

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



THE ALTERNATIVE ANIMAL SANCTUARY

Charity Commission for England and Wales, Inquiry Report, 2 September 2021

An inquiry into the conduct of a charity

Key words: Charity, England and Wales, Trustees' Legal Duties, Best Interests of a Charity, Conflicts of Interest, Third Party Fundraising, Regulatory Compliance, Misconduct and/or Mismanagement in the Administration of a Charity, Winding up, Removal from Register of Charities

1. The Alternative Animal Sanctuary (the charity) was established in 2005. The charity's objects were to relieve the suffering of animals in need of care and attention, to promote humane behaviour towards animals, and to provide and maintain facilities for the reception and care of unwanted animals.
2. Concerns about the charity were first raised in 2016 by the charity's auditors. These concerns included no evidence of trustee meetings, incomplete and missing financial records, and a lack of segregation between personal and charitable funds.
3. As a preliminary matter, the Charity Commission for England and Wales (the Commission) identified that the charity was party to a direct mailing agreement (the Agreement) with a specialist direct mailing agency (the Agency).
4. On 2 March 2017, the Commission opened a statutory inquiry into the charity under section 46 of the Charities Act 2011 to examine the administration, governance and management of the charity with respect to the extent to which the trustees:
 - acted in the charity's best interests and acted in accordance with their legal duties;
 - responsibly managed the charity's resources and financial affairs, including the charity's debts/solvency and the adequacy of the charity's financials controls;
 - ensured that conflicts of interest had been adequately avoided or managed;
 - complied with their reporting duties, including the submission of the charity's annual reports and accounts to the Commission;
 - prudently managed the arrangements with a third-party fundraising agency.

5. Interim managers were appointed during the inquiry.
6. In relation to (a), the inquiry found that the charity had four trustees, three of whom were members of the same family, including the Chair of trustees, who ran the sanctuary on a day-to-day basis and who managed the charity's finances. The inquiry found significant and wide-ranging evidence that the trustees failed to act in accordance with their legal duties, and to act in the best interests of the charity.
7. In particular:
 - There was a complete lack of effective governance by the trustees and an unwillingness and inability to have proper oversight of the activities of the Chair;
 - The charity's record keeping was inadequate, which resulted in key decisions by the trustees, and the considerations involved in such decisions, not being recorded;
 - The trustees could not demonstrate that their decisions were properly taken, reasonable or in the best interests of the charity;
 - The trustees failed to keep and maintain adequate financial records;
 - There had been repeated failure to meet the charity's statutory reporting obligations;
 - The trustees had also failed to properly manage conflicts of interest;
 - The Chair had acted unilaterally to the detriment of the charity in purchasing property using charity funds and personal funds intermixed;
 - The trustees failed to comply with the Commission's orders of rectification.
8. The trustee's failure to comply with the Commission's orders, together with the inquiry's findings that the trustees failed to act in accordance with their legal duties constituted misconduct and/or mismanagement in the administration of the charity.
9. In respect of (b), the inquiry identified that:
 - The charity's finances were solely managed and controlled by the Chair;
 - There were no internal financial reporting mechanisms nor any formal procedures in which trustees other than the Chair were involved in the approval or payment of expenditure;
 - The charity had no financial control procedures to protect the charity's funds from risk;
 - There was a complete lack of separation between the personal finances of the Chair and those of the charity;
 - The Chair used personal credit cards to pay for some of the charity's expenditure, which was later claimed when the charity had funds available. The total amount repaid to the Chair was £360,000;
 - There were no procedures within the charity that would have enabled the other trustees to provide adequate checks and balances on this practice;
 - The trustees did not take any reasonable steps to implement procedures to track or document such expenditure or to reassure themselves that such expenditure was legitimately incurred in furtherance of the charity's purposes;

- The Chair received £2,000 per month from the charity for the use of her property, but there was no lease or other supporting documentation to support this payment;
- The Chair also received regular benefits paid for by the charity, such as food, clothes and other day-to-day items without supporting documentation;
- The Chair had complete autonomy to manage the charity's finances, to apply considerable funds to herself and to make all financial decisions with no recourse to, or oversight by, the other trustees.

10. The charity's lack of even basic financial controls or procedures and the trustee's unwillingness and inability to have proper oversight or control of the Chair's actions, or to ensure the trustees made collective and documented financial decisions, exposed the charity's funds to undue risk which resulted in significant losses to the charity. The inquiry found that this constituted misconduct and/or mismanagement in the administration and management of the charity by the trustees.

11. In relation to (c), conflicts of interest in the charity were very difficult to manage because three of the trustees, including the Chair, were from the same family. The trustees of the charity did not appear to recognise the existence of conflicts of interest, and had no conflicts of interest policy in place.

12. The particular conflicts identified included:

- The trustees failed to identify and properly manage conflicts of interest when administering the charity, particularly in relation to decisions made that resulted in personal benefits to the Chair;
- The trustees could not provide documentary evidence demonstrating how key decisions that resulted in benefits to the Chair were made, or how conflicts of interest were managed;
- Issues involving conflicts should have been decided by an unconflicted quorum of trustees.

13. The inquiry found that the trustees were unable to demonstrate how they adequately identified or managed conflicts of interest and acted in the charity's best interests. The Chair was also under a personal duty not to put herself in a position where her personal interests conflicted with those of the charity. She had failed to do so. The inquiry considered that this demonstrated misconduct and/or mismanagement by the trustees.

14. As to (d), the inquiry found that the trustees consistently failed to meet the statutory reporting requirements for the charity, those being the obligation to file annual accounts and a Trustees Annual Report within ten months of the charity's financial year end. The charity's accounts for each of the financial years ending between 2012 – 2015 were qualified by the charity's auditors, and the trustees failed to take any of the advice given by the auditors, or indeed the Commission, up to and including the appointment of the interim managers.

15. The inquiry found that the trustees failed to act in accordance with their duties to maintain adequate accounting records, to meet their statutory filing obligations and to ensure the charity was accountable

to the public and its supporters, all of which demonstrated misconduct and/or mismanagement in the administration of the charity.

16. Finally as to (e), the inquiry found that at the time of entering into the Agreement, the trustees did not take any formal legal or accountancy advice and failed to undertake any due diligence in respect of the company chosen. There appeared to have been no prior discussion amongst the trustees about the Agreement, on which the charity did not negotiate terms at all.
17. Not only was there no discussion about the Agreement, but the trustees did not inform themselves about the Agreement before deciding to enter into it. Trustees are required to ensure that they are adequately informed prior to making a decision. To discharge their legal duties when making decisions, trustees must:
 - act within their powers;
 - act only in the interests of the charity;
 - make sure they are sufficiently informed;
 - take account of all relevant factors;
 - ignore any irrelevant factors; and
 - manage conflicts of interest and make decisions that are within the range of decisions that a reasonable trustee body could make.
18. The Agreement was very unfavourable to the Charity's interest, and resulted in significant loss of funds raised. The inquiry found that the high level of costs and fees associated with the Agreement resulted in a very low proportion of publicly donated funds being passed to the charity to further its objects.
19. In the lifetime of the charity's Agreement with the Agency, which ran from 2008 to 2020, the total income generated by the arrangement was £10.6 million. Total income received by the charity amounted to £1.8 million. This represented less than 18% of the funds raised from the public being directed to the charity for it to use in furtherance of its objects, with over £8.8 million being consumed by the costs and fees associated with the Agreement. None of this was made transparent to public donors.
20. There are specific rules that have to be followed if a charity uses a 'professional fundraiser'. The Charities Act 1992 and associated statutory regulations require professional fundraisers, and others, to follow certain rules when fundraising for a charity or charitable purposes. This includes making a detailed declaration, known as a solicitation statement, to the public when soliciting or procuring funds on behalf of the charity from them. The regulations seek to enable donors to make an informed decision, knowing how much of their donation will reach the charity, and the proportion that will be received by the professional fundraiser.
21. In this case, there was no solicitation statement provided to donors, and no oversight of the Agreement at any stage. Therefore, not only was there a serious loss of funds to the charity, but also a high degree of risk of reputational damage.

22. The Commission's Inquiry concluded that:

- There was a comprehensive failure in governance and financial management at the charity which resulted in its funds being placed at undue risk and significant losses to occur;
- The Chair bore the majority of responsibility, having had operational oversight of the charity, having managed its resources and being responsible for some of the losses described;
- The trustees had collective responsibility for the failures and weaknesses identified at the charity;
- The trustees collectively failed to understand their legal duties;
- The trustees' collective failure to address the deficiencies identified, to fully cooperate and engage with the inquiry, and to comply with orders/directions amounted to misconduct and/or mismanagement in the administration of the charity.

23. The charity was wound up by the interim managers appointed during the Inquiry as it was not feasible to address the significant underlying issues at the charity, even if a new trustee board was to have been identified and appointed. This was particularly so given that the charity was operated from the Chair's property.

24. The interim managers oversaw the distribution of the charity's residual funds, which totalled £407,000, to ten different charities with similar purposes working in Lincolnshire and surrounding areas. The Commission thereby ensured that the funds were protected against the risks evident within the charity and secured a proper application of them for the purposes of charity.

25. The charity was removed from the register of charities on 28 June 2021.

26. Based on the Commission's findings, the Chair and one other trustee were disqualified from acting as trustees under section 181A of the Act, with the Chair being disqualified for the maximum period available of 15 years.

IMPLICATIONS



This Inquiry revealed issues which together made a checklist of how not to operate a charity in England and Wales. The Commission published part of the report which contained significant findings in relation to the wider charity sector at <https://www.gov.uk/government/publications/charity-inquiry-the-alternative-animal-sanctuary/charity-inquiry-the-alternative-animal-sanctuary>.

Trustees must always:

- 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

- ignore any irrelevant factors
- manage conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make.

Trustees should also adhere to the [conflicts of interest](#) guidance, and the [Internal Financial Controls for Charities \(CC8\)](#) guidance. A [self-check-list for trustees](#) has been produced by the Commission to enable trustees to evaluate their charity's performance against the legal requirements and good practice recommendations set out in the guidance.

The Commission was most concerned by the third party fundraising agreement which the charity had entered into. Where a charity is working with a third party to raise funds, compliance with trustee duties means having effective systems in place to keep control of the fundraising, and taking steps to properly protect the charity's interests, assets and reputation. It also means compliance with relevant legal rules, including those designed to make third party fundraising arrangements transparent to donors, supporters and the public.

The Commission views the following situations as of particular concern, and noted that they should be avoided:

- arrangements with a third party fundraiser which bear all the hallmarks of a professional fundraiser arrangement, but which are structured to avoid the legal rules; the fundraiser may be described as an adviser or consultant in the contract even though in reality they are really controlling the solicitation of funds on the charity's behalf - these arrangements can also mean that it is not clear to the donor that the fundraising is being delivered by, or with the significant involvement of, a third party at a significant cost to the charity;
- medium or long term contracts that have very limited termination or adjustment provisions;
- arrangements in which the charity only benefits from the arrangement at the very end of the contract term, and where there is the possibility that the charity will not benefit at all;
- arrangements where the fees received by, or payments made to, third party fundraisers damage public trust and confidence in that charity.

VIEW THE CASE



This case may be viewed at <https://www.gov.uk/government/publications/charity-inquiry-the-alternative-animal-sanctuary/charity-inquiry-the-alternative-animal-sanctuary>

Read more notable cases in [The Australian Nonprofit Sector Legal and Accounting Almanac series](#).

Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

Date of creation: September 2021

Number of case: 2021- 93

Disclaimer: The material included in this document is produced by QUT's [Australian Centre for Philanthropy and Nonprofit Studies](#) (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Commons licence: 

[This work is licenced under a Creative Attribution 4.0 International licence \(CC BY 4.0\).](#)



ACPNS SUPPORTING THE SECTOR

QUT's Australian Centre for Philanthropy and Nonprofit Studies is a small centre with BIG impact. Since 2001 it has taken a leading role in nonprofit teaching and research, benefiting the sector here in Australia and beyond.