of return of 55% per annum was so high and the amount of £5 million so significant, the inquiry's view was that independent professional advice should have been sought.

The decision making trustees informed the inquiry that they specifically considered whether they should obtain independent professional advice and decided not to on the basis that they had the necessary expertise in-house. However, the inquiry established that none of the decision making trustees had direct investment experience other than the ex-trustee who was conflicted.

A draft investment policy was in circulation at the time; however the policy had not been finalised and it appears that no regard was had to it in the making of the decision. The draft policy recommended the use of professional investment managers and did not contemplate any sort of foreign exchange trading of the type pursued by the ex-trustee.

Little time in the decision making trustees' deliberations seems to have been taken up with the level of return that the ex-trustee was offering, being 5% per month, save for August and December where the return would be 2.5% due to quieter trading volumes. That represented an overall rate of return of 55% per annum.

The inquiry found that no proper consideration was given to the additional amounts that were invested in December 2009, April 2010 and June 2010.

The inquiry established that whilst the decision making trustees did keep the investments under review, this was limited to checking monthly payments rather than the underlying investment. The investment agreement stated that within 2 business days of receiving a monthly report the charity would confirm whether it wished to roll-over the investment fund and accrued profit for another month. If no instructions were given the investment fund and accrued profit would automatically roll-over. From June 2009 to March 2010 a regular sum was not drawn down by the charity but left to accumulate. At the end of March 2010 the income from the investment was requested and £734,220 was returned to the charity by the ex-trustee. For the second year of the investment £50,000 per month for 10 months was returned to the charity. The rest was theoretically being reinvested but the trustees did not seek independent verification of this.

Up until February 2011 the decision making trustees understood that they were receiving a proportion of their investment return as a payment each month. The decision making trustees were under the impression that the balance of their return was being reinvested in line with the terms of the investment agreement and as suggested in a table provided by the ex-trustee each month that indicated this to be the case. However it later became clear that the majority of the charity's investment had been lost.

In light of the inquiry's findings, on 31 January 2014 the inquiry appointed an interim manager. The trustees continued to run the religious and other activities of the charity on a day to day basis. The interim manager was appointed specifically to review the decision making of the decision making trustees in relation to the £5 million of charitable funds invested with the ex-trustee and to consider whether there was any personal liability and if so whether litigation or restitution was appropriate and in the charity's best interests.

The key findings of the interim manager included that:

- none of the decision making trustees could explain on what basis or why they were satisfied that there was sufficient expertise in-house to make the decision to invest, particularly as no decision making trustee had direct investment experience other than the ex-trustee, who was conflicted
- whilst investment agreements were entered into with the ex-trustee relating to the first £3 million invested, the investment agreement did not cover, and there did not appear to be any other investment agreement relating to the final £2 million invested
- the majority of the decision making trustees believed that confirmation received from HMRC that the first £3 million investment qualified for tax relief was an endorsement of or approval for the investment per se; HMRC made it clear that any additional amounts to be invested would require express guidance - however the decision making trustees made 2 further investments of £1 million each without seeking consent in advance from HMRC, resulting in a significant tax liability for the charity of £560,000
- there was a strong legal claim for personal liability against the decision making trustees and it was proportionate for the now current trustees to consider bringing a claim

Issue 2) - management of potential conflicts of interest

The inquiry established that at a board meeting on 14 March 2009 the ex-trustee was questioned by the decision making trustees regarding the proposed investment scheme. The decision making trustees then asked the then charity's senior management team (SMT) to conduct due diligence into the ex-trustee and his operations.

As far as the interim manager was able to establish this was limited to inspection of the ex-trustee's certificates and a visit to his home where he conducted his trading. On the basis of this the SMT prepared a 30 page report on their due diligence. This included information and case scenarios provided by the ex-trustee but did not include any independent checking of past investment performance or taking of references from other corporate clients.

At a board meeting on 16 May 2009 the ex-trustee was asked to leave the room during discussions on the investments.

The decision making trustees obtained a personal guarantee, of initially £2 million increasing to £3 million, from the ex-trustee, which would be repayable within 14 days should the decision making trustees decide to withdraw their investment. However the decision making trustees failed to evidence whether or not the ex-trustee would be able to meet this personal guarantee.

The interim manager found that conflicts of interest were not managed properly by the decision making trustees when making the decision to invest. There was too much reliance on the expertise of the ex-trustee when he was personally interested and conflicted.

The interim manager found that insufficient consideration was given by the decision making trustees as to whether the guaranteed rate of return was unrealistically high, or to the potential for fraud.

In deciding to place funds with the ex-trustee, the decision making trustees placed a significant amount of store by the fact that he was a member of good standing in the charity and its church and was viewed by the decision making trustees as a person of integrity who had the best interests of the charity and its church at heart. The SMT stated in a report dated 5 March 2009 that the ex-trustee's 'own personal guarantee makes this as safe an investment as any'.

Issue 3) - conduct of the ex-trustee

The interim manager found that the decision making trustees appeared to have been convinced that the ex-trustee was licenced to make the investments by the FSA. The inquiry found no evidence to indicate that the ex-trustee had claimed that he was so authorised or licenced.

The ex-trustee stated to the interim manager in an interview that he made it clear that he was only licenced, that is FSA authorised to invest for family and friends. However the interim manager's view was that it is questionable whether the decision making trustees, given their lack of experience and knowledge in this area, would have understood the difference between this and a full licence.

The investment agreements signed on 16 May 2009 and a subsequent agreement signed on 24 December 2009 show that the charity's funds were to be deposited in an account in the name of the ex-trustee.

The sum of £734,220 returned to the charity by the ex-trustee at the end of March 2010 was the amount of return expected at the time. In the following year there was a regular return of £50,000 per month for ten months. This was below the expected level of return at the decision making trustees' request, with the rest theoretically being reinvested.

The ex-trustee provided the charity with regular monthly reports on a simple spreadsheet which aimed to show the income which was supposed to have been generated without providing any kind of trading reports. The decision making trustees did not ask for any additional information such as trading performance, where the ex-trustee was investing, or evidence of the amount and whereabouts of the investment.

In February 2011, the FSA commenced civil proceedings and obtained an order from the High Court restraining the ex-trustee from accepting, repaying or paying any interest on deposits and freezing the assets of the ex-trustee up to a value of £6.85 million. The investment was therefore stopped. The inquiry took action and exercised its powers to restrict the investment transactions of the charity.

At the time that the ex-trustee had his assets frozen by the FSA the charity had invested £5 million of its charitable funds. At this time the ex-trustee had paid the charity only £1.3 million in return. The decision making trustees were still of the view at that time that any additional returns due to the charity under the investment agreement had been reinvested. The ex-trustee's latest 'monthly report' at the time to the charity showed a 'portfolio balance' of around £7 million of charitable funds. However the decision making trustees were not shown any evidence to support this figure.

On 11 May 2011 the civil proceedings brought by the FSA against the ex-trustee were stayed by agreement to enable the FSA to commence bankruptcy proceedings. A bankruptcy petition was issued on 16 June 2011.

On 17 May 2011 the ex-trustee resigned as a trustee of the charity. Prior to the ex-trustee's resignation the inquiry had taken temporary and protective action to safeguard the charity's funds by preventing the decision making trustees from entering into further investments with the ex-trustee or any other parties without the commission's consent.

The ex-trustee and his creditors - including the charity - agreed at a creditors' meeting on 2 November 2011 to an Individual Voluntary Agreement (IVA). The claim by the charity in the IVA was £6,960,647 representing the total amount invested plus the return.

In June 2012 the charity received an initial payment of £341,768 under the IVA. The terms of the IVA were that a further £100,000 would be payable annually for 4 years together with 50% of any income (after tax) over £300,000. The vast majority of funds would not be due until the end of the IVA. The charity would have to wait 5 years to be able to determine whether or not the IVA had been successful in recovering funds.

The first anniversary of the IVA was in November 2012; the ex-trustee failed to meet this payment and was in breach of the IVA which failed. The charity petitioned for the ex-trustees bankruptcy. On 22 October 2013 the ex-trustee was declared bankrupt. In 2014 the ex-trustee made various offers to repay the charity, which were either not accepted or failed due to factors outside the current trustees' control.

Issue 4) - other investments and future investment plans

The interim manager found no evidence that an agreed investment policy was in place at the time the investments were made. They further found that there was inadequate due diligence relating to the investments with the ex-trustee.

The charity appointed an investment manager on 11 November 2011 and now has an approved investment policy for the future.

The decision making trustees are no longer trustees of the charity and the current trustees informed the inquiry that they believe that the decision making trustees' original decision to make the investments was not a prudent decision.

Issue 5) - risk to charity's assets and whether trustees were taking all appropriate steps to protect the charity

Trustees who were not the decision making trustees formed a special committee in August 2013 to consider matters relating to the investments with the ex-trustee. The terms of reference of the special committee were:

- understanding how the charity came to invest with the ex-trustee
- using all reasonable and necessary steps to pursue and recover the charity's money invested with the ex-trustee
- closely monitoring the recovery process
- advise the new trustees, senior management and senior pastor on all steps that have been taken to recover the charity's money invested with the ex-trustee
- liaising with the insolvency practitioners instructed in respect of the recovery of the charity's funds
- liaising with the charity's solicitors
- providing the commission with regular updates in respect of the recovery of the charity's funds

The inquiry had concerns about potential or actual conflicts of interest within the special committee and the fact that its remit did not extend to considering whether the decision making trustees were personally liable for any breach of duty to the charity for the losses incurred.

The interim manager's view was that the charity had a strong legal claim against the decision making trustees and that it was proportionate and in the best interests of the charity for it to bring a claim against the decision making trustees. Proceedings would have to be instigated by 18 May 2015 to be within the legal 'limitation period'.

The interim manager calculated the decision making trustees' liability on the basis of the loss to the charity plus compound interest at a reasonable bank rate of interest. In addition there was a further liability for a tax charge of £560,000 on the third and fourth investments.

Following on from the interim manager's findings and conclusions, the inquiry directed the trustees to instruct counsel to provide them with written advice on the merits of possible recovery action against the decision making trustees. The trustees obtained counsel's advice on 2 February 2015, considered the regulatory advice and provided the commission with a timetable for their actions which included attempting to negotiate a settlement and issuing proceedings if necessary.

The trustees issued protective proceedings against the decision making trustees on 14 May 2015, giving the decision making trustees 4 months from the date of issue to effect service if this proved necessary. In the meantime the trustees continued attempts to negotiate a settlement with the decision making trustees, taking the matter to mediation where an out of court settlement was reached on confidential terms on 3 September 2015. The sums agreed are required to be paid by 3 September 2017.

Conclusions

The commission's conclusions are:

1. That the decision making trustees did not exercise sufficient care when making the decisions to invest £5 million of the charity's funds through the ex-trustee's investment scheme. They did not follow all the principles expected of trustees to ensure they comply with their trustee duties under charity law when making those decisions.
2. In particular they failed to ensure they were sufficiently informed and took into account all the relevant factors. They could not show that their decisions were based on sufficient and appropriate evidence particularly as they did not seek proper independent advice on a high risk, high value investment scheme.
3. The decision making trustees appeared to have no understanding or appreciation of the high risk nature of the investment.
4. In its view, a prudent person of business, acting with due care would have been concerned that the promise of a fixed rate of return of 55% per annum was an unusually high rate and likely not to be achievable on a prolonged basis. The current trustees agreed that the decision making trustees' decision to invest was not a prudent or reasonable one.
5. Conflicts of interest were not managed properly by the decision making trustees when making the decision to invest. There was too much reliance on the expertise of the ex-trustee when he was personally interested and conflicted.
6. There was mismanagement in the administration of the charity.
7. None of the current trustees were involved in the decision making regarding the investments with the ex-trustee. Under the commission's scrutiny, they acted in the best interests of the charity in pursuing restitution and agreed a settlement to recover some of the losses the charity has suffered.
8. The current trustees have ensured that the charity now employs an investment manager and has adopted a new investment policy.

Regulatory action taken

The inquiry issued an order on 16 February 2011 under the then section 18 (1) (vi) of the Charities Act 1993 (now section 76 (3) (f) of the Charities Act 2011) to prevent the trustees from entering into any investment of the charity's property without the written approval of the commission. The order was discharged on 29 July 2011 after the ex-trustee resigned, and the FSA had obtained a restraining injunction and freezing order on 11 February 2011 in civil proceedings in which the FSA also sought a restitution order.

Appointment of an interim manager

The inquiry appointed an interim manager on 31 January 2014 under section 76 (3) (g) of the Charities Act 2011 to work alongside the existing trustees of the charity so that the trustees continued to run the religious and other activities of the charity on a day to day basis.

The specific functions of the interim manager were, to:

- review the decision making in relation to the investments made between 1 June 2009 and 30 June 2010
- establish the duties of the decision making trustees in relation to the investments and any breaches of those duties
- establish the amount of the losses in relation to the investments
- consider if any of the decision making trustees were personally liable for any breach of duty for the losses incurred
- if so, then analyse and assess potential grounds for and merits of taking action against the trustees including ability to pay, proportionality and whether in best interests of charity
- identify and assess risk of any actual or potential conflicts within the charity's current trustees body in relation to the decision making trustees that could impact decision making and recovery of losses

The interim manager remained in post until 14 May 2015 and was paid a total of £22,985 from the charity's funds, including VAT and disbursements.

Restitution

On 19 December 2014 the inquiry directed the trustees under section 84 of the Charities Act 2011 to instruct legal advisers and counsel to provide them with advice about the merits of making any claim against the decision making trustees.

The inquiry authorised charity proceedings under section 115 of the Charities Act 2011 on 23 April 2015. As a settlement was reached between the charity and the decision making trustees legal proceedings did not go ahead.

The inquiry provided the charity with regulatory advice and guidance on their decision making duties, ensuring the amounts agreed in the settlement are repaid, ensuring repaid amounts are shown in accordance with the Statement of Recommended Practice in the relevant trustees' report and accounts, and continuing to monitor developments with the ex-trustee in case there is any chance of recovery of funds.

The commission put the trustees on notice that it will monitor compliance and, it will expect the trustees to be able to evidence that they have taken steps to ensure compliance with these action points.

Issues for the wider sector

Charity trustees are under a legal duty to manage their charity's resources responsibly and avoid undertaking activities that might place their charity's assets or reputation at risk.

When considering high risk decisions particularly those involving significant sums of money, it is difficult to see how trustees could discharge their legal duties without taking and properly considering independent 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.

Charity trustees must always bear in mind their over-riding duty to take decisions that are in the best interests of the charity. When making decisions trustees must act reasonably within the range of decisions which a reasonable body of trustees could make and consider fully all relevant factors which they should take into account.

When making decisions in order to comply with their duties trustees must:

- act within their powers
- act in good faith and only in the interests of the charity
- make sure they are sufficiently informed
- take account of all relevant factors
- manage conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make

Trustees should be able to show how they have followed these principles. Part of ensuring they are sufficiently informed is being able to demonstrate decisions are based on sufficient and appropriate evidence, including whether or not to take advice from a suitably qualified person.

A charity is entitled to the independent and objective judgment of its trustees, acting solely as trustees. Trustees must ensure that they do not permit any personal associations to interfere inappropriately with their judgement as charity trustees. Trustees must act only in the best interests of the charity and should seek to identify and prevent conflicts of loyalty.

Trustees are responsible for the management and administration of their charity and must take steps to obtain proper redress when things go wrong. Trustees are, and will be held, accountable for recklessly making very poor decisions in circumstances in which they are not properly advised or informed or take wholly irrelevant factors into account which result in significant losses to their charity and it is primarily the responsibility of trustees to recover or repay the losses where this happens. See the commission's **policy on restitution and recovery of charitable funds lost to charity in breach of trust** for further guidance.