

Inquiry Report

Smartys Day Nursery (Hitchin)

Registered Charity Number 1148733



A statement of the results of the class inquiry into double defaulter charities in particular Smartys Day Nursery (Hitchin) (registered charity number 1148733) ('the charity').

Published on 19 April 2016.

The class inquiry

On 20 September 2013, the Charity Commission ('the commission') opened a statutory class inquiry ('the inquiry') into charities that were in default of their statutory obligations to meet reporting requirements by failing to file their annual documents for 2 or more years in the last 5 years and met certain criteria, including that

- the charities were recently (or in the case of charities that would become part of it in due course, would be) given final warnings to comply by a specified date
- on the day after the specified date they were still in default (partially or otherwise)

At the point a charity met the criteria they would become part of the inquiry. The commission started by looking at and sending final warnings to charities with a last known income over £500,000 and then moved on to those over £250,000, and then those with a last known income of between £200,000 and £249,000.

The charity

The charity was registered on 28 August 2012. It is a charitable company governed by a memorandum and articles of association incorporated on 29 May 2012.

The charity's objects are:

'To enhance the development and education of children under statutory school age by providing care and education in partnership with parents/carers to enable children to develop their full potential in a happy and caring environment and by:

- (a) offering appropriate play, education and care facilities and family learning, together with the right of parents to take responsibility for and to become involved in the activities, ensuring that the company offers opportunities for all children whatever their race, culture, religion, means or ability
- (b) encouraging the study of the needs of such children and their families and promoting public interest in, and recognition of, such needs in the local areas
- (c) instigating and adhering to and furthering the aims and objects of the everychild matters early years foundation stage'

More details about the charity are available on the [register of charities](#) ('the register').

Issues under investigation

The charity failed to submit its annual accounts and reports to the commission for the financial years ending 31 May 2013 and 2014. During the whole period of default, the charity was sent various computer generated reminders from the commission regarding the submission of their annual accounting documents. Although reminders were sent, the charity remained in default of its obligations under the Charities Act 2011 ('the act').

In addition the charity was contacted on 4 November 2015 by telephone and a final warning letter was issued the same day requesting that the missing documents be provided by 25 November 2015, and warning the charity that if it remained in default it would become part of the inquiry.

The charity failed to submit its outstanding documents by the deadline and became part of the inquiry on 26 November 2015. The inquiry is confined to dealing with the trustees' mismanagement and misconduct¹ and remedying the non-compliance in connection with the annual accounting documents.

The outstanding annual accounts and reports for the financial years ending 31 May 2013 and 2014 were submitted on 19 January 2016. During the inquiry the trustees also submitted the annual accounts and report for the financial year ending 31 May 2015 on the same day.

On 1 February 2016 the charity's representative informed the commission that the reason for not complying with their statutory accounting requirements was due to the fact that the charity had been merged with another local nursery over a lengthy period of time. Their accounting records had been combined while they were merged, although separate bank accounts were maintained for each nursery. Delays were incurred while the trustees arranged for the records of the two bodies to be separated. This does not excuse the failure of the trustees to fulfil their statutory obligations.

When the charity's outstanding documents were submitted, the accounts were referred for scrutiny by the commission's accountants. Any issues arising from that scrutiny will be followed up separately.

Conclusions

The charity's trustees were in default of their legal obligations to file accounting information with the commission. This was mismanagement and misconduct in the administration of the charity and a breach of their legal duties.

As a result of the inquiry, the commission ensured the charity complied with its legal obligations to submit its annual accounting information. 3 sets of accounts were filed and as a result £734,185 of charitable income is now transparently and publicly accounted for on the register.

The charity ceased to be part of the inquiry when it was no longer in default of its accounting obligations. This happened on 19 January 2016 when the charity filed the last missing documents.

1 The terms misconduct and mismanagement are taken from section 76 of the act. Misconduct includes any act (or failure to act) in the administration of the charity which the person committing it knew (or ought to have known) was criminal, unlawful or improper. Mismanagement includes any act (or failure to act) in the administration of the charity that may result in significant charitable resources being misused or the people who benefit from the charity being put at risk. A charity's reputation may be regarded as property of the charity.

Regulatory action taken

On 21 December 2015 the inquiry exercised powers under section 84 of the act to direct the trustees to prepare and complete the relevant missing annual accounts, reports and returns for the charity and provide copies of these to the commission.

On 22 January 2016 the inquiry exercised powers under section 47 of the act to direct the trustees to provide bank records and financial information of the charity relating to the missing years accounts. These will be used in connection with the commission's scrutiny of the accounts.

The commission provided regulatory advice and guidance about the trustees' duty to file the charity's annual accounting information.

Issues for the wider sector

Trustees of charities with an income of over £25,000 are under a legal duty as charity trustees to submit annual returns, annual reports and accounting documents to the commission as the regulator of charities. Even if the charity's annual income is not greater than £25,000 trustees are under a legal duty to prepare annual accounts and reports and should be able to provide these on request. All charities with an income over £10,000 must submit an annual return.

Failure to submit accounts and accompanying documents to the commission is a criminal offence. The commission also regards it as mismanagement and misconduct in the administration of the charity.

For those individuals who were not trustees at the initial date of default, when they became a trustee, they became responsible for making good the default.

It is important that the financial activities of charities are properly recorded and their financial governance is transparent. Charities are accountable to their donors, beneficiaries and the public. Donors to charity are entitled to have confidence that their money is going to legitimate causes and reaches the places that it is intended to. This is key to ensuring public trust and confidence in charities.