

## Deregistration decision: Hope for Children Charitable Foundation Board

### The facts

1. The Hope for Children Charitable Foundation Board (the Trust) was incorporated as a board under the *Charitable Trusts Act 1957* on 20 August 2001.
2. The Trust was registered as a charitable entity under the Charities Act 2005 (the Act) by the Charities Commission (the Commission) on 11 November 2008, with registration backdated to 30 June 2008.
3. The Trust's purposes are set out in clause 3 of the trust deed:

#### 3. Purposes

*The purposes of the Trust are as follows:*

- 3.1 *To provide financial, material, moral and other support for persons under the age of twenty (20) years within New Zealand, who in the sole and absolute discretion of the Trustees, are in need of care and assistance whether as a result of:
  - (a) Economic disadvantage or poverty.
  - (b) Physical or intellectual disability.
  - (c) Physical or mental illness.
  - (d) Drug or solvent addiction.
  - (e) An absence of educational opportunities.
  - (f) An absence of family support.
  - (g) Or otherwise.*
- 3.2 *To provide financial or other support to other charitable organisations or groups whose objects are altogether or in part similar to the Hope For Children Charitable Foundation within New Zealand.*
- 3.3 *To co-operate and promote co-operation with other organisations whose objects are altogether or in part similar to those of the Hope For Children Charitable Foundation within New Zealand.*
- 3.4 *To foster support of the Hope For Children Charitable Foundation and its objects by the Government, other interested or related organisations and by the public generally within New Zealand.*
- 3.5 *To commission, convene, organise, administer and promote charitable fundraising events within New Zealand.*
- 3.6 *To raise and employ funds for any educational or charitable purposes within New Zealand as outlined by these objects.*
- 3.7 *To do all such things as are conducive or incidental to the attaining of the above objects or any of them.*

3.8 *Such other purposes beneficial to the community not falling under any of the preceding purposes but which are charitable.*

4. The Trust's requirements with regard to trustees include those set out in the following clauses:

4. Trustees

4.1 *The number of Trustees shall be a minimum of two and a maximum of four. ...*

4.9 *A quorum of Trustees shall be two.*

4.10 *At any meeting a resolution of the Trustees shall be passed by at least two Trustees.*

5. Trustees' Powers

5.1 *In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act 1956, the Appointors declare that the powers which the Trustees may exercise in order to carry out its charitable objects are as follows: ...*

(e) *to borrow or raise money from time to time with or without security and upon such terms as to priority and otherwise as the Trustees think fit; ...*

6. Income, benefit or advantage to be applied to charitable purposes

6.1 *Any income, benefit or advantage shall be applied to the charitable purposes of the Trust.*

6.2 *No Trustee of the Trust or any person associated with a Trustee shall derive any income, benefit or advantage from the Trust where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:*

- (a) *professional services to the Trust rendered in the course of business charged at no greater rate than current market rates; or*
- (b) *interest on money lent at no greater rate than current market rates.*

7. Accounts

7.1 *The Trustees shall keep true and fair accounts of all money received and expended.*

7.2 *The Trustees shall as soon as practicable after the end of every financial year of the Trust, prepare annual accounts and an annual report for the Trust. The Trustees shall cause the accounts of the Trust for that financial year to be audited by an accountant appointed by the Trustees for that purpose and the Trustees shall present the audited accounts to the annual general meeting of the Trust together with an estimate of income and expenditure for the current year.*

5. As a result of media reports raising concerns about fundraising activities on behalf of the Trust, and following the receipt of the Trust's annual return and financial statement for the period ending 31 March 2009, the Commission commenced an investigation into the Trust. The Commission also commenced an investigation into a related charity, the Disabled Children's Trust.
6. The Commission's investigation focussed on the 12-month financial period from 1 April 2008 to 31 March 2009, being the financial period covered by the annual return and financial statement filed by the Trust.
7. On 30 July 2009, the Commission reviewed the Trust's website, [www.hopeforchildren.co.nz](http://www.hopeforchildren.co.nz). The website stated that:
  - the Trust works with Lions Clubs, Rotary Clubs, child cancer organisations, community groups, children's wards in New Zealand and the Hart Walker Foundation;
  - the trustee of the Trust is David Williamson;
  - the Trust gives emphasis to children who are in desperate need of urgent help. Children with cerebral palsy who need a walking frame are assisted as well as those who need ongoing treatment;
  - the Trust gives food parcels and gifts to families in need as well as running many events annually for special needs children;
  - throughout the year the Trust runs a variety of fundraising events in New Zealand for special needs children giving them a great day out and raising funds. Some of these events are Christmas party days out, film festivals where hundreds of children get to see a popular children's movie, visits to zoos and wildlife reserves, and indoor entertainment such as a circus or children's entertainers.
8. On 30 July 2009, the Commission sent the Trust a letter under section 50 of the Act seeking further information about the Trust's activities, particularly in relation to the Trust's financial statement. The Trust was asked:
  - whether it undertakes the fundraising activities stated on its website such as the Christmas party, film festival, visits to the zoo and indoor entertainment
  - how the Trust's income of \$8,950 was raised and whether it involved public donations
  - information about the grant of \$999 listed in the financial statement
  - information about the payment to a contractor listed in the financial statement.
9. On 15 August 2009, trustee David Williamson responded to the request for information on behalf of the Trust, stating:

*"No we don't undertake those activities you mentioned in your letter anymore. So there are no expenses involved in these activities.*

*The money was raised by telephone and was entirely from business houses.*

*Young offenders were assisted with phone cards, books and cash. This accounted for \$249.70. The rest was distributed to families in need.*

*The contractors were reimbursed for work undertaken in raising those funds.*

*The loan related to \$4,000 I put into the charity to keep it afloat during lean times. So I have been reimbursing myself when finances allow."*

10. On 20 August 2009, the Commission reviewed the Sovereign Sunshine website ([www.sovereignsunshine.co.nz](http://www.sovereignsunshine.co.nz)). This website, which is designed to direct potential donors to participating children's charities displays information that the Trust:
  - has been raising funds for organisations like Lions Clubs and Rotary Clubs in order to help special needs children for five years;
  - helps out special schools by providing wheelchair swings, computers, and exercise balls;
  - raises funds to help special needs children who may need a special piece of equipment or expensive medical procedure, like Hart Walker frames for kids with cerebral palsy;
  - gives food parcels and gifts to families in need.
  
11. On 23 September 2009, the Commission sent the Trust a second letter under section 50 of the Act seeking further information. In particular, the Trust was asked:
  - to explain how the office expenses for the Trust and the Disabled Children's Trust, located at the same physical address, are allocated between the two organisations
  - to provide supporting documentation regarding the office expenses and their payment
  - to provide further information about the work undertaken by the contractors listed in the Trust's income and expenses statement, including supporting documentation from the contractors detailing the services provided and the cost of those services
  - to provide further information about the loan to the Trust from trustee David Williamson "to keep it afloat during lean times", including supporting loan documentation
  - to provide copies of documents and receipts relating to the grants of money to young offenders and families in need
  - to provide further information about the donations to the Trust of \$8,950, including how and from whom the money was raised
  - to provide copies of the Trust's fundamental financial records for the last two financial years
  - to explain why the websites of the Trust ([www.hopeforchildren.co.nz](http://www.hopeforchildren.co.nz)) and Sovereign Sunshine ([www.sovereignsunshine.co.nz](http://www.sovereignsunshine.co.nz)) describe activities that the Trust does not undertake, and what the Trust is planning to do about the inaccurate information

12. On 29 October 2009, Mr Williamson responded on behalf of the Trust advising:

*"Expenses are allocated according to the activity within both charities. If one is inactive for a period then the expenses are allocated to the other. There is no box number for this charity. Enclosed are the invoices.*

*The contractors ... were remunerated for work done on the phone raising funds.*

*There was no formal loan agreement drawn up. However they were documented in the minutes. I've put a ring around the amount that was forwarded. See bank statement.*

*There are no receipts obtained from recipients. However enclosed are receipts detailing such. ...*

*Enclosed is money raised from donors. i.e the donors and the amounts.*

*Finally you mentioned sovereign sunshine website. I had a look and can't quite follow your logic on that one. Can you pinpoint the discrepancies for me so I can resolve the issue."*

13. Enclosed with the letter of 29 October 2009 were:

- monthly Telecom invoices for Mr Williamson's private residence in Christchurch for the 12 months to 31 March 2009
- monthly Meridian invoices for the supply of electricity for Mr Williamson's private residence in Christchurch for 13 months to 31 March 2009
- three Paperplus shop till receipts issued in January and March 2009 for a total of \$122.98, \$20 being for phone cards
- a Pak'nSave shop till receipt issued in March 2009 for phone cards to a value of \$10
- a Department of Corrections receipt dated 27 March 2009 detailing that \$10 was received from D Williamson
- four daily work sheets listing the names, addresses of companies, and Christian names of contacts of companies, with a dollar amount. Other than months on one page there is no date recorded against this information. The total amount recorded on the four sheets was \$5,092
- bank statements for the Trust's bank account for July and August 2006, and 16 April 2008 to 14 August 2009.

14. On 18 December 2009, the Commission sent the Trust a notice of intention to remove the Trust from the register on the basis that the Trust had engaged in serious wrongdoing or that a person or persons had engaged in serious wrongdoing in connection with the Trust. The serious wrongdoing was identified as "an act, omission or course of conduct that constitutes a serious risk to the public interest in the orderly and appropriate conduct of the affairs of the entity" or "an act, omission, or course of conduct by a person that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement".

15. The notice identified the facts relating to the operation of the Trust that were the basis for the Commission's intention to remove the Trust from the register, namely:

#### Purposes

- the Trust made grants of \$999 to young offenders and families in need in the year to 31 March 2009, with receipts for \$142.98 provided. The information relating to the activities of the Trust on its website [www.hopeforchildren.co.nz](http://www.hopeforchildren.co.nz) and the fundraising website [www.sovereignsunshine.co.nz](http://www.sovereignsunshine.co.nz) details a range of activities and support of other charities that is not reflected in the activities and charitable grants of the Trust in the year to 31 March 2009. The discrepancy can be considered misleading to the public and in particular potential donors; and

#### Trustees

- according to notification to the Commission, the Trust has only one trustee, which contravenes the minimum requirements in the trust deed;
- according to the provisions in the trust deed, two trustees are required to form a quorum and to pass resolutions at any meeting;
- if the Trust has more than one trustee it has failed to notify the Commission of the remaining trustees in breach of the requirement in the Act;
- the Trust's address is also the private address of the trustee; and

#### Financial Records and Reports

- the Trust has contravened the provisions of its deed because the trustees have not kept true and fair accounts of all money received and expended;
- the Trust has contravened the provisions of its deed in that the trustees did not have the accounts of the Trust for the financial year to 31 March 2009 audited by an accountant;
- the Trust was asked to provide fundamental financial records for two financial years to 31 March 2009 resulting in receipt of bank statements for the Trust for 16 months to 14 August 2009;
- the bank statements provided no information in relation to the Trust's items 'cash and bank balances \$140' and 'investments \$8,000' that appear in the annual return statement of financial position, for the year to 31 March 2009;
- there is a discrepancy between the Trust's income and expenses statement to 31 March 2009 which records donations of \$8,590, and the four 'Daily Work Sheets' of contract fundraisers for the same period which record a total of \$5,092 raised;
- there is a discrepancy between the total expenses of \$8,757 recorded in the Trust's income and expenses statement for the year to 31 March

2009 and the \$13,396.49 withdrawn from the Trust's bank statements for the same period. The discrepancy of \$4,639.49 between these two figures has not been accounted for;

- in the year to 31 March 2009 the Trust made grants of \$999. In response to requests for detail and documentation, the Trust advised that \$249.70 was paid to assist young offenders and the rest to families in need. The Trust provided shop receipts for \$132.98 for books and phone cards and a receipt for \$10 from Christchurch Men's Prison. The Trust failed to keep specific records of all grants made;
- the Trust's income and expenses statement records an expense item of 'payment to contractor \$1,280'. The Trust advised the Commission that two contractors were paid for raising funds by phone. Despite a request, no documentation specific to the payment of contractors was provided to the Commission. The Trust's bank statements for all but two weeks of the 12-month period to 31 March 2009 record one payment of \$120 to a contractor on 29 April 2008. Outside this financial period the bank statements record payments of \$437 to the second contractor. The Trust's bank statements and other documentation do not support the additional \$1,160 recorded as payments to contractors in the 12 months to 31 March 2009;
- the Trust's income and expenses statement contains an expense item of 'repay loan \$1,323'. Mr Williamson advised the Commission that the loan relates to \$4,000 he put into the charity during lean times and that he reimburses himself when finances allow. The Trust's bank statements for all but two weeks of the 12-month period to 31 March 2009 detail direct credit payments to David Williamson of \$2,900. This exceeds the \$1,323 recorded to repay the loan to him;
- the Trust has failed to keep true, fair and proper accounts as required by the trust deed and common law, and there are significant discrepancies between support documentation and the Trust's income and expenses statement for the 12-month period to 31 March 2009;
- the Trust has not provided documentation or information supporting its statement of financial position; and

#### Personal loan from the Trustee

- Clauses 4.1, 4.9, and 4.10 of the trust deed require two trustees to make decisions or pass resolutions. The power to make decisions to borrow money on particular terms rests with the 'trustees' under clause 5.1(e) of the trust deed.
- In relation to the expense item of 'repay loan \$1,323' in the income and expenses statement, Mr Williamson advised the Commission that the loan relates to \$4,000 he put into the charity himself. He stated that there was no formal loan agreement but it was documented in the minutes and the deposit of \$5,833.44 on 10 August 2006 that appears in the Trust's bank statement was his depositing of the loan. No other documentation was provided, and no explanation has been offered, regarding the discrepancy between the stated amount of the loan and the recorded amount of the deposit.

16. On 10 February 2010, Mr Williamson, on behalf of the Trust, responded to the notice of intention to remove the Trust from the register, submitting the following:

*"The trust has been operating for a good number of years now. Presently event activities aren't happening but they certainly have in preceding years. Also hart walker frames have been bought for children in need. Activities cannot proceed without adequate funds naturally.*

*Giving money to young offenders is always fraught with danger as it can be difficult to get receipts. The privacy act makes it more troublesome.*

*There is another trustee. Document is enclosed.*

*The \$8000 investment is enclosed.*

*Once again I can only reiterate that this charity has helped a lot of organisations and individuals over the years. I have enclosed some docs as proof."*

17. Enclosed with the Trust's submission of 10 February 2010 were:
- five letters dated between 2004 and 2006, from organisations acknowledging donations received
  - a 2002 newspaper article regarding a donation by the Trust
  - a 1999 letter acknowledging the Trust's work regarding an event benefiting children
  - a copy of the front page of the trust deed dated 2001; and
  - a 2003 share certificate for 1,000 fully paid ordinary shares in Virionyx Corporation Limited in the name of the Trust.
18. On 18 February 2010, the Commission sent a letter to the Trust requesting further information relating to the grounds detailed in the notice of 18 December 2009. In particular, the Trust was asked:
- to advise what action the Trust intended to take in relation to discrepancies between information about the Trust on two websites and the Trust's actual activities in the year to 31 March 2009
  - to provide officer certification forms and contact details including phone numbers for any other trustees of the Trust
  - to explain how the expenses for the use of trustee David Williamson's private residence are divided between the two trusts and Mr Williamson himself
  - to explain the discrepancies between the supporting documentation provided including bank statements, and the Trust's income and expenses statement for the 12 months to 31 March 2009
  - to provide receipts and the contact details of recipients including phone numbers for grants made between 16 April 2008 and 31 March 2009
  - for further information about the Trust's shareholder status in Virionyx (Innate Therapeutics Limited)



- for further information about the recipients of the walker frames from the Trust
- for further information about the payment of \$4,639.49 (being the difference between the amount withdrawn from the Trust's bank account in the year to 31 March 2009 and the expenses recorded in the Trust's income and expenses statement for that period)
- to provide details of the terms of the loan made by the trustee to the Trust, including details about who was involved in the decision to receive the loan, the minutes of the relevant meeting and related documentation.

19. Mr Williamson responded in a letter dated 2 March 2010 stating:

*"It has been rather difficult sourcing some of the information you request. However in place of actual receipts where necessary I've provided other support documentation.*

*1 The person responsible for looking after the website is currently in USA. Upon his return changes will be made to the site.*

*2 I've enclosed the officer notification form. You will notice there's a new officer. Unfortunately my Dad has passed away.*

*3 The expenses are split between the Hope for Children Charitable Foundation and the Disabled Childrens Trust. Only some expenses are claimed like phone and power. There are no expenses claimed for car usage, maintenance of property and car and rates.*

*4 I've enclosed as much as possible receipts and contact details. In cases where not acknowledgements are enclosed. A copy of the Virionyx share certificate is enclosed.*

*A young boy with leukaemia received the walker frame. I cannot recall his name. [BF] (email enclosed) received ongoing support for a walker and treatment for a period of two years. Once again I have no relevant documentation.*

*As for the payment of \$4639.49 I cannot determine or find the source. The only possible explanations I can come up with is that it was for services rendered and (or) reimbursements for petty cash and repayments to the trustee for the money that was put into the charity.*

*5 The personal loan from the trustee was to keep the charity going. It was something I took upon myself personally. There were no conditions; I cannot find the minutes relating to it; I was sole decision maker.*

*I know some of my answers don't make pretty reading but all I can say is that admittedly the housekeeping left a lot to be desired but the actual giving and the involvement is something I really enjoy doing. ...."*

20. Enclosed with the letter of 2 March 2010 were:

- an officer certification form for one other trustee indicating her date of appointment as 10 October 2009
- a 2003 share certificate for 1,000 fully paid ordinary shares in Virionyx Corporation Limited in the name of the Trust
- fifteen letters dated between 2003 and 2007 acknowledging receipt of grants from the Trust or acknowledging the charitable work of the Trust

- a 1999 letter of support and an 2009 receipt
- two undated letters and an undated receipt relating to the Trust;
- two newspaper reports, one mentioning the Trust and one not mentioning the Trust.

## The issues

21. The Commission has considered whether the Trust has engaged in serious wrongdoing or any person has engaged in serious wrongdoing in connection with the Trust, in terms of section 32(1)(e) of the Act. In this case, the key issue for consideration is whether there have been activities amount to serious wrongdoing, as defined in section 4(1) of the Act.
22. The Commission has also considered, in the event that the Trust is removed from the register, whether to make an order under section 31(4) of the Act:
- that an application for the re-registration of the Trust as a charitable entity must not be made before the expiry of a specific period; and/or
  - disqualifying an officer of the Trust from being an officer of a charitable entity for a specified period that does not exceed 5 years.

## Relevant law

23. Section 50(2) of the Charities Act empowers the Commission, if it considers it reasonably necessary for the purposes of carrying out its functions and exercising its powers under the Act, to examine and inquire into matters in connection with charitable entities or persons, including:
- the activities and proposed activities of the charitable entity or person;*
  - the nature, objects, and purposes of the charitable entity;*
  - the management and administration of the charitable entity;*
  - the results and outcomes achieved by the charitable entity or person;*
  - the value, condition, management, and application of the property and income belonging to the charitable entity or person.*
24. Section 32(1) of the Act provides that:
- The Commission may remove an entity from the register if—*
- the entity is not, or is no longer, qualified for registration as a charitable entity; or*
  - there has been a significant or persistent failure by the entity to meet its obligations under this Act or any other enactment; or*
  - there has been a significant or persistent failure by any 1 or more of the officers of the entity to meet their obligations under this Act; or*
  - there has been a significant or persistent failure by any 1 or more collectors who act on behalf of the entity to meet their obligations under this Act; or*
  - the entity has engaged in serious wrongdoing or any person has engaged in serious wrongdoing in connection with the entity; or*

- (f) *the entity has sent or delivered to the Commission a request to be removed from the register.*
25. Section 4(1) of the Act defines "serious wrongdoing" in relation to an entity as including serious wrongdoing of any of the following types:
- (a) *an unlawful or a corrupt use of the funds or resources of the entity; or*
  - (b) *an act, omission, or course of conduct that constitutes a serious risk to the public interest in the orderly and appropriate conduct of the affairs of the entity; or*
  - (c) *an act, omission, or course of conduct that constitutes an offence; or*
  - (d) *an act, omission, or course of conduct by a person that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.*
26. Under section 35(1)(a) of the Act if an objection to removal of an entity from the register is received, the Commission must not proceed with the removal unless it is satisfied that it is in the public interest to proceed with the removal and at least one ground for removal has been satisfied.
27. Section 31(4) of the Act provides that the Commission may, where it has removed an entity from the register make either or both of the following orders:
- (a) *an order that an application for re-registration of the entity as a charitable entity must not be made before the expiry of a specified period:*
  - (b) *an order disqualifying an officer of the entity from being an officer of a charitable entity for a specified period that does not exceed 5 years.*

### **Charities Commission's analysis**

28. In order to determine whether the Trust has engaged in serious wrongdoing or any person has engaged in serious wrong doing in connection with the Trust, the Commission has considered information provided in the Trust's annual return and financial statement for the 12 month period to 31 March 2009, the Trust's deed, documents provided by the Trust during the investigation, documents held by the Commission relating to the investigation for Disabled Children's Trust, website based information, and the relevant case law.

#### **Private Pecuniary Profit**

29. The Trust operates from trustee David Williamson's private residence. The Commission sought clarification from the Trust as to how the expenses for the use of Mr Williamson's private residence are divided between the Trust, the Disabled Children's Trust, and Mr Williamson himself.
30. In his letter of 29 October 2009 trustee David Williamson stated:

*"Expenses are allocated according to the activity within both charities. If one is inactive for a period then the expenses are allocated to the other. There is no box number for this charity.."*

31. Enclosed with the letter of 29 October 2009 were monthly Telecom accounts for Mr Williamson's private residence in Christchurch for the 12-month period April 2008 to March 2009, totalling \$1,788.16. For the same period:
- the Statement of Miscellaneous Income and Expenses filed by the Hope for Children Charitable Foundation Board listed an expenses item of 'Telecom \$1,789'.
  - the income and expenses statement filed by the Disabled Children's Trust listed an expenses item of 'Telecom \$141'.
32. Also enclosed with this letter were the monthly Meridian electricity statements and tax invoices for Mr Williamson's private residence in Christchurch for the 12-month period April 2008 to March 2009, totalling \$2,154.34. For the same period:
- the Statement of Miscellaneous Income and Expenses filed by the Hope for Children Charitable Foundation Board listed an expenses item of 'Power \$2,200'.
  - the income and expenses statement filed by the Disabled Children's Trust did not have a power or electricity expenses item.
33. In his letter of 2 March 2010, Mr Williamson stated:
- "The expenses are split between the Hope for Children Charitable Foundation and the Disabled Childrens Trust. Only some expenses are claimed like phone and power. There are no expenses claimed for car usage, maintenance of property and car and rates."*
34. The Commission notes that expenses for 'Car \$211' are included in the Trust's income and expenses statement contrary to the advice that car expenses are not claimed.
35. The Trust and the Disabled Children's Trust have made payments for electricity and telecommunications services supplied to Mr Williamson's private residence for the 12 months to 31 March 2009 which exceed the total cost of the electricity and telecommunications accounts for this address. Information provided to the Commission indicates that Mr Williamson is not making any contribution to the cost of these services to his private residence, he therefore appears to be receiving a private benefit from the operation of these trusts, contrary to clause 6.2 of the Trust deed.

### Purposes

36. The Trust's website ([www.hopeforchildren.co.nz](http://www.hopeforchildren.co.nz)) and the fundraising website ([www.sovereignsunshine.co.nz](http://www.sovereignsunshine.co.nz)) state that the Trust works with Lions clubs, Rotary clubs, child cancer organisations, community groups, children's wards and the Hart Walker Foundation. The websites state that the Trust focuses on assisting children in desperate need, children with cerebral palsy, special needs schools, and families in need.

37. In his letter of 15 August 2009 Mr Williamson acknowledged that the Trust now provides phone cards, books and cash to young offenders and distributes the remainder to families in need.
38. The information presented to the public by the Trust on the two websites no longer corresponds with the activities undertaken by the Trust, and did not correspond with the activities undertaken by the Trust in the year to 31 March 2009. The Commission considers that this discrepancy could mislead the public and in particular potential donors as to the Trust's beneficiaries.

#### Common law

39. For a considerable amount of time, the Courts have placed an obligation on trustees to keep true, fair and proper accounts and to be in a position to present these accounts.
40. In *Kemp v Burn* the Court found:
- "In a case like the present, where an account is demanded of trustees and executors of a will by a residuary legatee, there seems to me no doubt what the duty of the executors is. Their duty is to keep proper accounts, and to have them always ready when called to render them."*<sup>1</sup>
41. In *Freeman v Fairlie* the Lord Chancellor found:
- "The Court has every favourable leaning towards Executors and Trustees; keeping their accounts regular, and being at all times willing to inform the court of the situation of their affairs, and the difficulties they have to meet with and encounter."*<sup>2</sup>
42. In *Bassett and Others v Bassett and Others* the Court found:
- "The question is on what basis should the accounts be taken. Although it is not claimed that the method adopted by the trustees amounted to a breach of trust, I am clearly of opinion that it was not the proper method, and that the method adopted by the public accountant is the only proper method of keeping the trust accounts of a farming business where there are life tenants or annuitants and remainder men. Only by so doing can the balance be held fairly between these conflicting interests."*<sup>3</sup>
43. Despite repeated requests for specific financial information, the Trust has not provided this information to the Commission. The Commission considers that this is a breach of the trustees' obligations to keep true, fair and proper accounts and to be in a position to present these accounts.

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<sup>1</sup> (1863) 4 Giff 348, 349.

<sup>2</sup> (1812) 3 Mer 29, 40, 42.

<sup>3</sup> 1934 NZLR 690; [1934] GLR 537.

## Financial Records and Reports

44. The Trust has submitted to the Commission an annual return and accompanying one-page income and expenses statement for the 12-month period from 1 April 2008 to 31 March 2009. In response to a request for the Trust's fundamental financial records for the two-year period to 31 March 2009, the Trust provided bank statements for its bank account for July and August 2006, and the period 16 April 2008 to 14 August 2009.
45. Clause 7.1 of the trust deed requires that the trustees keep true and fair accounts of all money received and expended.
46. The Trust's income and expenses statement records donations of \$8,590 as total income, which the Trust advised was raised by telephone "and was entirely from business houses".<sup>4</sup>
47. In response to the Commission's request for copies of receipts issued to donors for the 12-month period to 31 March 2009, the Trust provided four undated Daily Work Sheets with the details of companies and dollar amounts to a total of \$5,092. The Trust has been unable to provide further information regarding the balance of \$3,498.
48. The income and expenses statement records the total expenses for the year to be \$8,757. The Trust's bank statements for the same period less the first two weeks of April list withdrawals of \$13,396.49. The discrepancy between the two figures is \$4,639.49.
49. In his letter of 2 March 2010, Mr Williamson stated:

*"As for the payment of \$4639.49 I cannot determine or find the source. The only possible explanations I can come up with is that it was for services rendered and (or) reimbursements for petty cash and repayments to the trustee for the money that was put into the charity."*
50. The income and expenses statement records an expense item of 'grants \$999'. In response to requests for details of recipients, receipts and related documentation, the Trust provided shop receipts for \$132.98 and a receipt issued by a prison for \$10. The Trust also provided a number of receipts and documents regarding donations relating to dates prior to the period under investigation. The Trust advised that young offenders and families in need had been assisted, explaining that there were difficulties obtaining receipts from young offenders.
51. The income and expenses statement records an expense item of 'payment to contractor \$1,280'. The Trust explained this item related to payments for two contractors engaged in fundraising by telephone. A review of the Trust's bank statements for all but two weeks of this period disclose a single \$120 payment to one of the contractors. Outside the period were payments to the second contractor. The balance of \$1,160 is not supported by detail in the Trust's bank statements.

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<sup>4</sup> Letter from the Trust to the Commission dated 15 August 2009.

52. The Commission considers that the provisions in clause 7.1 of the trust deed, requiring the trustees to keep true and fair accounts of all money received and expended, have been breached for the year to 31 March 2009 in relation to both funds received and funds expended (including grants and payments to contractors).
53. In addition, the Trust's income and expenses statement for the year to 31 March 2009 has not been audited. This appears to contravene clause 7.2 of the trust deed, which requires the trustees to ensure that each year's financial accounts are audited by an accountant.

#### Loan from Trustee

54. The Trust's income and expenses statement for the 12 months to 31 March 2009 records an expense item of 'repay loan \$1,323'.
55. In his letter of 15 August 2009, Mr Williamson advised that this related to a loan that he made to the Trust:

*"The loan related to \$4,000 I put into the charity to keep it afloat during lean times. So I have been reimbursing myself when finances allow."*

56. The Trust's bank statements detail that \$2,900 was paid to trustee David Williamson in the 12 months to 31 March 2009. This amount is well in excess of the \$1,323 detailed in the income and expense report for repayment of the loan. The Trust has provided no explanation for this discrepancy.
57. The Commission requested further information about the loan, including a copy of the loan document and documentation such as bank statements detailing the receipt of the loan by the Trust.
58. In his letter of 29 October, Mr Williamson advised that there was no formal loan agreement but that there were meeting minutes. Mr Williamson later advised the Commission that he could not locate these minutes.
59. The Trust provided its July-August 2006 bank statement indicating a deposit by David Williamson of \$5,833.44 as the relevant loan deposit. The Trust has not provided an explanation for the discrepancy between the loan figure of \$4,000 and the deposit of \$5,833.44.
60. The Commission considers that the provisions in clause 7.1 of the trust deed, requiring the Trustees to keep true and fair accounts of all money received and expended, have been breached for the year to 31 March 2009 in relation to the loan from David Williamson to the Trust.
61. In his letter of 2 March 2010, Mr Williamson advised the Commission that he alone had made the decision to loan money to the Trust:

*"The personal loan from the trustee was to keep the charity going. It was something I took upon myself personally. There were no conditions; I cannot find the minutes relating to it; I was sole decision maker."*

62. The Commission considers that this amounts to a breach of clauses 4.1, 4.9, and 4.10 of the trust deed, which require a minimum of two trustees to make decisions or pass resolutions.

### Trustees

63. Clauses 4.1, 4.9, and 4.10 of the trust deed require a minimum of two trustees to operate the Trust.
64. When the Trust applied for registration, it indicated on its application form that it had only one officer (David Charles Williamson).
65. On 18 February 2010, the Commission asked the Trust to provide officer certification forms and contact details including phone numbers for all trustees other than the trustee currently notified to the Commission.
66. The Trust provided an officer certification form for one additional officer appointed on 10 October 2009. The form was dated 1 March 2010 and the details of the person completing the form were not recorded. The requested contact details for this trustee were not provided.
67. Section 17(1)(b) of the Charities Act requires that each application for registration be accompanied by an officer certification form for every person who is an officer of the entity.
68. Section 40 of the Act requires every charity to send or deliver notification of any appointment of new officers or any officers ceasing to hold office within three months of the date of the change.
69. The Commission considers that the Trust has been operating in contravention of the minimum number of trustees required by clauses 4.1, 4.9, and 4.10 of the trust deed. The trustees have also failed to comply with their obligations under section 40 of the Charities Act to inform the Commission about any changes in officers, including notification of the officer appointed on 10 October 2009, within the required time period.

### Conclusion

70. For the reasons set out above, the Commission considers that the Trust and its trustee, David Charles Williamson, have been acting in contravention of the specific provisions of the trust deed and in a manner below the standards set by the courts for trustee account keeping and reporting. The Trust and its trustee have also failed to comply with the requirements set out in the Charities Act. The Commission concludes that this amounts to serious wrongdoing in terms of section 4(1) of the Charities Act.



## Public interest

71. Section 35(1)(a) of the Charities Act provides that if an entity has objected to its removal from the register, the Commission must not proceed with the removal unless it is satisfied that it is in the public interest to proceed with the removal.
72. Section 10(1)(a) of the Act obliges the Commission to promote public trust and confidence in the charitable sector. The Commission considers that public trust and confidence in registered charitable entities will not be maintained if entities engaged in serious wrongdoing relating to the management and control of their funds remain on the register. This is particularly relevant for entities, such as the Trust, that seek funds from the public.

## Orders relating to an entity removed from the register

73. Section 31(4) of the Act provides that the Commission may, if it has removed an entity from the register, make an order preventing an application for re-registration by the entity for a specified period, and/or an order disqualifying an officer of the entity from being an officer of a charitable entity for a specified period up to five years.
74. The Commission considers that there have been significant and fundamental failures by the Trust and its trustee David Charles Williamson, specifically:
  - failing to maintain acceptable financial records and to be in a position to prepare acceptable financial reports;
  - failing to be in a position to account for funds received by the Trust from public donations;
  - failing to comply with the provisions set out in the trust deed;
  - failing to comply with the trustees' obligations under the Charities Act.
75. The Commission considers that it is appropriate to make orders under section 31(4) of the Act in relation to both the Trust and its officer David Charles Williamson.


## **Charities Commission's determination**

76. The Commission has concluded that there has been serious wrongdoing in relation to the Trust, as defined in section 4(1) of the Act.
77. Under section 35(1) of the Act the Commission is satisfied that it is in the public interest to remove the Trust from the register and one ground for removal from the register has been satisfied, that is, the Trust has engaged in serious wrongdoing or a person has engaged in serious wrongdoing in connection with the Trust.

78. The decision of the Commission is therefore to remove the Trust from the Register, pursuant to section 31 of the Act, with effect from 9 July 2010.
79. The Commission proposes that, in accordance with section 31(4)(a) of the Act, if the Trust is removed from the register, an order be made that an application for the re-registration of the Trust as a charitable entity must not be made before the expiry of three years after the date of removal.
80. The Commission proposes that, in accordance with section 31(4)(b) of the Act, if the Trust is removed from the register, an order be made that officer David Charles Williamson be disqualified from being an officer of a charitable entity for a period of three years after the date of removal.

**For the above reasons, the Commission determines to deregister the Trust as a charitable entity by removing the Trust from the Register.**

Signed for and on behalf of the Charities Commission



Trevor Garrett  
Chief Executive

11/6/10

Date