



**CHARITY COMMISSION**  
FOR ENGLAND AND WALES

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## **Inquiry Report**

### **Greenfinch Charitable Trust**

Registered Charity Number 1014816

# A statement of the results of an inquiry into Greenfinch Charitable Trust (registered charity number 1014816) ('the charity').

**Published on 8 December 2016.**

## The charity

Greenfinch Charitable Trust was registered on 19 October 1992. It is governed by memorandum and articles of association dated 31 May 1991.

More details about the charity are available on the **register of charities** ('the register').

The charity was originally called Next Step Charitable Trust and changed its name to Greenfinch Charitable Trust on 5 October 2004.

Between 1998 and 2004 the charity ran a fostering service under which foster carers were recruited, trained and supervised. Between 2004 and 2010 it ran a supervised contact centre and a service providing court assessments for families subject to care proceedings.

## Issues under investigation

In 2009, following the receipt of a complaint, the Charity Commission ('the commission') opened a regulatory compliance case in order to investigate the management of this charity.

The charity was experiencing financial difficulties and on 22 July 2010 entered a creditor's voluntary winding up. This followed the receipt of professional advice to cease trading. The charity's Statement of Affairs, prepared by the liquidator, indicated that there were sufficient funds at that time to pay all creditors with a surplus of £37,000.

The commission notified the liquidator of its concerns and asked that she consider those concerns in the light of her responsibility to investigate decisions taken by the charity's directors. The issues were complicated and there were a significant number of documents. The liquidator did investigate but by late 2012 no proceedings had been issued.

On 25 January 2013 the commission formalised its investigation of this charity and opened a statutory inquiry under section 46 of the Charities Act 2011. The inquiry closed on 8 December 2016 with the publication of this report. The issues under investigation were:

- the identity of charity trustees
- unauthorised trustee remuneration
- unauthorised pension payments
- the transfer of the charity's fostering agency to a private company
- outsourcing of the charity's administration to a company owned by connected persons

# Findings

## Issue 1 - the identity of the charity trustees

The charity is a company limited by guarantee and its governing document is a memorandum and articles of association. The governing document does not use the term director and states<sup>1</sup> that the company is to be managed by the 'Council of Management' and that the members of the council are to be mindful that they are charity trustees. The charity had directors and a company secretary recorded at Companies House. Different individuals were recorded by the charity as members of the Council of Management and the charity's accounts recorded the identity of directors and trustees separately.

'Charity trustee' is defined in Charities Act 2011 s 177 (previously s97(1) Charities Act 1993) as "the persons having general control and management of the administration of a charity". Charity trustees are called a range of different things including board member, committee member, director and governor. In a company limited by guarantee the directors are the charity trustees. The inquiry found that in this particular charity the term Council of Management was being used to describe the directors of the company. In particular the inquiry found that those individuals registered as directors at Companies House were members of the Council of Management and trustees of the charity.

The charity strongly disagreed with this finding and maintains that the Council of Management were the charity trustees and that a director did not have to be part of the Council of Management. Specifically the charity has maintained that its leading management figure ('manager') was a director but not a member of the Council of Management and therefore not a charity trustee. However, the charity did accept that as a director the manager owed fiduciary duties to the charity.

## Issue 2 - Unauthorised trustee remuneration

The charity's manager was a director of the company. The charity's governing document contained a prohibition on members of the Council of Management receiving remuneration (clause 4 of the Memorandum of Association). The manager was paid a salary of approximately £70,000 per annum between 1998 and 2005 falling after that because she started to work part time. The manager was a director of the company and the inquiry found that a director must be a member of the Council of Management and therefore she had received substantial unauthorised remuneration.

The charity disagreed with this finding. It maintains that the manager was not a member of the Council of Management and therefore there was no prohibition on the manager receiving a salary. The charity contends that the salary paid to the manager represented good value in the light of the charity's good financial results, which included substantial cash reserves plus ownership of an unencumbered freehold property.

Two members of the Council of Management worked at the charity providing accounts and administration services. They were employed by a company called Faircourt Properties Ltd (Faircourt). The charity paid Faircourt for administration services and Faircourt paid the 2 trustees a salary. Faircourt was a company set up and owned by the charity's manager. The inquiry found that the 2 trustees and the manager received unauthorised trustee benefits.

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<sup>1</sup> Article 33(a) The business of the company shall be managed by the Council  
'33(b) In the exercise of the aforesaid powers and in the management of the business of the company the members of the council should always be mindful that they are charity trustees within the definition of s46 of Charities Act 1960 as the persons having the general control and management of the administration of a charity.

### **Issue 3 - Unauthorised pension payments**

The inquiry established that the charity paid contributions to the manager's pension totalling £139,106. This included a lump sum paid at the time the fostering agency (see issue 4) was transferred out of the charity. The inquiry found that this was an unauthorised trustee benefit. The charity maintains that the manager was not a charity trustee and therefore these payments were legitimate.

The inquiry established that the charity had also made material contributions to the pension of the manager's husband. The inquiry found that these payments were not in furtherance of the charity's objects and therefore made in breach of the charity trustees' duties.

### **Issue 4 - Transfer of the charity's fostering agency to a private company**

Between 1998 and 2004 the main activity of the charity was the operation of a fostering agency. The fostering business had originally been gifted to the charity by the manager. By 2004 the fostering agency was managing the placement of approximately 50 children and its accounts for the year ending 31 May 2004 reported an income from the fostering agency of £2.14 million. In 2004 the charity decided that changes in social services policy would make operating in the future more difficult and risky. In August 2004 the charity decided to cease the fostering work. On 1 October 2004 the fostering agency was transferred to a private company Next Step Fostering Services Ltd (NSFSL).

NSFSL was owned by 2 companies AW Consultancy Ltd and I & L Consultancy Ltd. AW Consultancy is owned by the husband of the charity's manager and it held 85% of the shares in NSFSL, I & L Consultancy Ltd held the remaining 15% of the shares in NSFSL and it was owned by the manager's daughter and the charity's service director. At the time of the transfer the directors of NSFSL were the husband of the charity's manager, the daughter of the charity's manager (who was also employed by the charity) and the charity's then service manager.

The charity transferred the fostering agency to NSFSL for nil consideration receiving only £24,519 for the tangible assets. Until October 2004 the charity was called Next Step Charitable Trust. When the fostering agency was transferred to NSFSL the charity changed its name to Greenfinch Charitable Trust.

The inquiry found that the trustees' decision making regarding the transfer of the fostering agency was flawed. The meeting at which the decision was taken was not quorate, the various conflicts of interest were not managed and the trustees failed to consider relevant factors such as alternative ways of protecting the charity from the alleged increased volatility of fostering as a business and failed to consider alternative buyers or a charitable company to take over the fostering agency. In addition the charity did not obtain an independent valuation of the fostering agency in order to determine an appropriate sale price.

The inquiry found that the transfer of the fostering agency to the company was:

- a breach of duty as charity trustees in transferring charity assets neither in furtherance of the charitable purpose nor for market value
- a breach of fiduciary/directors' duty to act bona fide in the interests of the charity and not to self-deal or profit and to avoid conflicts of interest in allowing charity assets to be transferred to a connected company for no consideration
- voidable under statute - where assets of a company are acquired by a director or a person connected with him such arrangements required the approval of the company in general meeting pursuant to s.320 of the Companies Act 1985 (in force at the material time) and under s.66 of the 1993 Act commission approval is also required; the inquiry found that the transaction had not been approved by the company's members and the commission's authority had not been sought

The charity contested the findings of the inquiry. The charity maintains that it was necessary to transfer the agency out of the charity in order to protect the charity from a difficult future trading environment. The charity informed the inquiry that the political climate was changing at the time. In addition the charity informed the inquiry that the fostering agency was entirely dependent on foster parents and social workers who were not tied to the agency and could join another agency at any time. The charity informed the inquiry that this had a significant impact on the valuation of the fostering agency and reduced that value to nil.

The inquiry commissioned an independent valuation of the fostering agency which estimated it was worth £1.5 million at the date of the transfer. The charity contested the accuracy of this valuation and commissioned its own valuation which estimated that the fostering agency had a nil value at that date.

The charity now accepts nonetheless that the fostering agency transfer was not dealt with properly. There should have been professional independent advice and a valuation addressed to the charity (and not just to the manager) and the transfer should have been referred to the commission for approval.

## **Issue 5 - Outsourcing of the charity's administration**

In 2007 the main activity of the charity was producing court assessments for families subject to care proceedings. During 2007 the administration of this service was outsourced to A&D Consultancy Limited (A&D) a company owned by the then service manager<sup>2</sup> and by the manager's husband although the manager's husband received no payments from A&D.

A&D charged the charity all its staff costs plus 20% plus VAT and also made additional charges. The charity could not afford this arrangement and began to experience financial difficulties. The outsourcing arrangement was terminated on 16 December 2008. The service manager maintained that the outsourcing arrangement was undertaken with the full approval of the charity. The charity maintains that they did not approve this arrangement. The inquiry found that as a result of this outsourcing arrangement the charity incurred approximately £318,000 of costs it would not have incurred if the administration had remained within the charity.

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<sup>2</sup> This service manager was a different person to the service manager referred to in issue 4.

## Conclusions

The commission concluded that there had been several breaches of trust which had led to the charity losing a significant amount of money and that action for recovery of that loss should be taken. The commission's policy on restitution is available on [GOV.UK](https://www.gov.uk). That policy states that "Where the trustees are unable or unwilling to do so, and the amount involved is significant and the breach of trust is sufficiently serious, the commission will not hesitate to use its powers of intervention and remedy to secure the recovery of lost funds" and "In appropriate cases and exceptionally, the commission will consider bringing legal proceedings in the public interest with the Attorney General's consent to recover funds lost to charity."

The charity went into liquidation in 2010 and was still in liquidation during the inquiry. The commission liaised with the liquidator regarding the possibility of her taking legal action to recover the funds lost. The liquidator confirmed that she was considering legal action in connection with the transfer of the fostering agency and the unauthorised remuneration but not the outsourcing of the charity's administration between 2007 and 2008.

The commission decided that the losses sustained by the charity as a result of the outsourcing were substantial enough to justify taking legal action.

In April 2013 the commission issued proceedings in the High Court against 4 individuals in relation to outsourcing arrangement which took place between 2007 and 2008. The commission served those claim forms on the defendants on 23 August 2013.

The defendants indicated that they were prepared to negotiate a settlement of the commission's claim and any other potential claims. Two of the defendants attended mediation on 19 May 2014 and following further negotiations a settlement agreement was reached in respect of claims against all defendants. This was accepted by the High Court on 24 November 2014 and the commission discontinued its claims against the other 2 defendants.

The terms of the settlement agreement are confidential. The settlement sum was paid to the liquidator. The liquidator was able to pay all the charity's creditors in full plus the costs of the liquidation. In addition she was able to pass £181,081.11 to other charities with similar objects.

## Regulatory action taken

The commission used its information gathering powers under s52 Charities Act 2011 (previously s9 Charities Act 1993) to obtain a range of information including the charity's bank statements, copies of cheques drawn on the charity's account, information from the charity's accountants, the solicitors who acted for A&D and the solicitors who acted for the charity.

On the 25 January 2013 the commission opened a statutory inquiry in accordance with s46 Charities Act 2011.

## Issues for the wider sector

It is legitimate for trustees to delegate the day to day management of a charity to staff and others. However, charity trustees always retain the ultimate responsibility for running the charity and should ensure that robust reporting procedures are in place to enable them to make reasonable decisions. Responsibility for ensuring they have sufficient information and are adequately informed in order to make decisions rests with the charity trustees.

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 businesses 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.

When a charity disposes of assets the charity trustees must ensure that it is acting in the best interests of the charity. This includes ensuring they obtain full value for the asset and properly manage any conflict of interest. If the disposal is to a connected party the trustees may need approval from the charity's members and/or the commission. Trustees must ensure that they are aware of the legal requirements and obtain legal advice if necessary.

A charity is entitled to the objective judgment of its trustees, exercised solely in the interests of the charity, and unaffected by the prospect of any personal advantage to themselves. Charity trustees must not put themselves in a position where their personal interests conflict or are likely to conflict with their duty to act in the best interests of the charity. The onus is on the trustees to be able to demonstrate they have acted solely in the interests of the charity.

Charity trustees must ensure that any disposal of property to a connected person (including a lease) is properly authorised and reported in the charity's accounts as a related party transaction.

Charity trustees should ensure that they have a conflicts of interest policy in place to ensure that they are fully aware of their responsibilities and that any conflicts that do arise are appropriately managed.

Where a charity trustee has a conflict of interest they should follow the basic checklist set out in the commission publication: **Conflicts of interest: a guide for charity trustees (CC29)** and where necessary or appropriate take professional advice.

Charity trustees should ensure that adequate records are kept of their decisions so that they can demonstrate that they have acted in accordance with the governing document and with best practice. From time to time, trustees may have to take decisions with which others may disagree and which may come under very close scrutiny. In these circumstances, trustees should be able to demonstrate clearly that they acted honestly and reasonably in what they judged to be the best interests of the charity.