



**CHARITY COMMISSION**  
FOR ENGLAND AND WALES

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## **Inquiry Report**

### **Cavalier King Charles Spaniel Rescue & Welfare**

Registered Charity Number 1104112

# A statement of the results of an inquiry into Cavalier King Charles Spaniel Rescue & Welfare (registered charity number 1104112).

**Published on 22 December 2016.**

## The charity

Cavalier King Charles Spaniel Rescue & Welfare ('the charity') was registered with the Charity Commission ('the commission') on 3 June 2004. The charity is unincorporated and governed by a declaration of trust dated 2 May 2004 ('the governing document').

The charity's objects are 'to relieve the suffering of unwanted, abandoned, neglected and mistreated Cavaliers King Charles Spaniels and in particular for the rescue and provision of care for such animals and where appropriate to find a suitable alternative home'.

Further details of the charity can be found on the commission's [register of charities](#).

## Background and issues under investigation

Before opening the statutory inquiry ('the inquiry') under section 46 of the Charities Act 2011 ('the Act') the commission conducted a regulatory compliance case ('the investigation').

The investigation was opened on 23 April 2013 following a complaint from the executor of a will that a legacy of £382,460 ('the donation') had been left to the charity in 2005, which had not been recorded in the charity's accounts. The executor's engagement with the founder of the charity ('the founding trustee') on this matter did not allay their concerns that the legacy had been properly accounted for and safeguarded for the charity.

The investigation confirmed that the donation was not shown in the charity's 2005 accounts and was not included in accounts for subsequent years. The investigation also found the donation had been dispersed into various personal bank accounts and the trustees had failed to secure it for the charity despite receiving guidance.

On 20 March 2014 the commission opened the statutory inquiry to establish whether there was evidence of:

- serious governance failures
- significant financial loss to the charity
- the charity deliberately being used for private benefit and misuse of charity funds
- poor financial controls or mismanagement

## Findings and conduct of the inquiry

The inquiry found evidence of failures in basic governance. The trustees were not fully aware of the requirements of the governing document and did not collectively discharge their responsibilities and as a consequence had not acted in the best interests of the charity.

The inquiry confirmed that the charity had 3 trustees comprising of the founding trustee and 2 other trustees, who were husband and wife ('the other trustees'). One of the other trustees told the inquiry that they were supposed to be the chair of trustees, but the founding trustee was in effective control of the charity. They explained this was because the founding trustee lived on site with the dogs and was heavily involved in the day to day administration of the charity, which included in practice sole control of the charity's finances.

The other trustees told the inquiry they had moved from the area the charity was operating in and now lived so far away they felt they could not have effective control or oversight of the charity. Although they told the inquiry they were not excusing themselves for not keeping a closer eye on the charity's affairs, they expressed their intention to resign as trustees. However the inquiry found the governing document stipulated that there should be at least 3 trustees so, if they resigned without recruiting additional trustees first, the charity would not be able to operate.

The inquiry found that poor oversight by the trustees and a lack of proper financial controls led to financial mismanagement of the charity.

The inquiry established that the donation had been placed in several bank accounts held in the name of the founding trustee and another person who was not a trustee. They were the only signatories on the personal accounts. After obtaining and scrutinising the banking and accounting records, the inquiry found that in June 2011 a further, separate legacy of £44,957 was received and, after initially being paid into an account held in the name of the charity, was also transferred into an account held in the name of the founding trustee. The inquiry also established that part of the donations were used to invest in properties held in the name of the other person who was not a trustee.

The transfer of the donations to personal accounts was imprudent and in breach of the governing document, which stated that any bank or building society account in which any of the funds of the charity were deposited must be held in the name of the charity. Whilst they retained their status as charitable funds whilst held in the personal accounts, their use as personal funds to invest them in properties that were then not held legally in the name of the charity were an improper use of charitable funds.

The other trustees told the inquiry they were unaware that the founding trustee had moved the donations into personal bank accounts. They said this was because this had happened after they moved away from the area.

The founding trustee told the inquiry responsibility for the charity's finances had been delegated to the charity's accountant. This was disputed by the accountant who told the inquiry that the financial controls were the responsibility of the founding trustee. The inquiry found that the founding trustee had sole control of the charity's bank account.

At that point, due to the serious risk to the charity's funds, the commission exercised its statutory powers to freeze 6 bank accounts where there was evidence that charitable funds had been moved to and/or were held. This action protected £378,000 of charitable funds and enabled the other trustees to take steps to recover a substantial amount of the misappropriated funds.

The inquiry also reported what had happened, the evidence found, and its concerns about the misappropriation of funds to the police and provided support to a subsequent criminal investigation. The police investigation was halted due to insufficient evidence when the founding trustee died.

The inquiry monitored the recovery actions by the trustees to ensure that misappropriated funds were recovered by the charity.

## Conclusions

The commission concluded, on the basis of the evidence it gathered, on balance, that under charity law, the donations were misappropriated for personal benefit. This happened after the other trustees moved away and the founding trustee effectively took over sole control of the charity and its financial affairs.

The lack of effective collective oversight by the trustees and poor financial controls in the charity created an environment which enabled an individual with significant control and influence to take control of the charity and where substantial charitable funds could be transferred to or deposited in personal bank accounts without the other trustees' knowledge.

The commission concluded the actions of the founding trustee amounted to mismanagement and misconduct in the charity and that the actions and omissions of other trustees meant they also failed to adequately and fully discharge their duties as charity trustees.

The commission acknowledges that the other trustees subsequently acted in a responsible manner to address the commission's concerns and followed the commission's guidance to remedy matters. They took control of the charity and its finances, recruited additional trustees and sought legal assistance which enabled them to recover a substantial amount of the misappropriated funds. The commission has seen evidence that in the region of £300,000 has been recovered and the trustees told the inquiry this is in addition to £120,000 the founding trustees had already repaid.

The vigilance of the executor and the intervention of the commission prevented a substantial permanent loss occurring which would probably have proved fatal to the charity. The subsequent remedial actions have enabled the charity to be placed back on a proper footing and to continue as a going concern.

## Regulatory action taken

The inquiry used its powers to make an Order under s52(1)(b)(i) of the Act for the charity's bank to provide copies of bank statements for the relevant accounts.

To prevent the donations being disposed of, the inquiry used its powers to make 3 Orders to freeze 6 bank accounts under section 76(3)(d) of the Act.

The inquiry provided formal regulatory advice and guidance to the charity trustees in relation to their responsibilities and duties.

When there was no further risk to the charity's assets, the inquiry used its powers to discharge the protective orders.

The inquiry also reported its concerns about the misappropriation of funds to the police and provided support to the subsequent criminal investigation.

## Issues for the wider sector

Every charity needs an effective trustee body which has control over the administration of the charity and acts as a whole, especially because all trustees are equal in responsibility.

Trustees carry ultimate responsibility for the management of their charities.

The commission's guidance **The essential trustee: what you need to know, what you need to do (CC3)** explains the key legal duties of charity trustees. Trustees should take all reasonable steps to find out as much as they can about the charity including reading the governing document, and finding out what will be expected of them as a trustee. One of the legal duties of a charity trustee is to ensure that the charity does not breach any of the requirements or rules set out in its governing document and that it remains within the charitable purposes and objects set out in the governing document.

Trustees must ensure that their charity has adequate financial and administrative controls in place. Such systems help to prevent financial crime, ensure the charity is reporting accurately to the public and help to protect the charity's reputation. Trustees must ensure that they comply with their statutory obligations to maintain the accounts and records of their charity. As the commission's **compliance toolkit** makes clear, trustees are under legal duties to safeguard the charity's money and assets and to act prudently. Trustees also have a duty to avoid undertaking activities that may place their funds, assets or reputation at undue risk. This means that when receiving, holding and moving funds, trustees need to ensure they take proper care to ensure the charity's money is held safely, not placed at undue risk and reaches the intended destination for the purposes intended. All bank accounts should be held in the name of the charity and never in the name of individuals. The charity may have a policy about its accounts and this should be checked by trustees to ensure they are acting in compliance with it. Appropriate controls and safeguards should be in place as to their use and access to them. There should be a clear audit trail of where bank accounts are held, what they are held for and who has access to them.

Trustees should not only ensure that financial controls are put in place but also that sufficient information is reported back at trustee meetings to satisfy them that the controls are being properly observed. The commission has produced guidance to assist trustees in implementing robust internal financial controls that are appropriate to their charity. **Internal financial controls for charities (CC8)** is available on GOV.UK. There is also a **self checklist for trustees** which has been produced to enable trustees to evaluate their charity's performance against the legal requirements.

Trustees have a duty whenever possible to recover charity funds that have been misappropriated or as a result of trustees or others gaining personally from the charity through deliberate or reckless acts carried out in breach of trust. However they should take and consider legal advice and need to consider whether there is a reasonable prospect of success in pursuing an action, so as to justify the outlay on legal costs. It will not always be cost effective to pursue a loss, and trustees should always take legal advice before deciding to embark on litigation.