

# Inquiry Report

Caring for children in the Gambia

Registered Charity Number 1108231



# A statement of the results of an inquiry into Caring for children in the Gambia (registered charity number 1108231).

Published on 18 January 2016.

## The charity

Caring for children in the Gambia ('the charity') was an unincorporated charity, governed by a declaration of trust dated 28 December 2004.

Its object was to advance the education of children in the Gambia, West Africa. The charity was registered with the Charity Commission ('the commission') on 22 February 2005.

The charity's reported income for the financial year ending 31 October 2010 was £4,200.

## Background to the issues under investigation

A company limited by guarantee was incorporated on 12 August 2008, with a similar name Caring for children in the Gambia Limited ('the company'). The company's purposes were to promote and advance within local communities in the Gambia:

- the education of children and alleviation of poverty
- the improvement of facilities and the standard of living of individuals within those communities
- a sustainable and stable infrastructure

An application to register the company as a charity was submitted to the commission in November 2011. The application indicated that the company was established to replace the charity. It is not unusual for trustees of a registered unincorporated charity to create and register an incorporated charity, and subsequently transfer the unincorporated operations and assets to the incorporated charity. Typically this is done when:

- there is a concern about the level of financial risk a charity faces and the trustees require greater protection
- there is a need for a charity to hold land or property in its own name<sup>1</sup>
- a charity wishes to enter into contracts

The objects of the company were not exclusively charitable and insufficient evidence was provided to the commission to demonstrate that the company met the definition of a charity under the Charities Act 2011.

Further periodic attempts were made to register the company as a charity with the commission. On each occasion, the information provided to the commission remained insufficient to justify the registration of the company as a charity.

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<sup>1</sup> An unincorporated charity is not able to hold land or property in its own name. Any land or property belonging to an unincorporated charity has to be held in the name of a trustee, custodian or nominee on behalf of that charity.

The charity was removed from the register of charities ('the register') by the commission in April 2013 as it had failed to file its annual return for the financial year ending 31 October 2011, and because the income of the charity was below the mandatory registration threshold.<sup>2</sup>

As a result of the applications to register the company as a charity, the commission had concerns that there was inadequate separation of the affairs of the charity and the affairs of the company. In October 2013, the commission opened a regulatory compliance case ('RCC') into the administration of the charity.<sup>3</sup>

As part of the RCC the commission conducted an examination of the books and records of the charity and also met with a trustee of the charity.

The RCC did not allay the commission's separation concerns and on 25 February 2014, a statutory inquiry was opened into the charity under section 46 of the Charities Act 2011 (the 'inquiry').

The inquiry was established to investigate the extent of mismanagement or misconduct by the trustees and the risk of misuse or loss of charitable funds. The inquiry was also to consider the application to register the company as a charity.

## Findings

The trustees of the charity were notified of the opening of the inquiry on 19 March 2014.

The company ceased trading shortly after on 23 March 2014.

Based on the evidence gathered from the examination of the charity's books and records, the commission found that there were poor financial controls and record keeping and insufficient separation between the affairs of the company and the affairs of the charity. It was difficult to draw a distinction between the respective activities of the charity and the company. The trustees were only able to provide the commission with limited evidence of charitable activity.

## Conclusions and regulatory action taken

The inquiry has concluded that there was misconduct and/or mismanagement in the administration of the charity because the trustees did not:

- adequately separate the affairs of the charity from the affairs of the company
- maintain adequate records, and were unable to demonstrate that all expenditure was a proper application for the purposes of the charity

Based on the information obtained, the inquiry has concluded that the charity has ceased to operate.

The commission closed its registration case once it was notified that the company had ceased trading. The company was dissolved on 16 June 2015.

The risks of misuse or loss of charity funds through a lack of separation between the company and the charity have been addressed as both the charity and the company have ceased to operate. The inquiry has therefore concluded that there is no ongoing risk to charitable funds.

<sup>2</sup> The registration threshold for a charity of this type is £5,000 annual gross income.

<sup>3</sup> Although de-registered the charity still fell within the commission's jurisdiction and did not preclude the commission opening an RCC or statutory inquiry at a later stage.

## Issues for the wider sector

Trustees must manage a charity's resources responsibly. This includes ensuring that their charity's assets are only used to support or carry out its purposes. Trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise they risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of their legal duties as charity trustees.

Changing to a different charitable structure by incorporating an unincorporated charity is not unusual, but can be a complex process. The new organisation must be wholly charitable in law, and meet the criteria for registration. It is a decision that trustees should consider carefully. [Guidance and a checklist](#) can be found on GOV.UK.