

# Inquiry Report

## The Egyptian Community Association in the United Kingdom

Former Registered Charity Number 1129160 (now removed from the Register of Charities)



# This is a statement of the results of the Inquiries into the removed charity, The Egyptian Community Association in the United Kingdom (former registered charity number 1129160) and over the charitable funds arising from the proceeds of sale of 100 Redcliffe Gardens, London SW10 9HH.

Published on 29 May 2014.

## The Charities

1. The now removed charity, The Egyptian Community Association in the United Kingdom, former registered charity number 1129160 (“the Company”), was registered as a charity on 15 April 2009. It was a company, with company number 6841678, and governed by a memorandum and articles of association dated 10 March 2009, amended by special resolution dated 5 April 2009. It was removed from the Register of Charities on 7 December 2012.
2. At the point the Company applied for charity registration, the Commission was informed that it had been set up to replace the charity, The Egyptian Community Association in the United Kingdom, registered charity number 289332 (“the Foundation”), which was registered on 27 April 1984. The Foundation is governed by a scheme of the Charity Commission sealed on 8 May 1998, as varied by resolutions passed at annual general meetings on 9 October 1999, 29 June 2002 and 29 May 2004.
3. The Company and the Foundation continued to exist and operate under the same name simultaneously, with similar, though not identical, objects. The charity trustees of the Company and the Foundation were not identical individuals, although both trustee bodies shared one individual in common.
4. The **Register of Charities entries** relating to the Foundation and Company can be found on the Commission’s website.

## Background to the Issues under Investigation

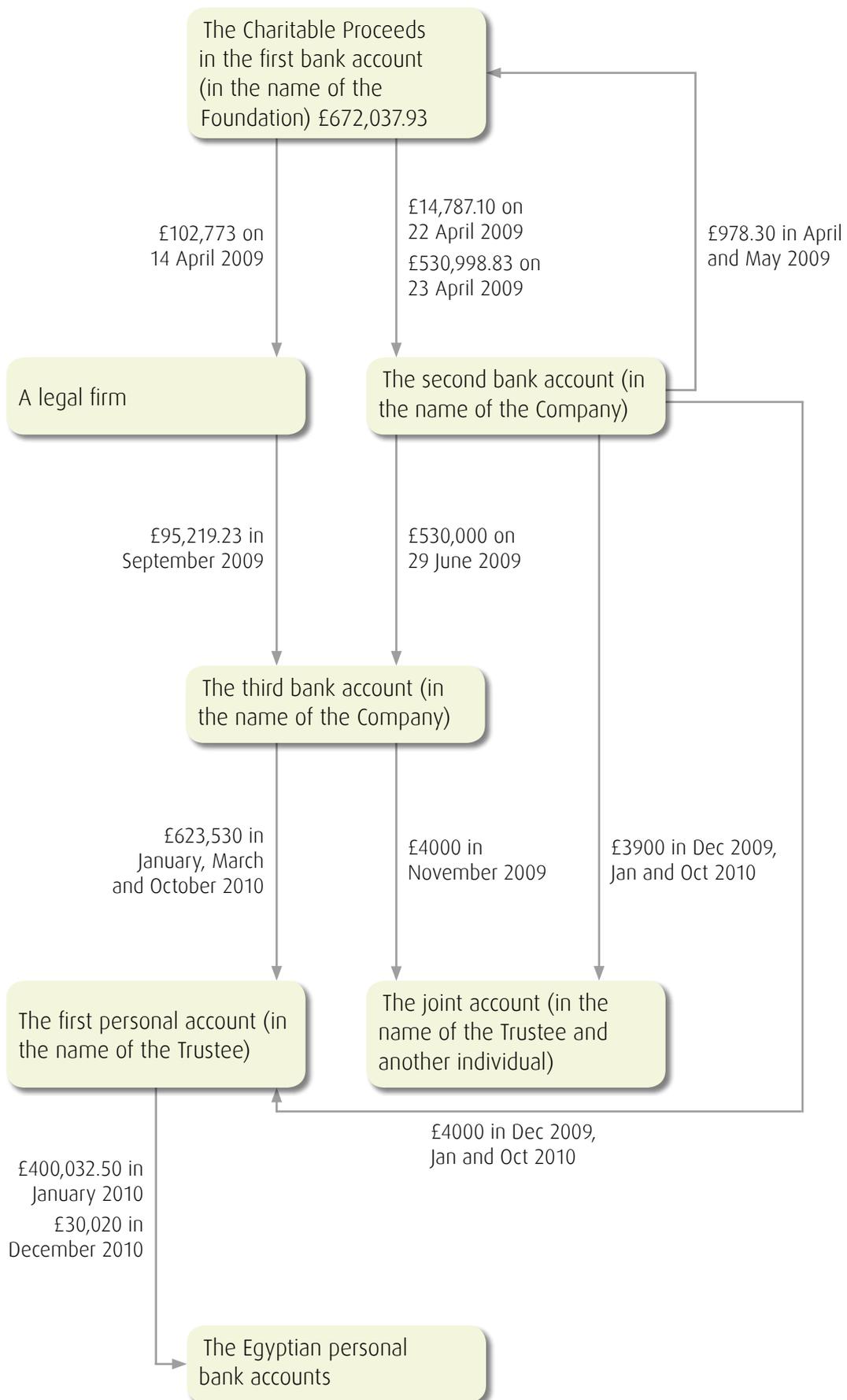
5. In October 2007, a property owned by the Foundation, 100 Redcliffe Gardens, London, SW10 9HH (“the Property”), was sold. On 6 March 2008 the proceeds from the sale of the Property, totalling £672,037.93 (“the Charitable Proceeds”), was transferred to one of the Foundation’s bank accounts.
6. A dispute between the then trustees of the Foundation arose about the management and administration of the Foundation, the proposed incorporation of the Foundation, and the establishment of the Company. In March 2009, this dispute was brought to the Commission’s attention by a number of complainants, who claimed they had no knowledge of the plan to incorporate the charity and did not want the building to be sold.

7. On 23 April 2009 £530, 998.83 of the Charitable Proceeds were transferred from the Foundation's bank account to a bank account in the name of the Company. Subsequently on 29 June 2009 £530,000 was transferred out of that account to another bank account, also in the name of the Company.
8. When the then trustees of the Foundation became aware of the transfer of funds from the Foundation to the Company in May 2009 they reported it to the police. However, the police did not pursue the matter further.
9. The Commission became involved in resolving the governance issues arising out of the two organisations existing side by side and with different sets of individuals claiming to be trustees. A form of mediation with both groups began in June 2009; it was agreed that the Foundation did not have a properly elected trustee body, which meant that any decisions to transfer the funds were voidable. It became clear that both groups viewed the two organisations as one and the same. As a result of the mediation, both groups agreed to work together by adding members of the Foundation and the Company to the bank mandate for the Company.
10. Subsequently, the group that established the Company withdrew from the agreed plan to resolve the dispute. So in September 2010, interim trustees were appointed to the Foundation to supervise the election of new trustees; the Commission's position was that it would be a matter for the newly elected trustee body of the Foundation to resolve the issue of ownership of the Charitable Proceeds and if necessary seek recovery of the funds back from the Company.
11. On 18 November 2011 the Commission opened two statutory Inquiries under section 46 of the Charities Act 2011 ("the Inquiries") after it obtained evidence that a significant proportion of the Charitable proceeds had been transferred from a bank account in the name of the Company, to two personal bank accounts held in the name of one of the trustees of the Company; Mr Nehad Gamal-Eldin ("the Trustee"). One inquiry was opened into the Company and one inquiry was opened into the Charitable Proceeds arising from the sale of the Property. The transfers were identified as result of the Commission exercising its powers to obtain bank statements for the Company following up the issues in the dispute between the trustees of the Foundation.
12. The Inquiries were opened to investigate and resolve the following key issues:
  - Issue 1: The financial transactions subsequent to the sale of the Property between the Foundation, the Company, and the Trustee;
  - Issue 2: Whether the Trustee had complied with and fulfilled his duties and responsibilities as a trustee under charity law;
  - Issue 3: The administration, governance and management of the Company by the trustees with specific regard to decision making and financial controls.
13. The Inquiries closed on 29 May 2014 with the publication of this report.

## Findings

### **Issue 1: The financial transactions subsequent to the sale of the Property between the Foundation, the Company, and the Trustee**

14. The Inquiries established that a number of transfers and transactions took place subsequent to the sale of the Property between the Foundation, the Company and the Trustee. These were as follows: following the transfer of the Charitable Proceeds into the Foundation's bank account ("the first bank account") on 14 April 2009, £102,773 was transferred from the first bank account to a legal firm; this money was intended to be the deposit for the purchase of another property. The following amounts were also then paid from the first bank account into a new bank account ("the second bank account") held in the name of the Company; £530,998.83 on 23 April 2009 and £14,787.10 (by way of cheque) on 22 April 2009.
15. On 29 June 2009, £530,000 was transferred from the second bank account into a third bank account in the name of the Company ("the third bank account").
16. In December 2009, January 2010 and October 2010 a total of £7,900 was debited by way of transfer online from the second bank account. £4,000 was transferred into a bank account in the name of the Trustee ("the first personal account") and £3,900 into a bank account in the names of the Trustee and another individual ("the joint account").
17. In April and May 2009 various sums, totalling £978.30, were transferred from the second bank account to the first bank account.
18. In September 2009, the legal firm returned the balance of the money left from the funds originally sent to it as the deposit for the property purchase in April 2009 after deduction of legal fees. They sent the remaining funds to the third bank account as a CHAPS transfer of £95,219.23.
19. In November 2009 £4,000 was transferred online from the third bank account into the joint account. In January, March and October 2010 amounts totalling £623,530 were transferred online from the third bank account into the first personal account.
20. Two international transfers of £400,032.50 (January 2010) and £30,020.00 (December 2010) were made from the first personal account to a bank account held in the name of the Trustee, or a relative of the Trustee, and a bank account in the name of the Trustee in Egypt (together being "the Egyptian personal bank accounts") respectively.



## Table of UK transfers

The first account (in the name of the Foundation)	The second account (in the name of the Company)	The third account (in the name of the Company)	The first personal account (in the name of the Trustee)	The joint account (in the name of Trustee and another individual)
In - Mar 2008 Sale proceeds 672,037.93				
Out - Apr 2009 →	In - Apr 2009			
Transfer 530,380.53	Transfer 530,380.53			
	Out - Jun 2009 →	In - Jun 2009		
	Transfer 530,000.00	Transfer 530,000.00		
Out - Apr 2009 CHAPS transfer 102,773.00		In - Sep 2009 CHAPS transfer 95,219.23		
		Out - Jan, Mar and Oct 2010 →	In - Jan, Mar and Oct 2010	
		Online transfer 623,530.00	Online transfer 623,530.00	
		Out - Nov 2009	→	In - Nov 2009
		Online transfer 4,000.00		Online transfer 4,000.00
	Out - Dec 09 and Oct 2010	→	In - Dec 09 and Oct 2010	
	Online transfer 4,000.00		Online transfer 4,000.00	
	Out - Dec 09 and Jan 2010	→	→	In - Dec 2009 and Jan 2010
	Online transfer 3,900.00			Online transfer 3,900.00

21. The total funds transferred into the first personal account from the Company's bank accounts was £627,530. Before these transfers the balance on the first personal account was £4,301. In November 2011, the Trustee was directed under the Inquiries' information gathering powers to account for the charitable funds transferred to the personal bank accounts and its expenditure.
22. The Inquiries did not receive any explanation for funds being transferred into the first personal account of the Trustee and were not satisfied that expenditure from the first personal account was used in furtherance of a legitimate charitable purpose of either the Company or the Foundation. The Inquiries were able to establish that the expenditure included a number of cash withdrawals in Egypt, cheque payments, and domestic payments such as grocery shopping, over and above the amount of personal funds held in the account during a period in which the charitable funds were the only income to the first personal account.
23. The only people resident outside of the United Kingdom who could properly benefit, in accordance with the governing documents of the Foundation and/or the Company, would be in the context of "fostering the knowledge and understanding of the art, literature, language and culture of Egypt and its people"<sup>1</sup>. Both the trustees of the Foundation and the Company stated to the Commission that their respective areas, of benefit were in practice confined to the United Kingdom.
24. The Commission was concerned that the funds had been misappropriated and reported its concerns to the police (see paragraphs 48 to 56 in Regulatory Action).

**Issue 2: Whether the Trustee had complied with and fulfilled his duties and responsibilities as a trustee under charity law;**

25. The Trustee was a director of the Company. As the funds held in the personal bank accounts were charitable funds, he was also in the position (and under the legal duties and responsibilities) of a trustee over those charitable funds. The Trustee had a legal duty to collect, take care of and properly apply the Company's charitable funds in accordance with the trusts of the Company. The Trustee also had a duty to account for the proper use and application of the charitable funds which he held in the personal accounts and was responsible for.
26. The charitable funds should not have been transferred from the Company's bank account and credited to the personal bank accounts of the Trustee. The Inquiries found that there was no justification for these bank transfers to have taken place nor were the Inquiries provided with any explanation as to why this happened by the Trustee.
27. As the only individual who had the legal duty and knowledge of the facts to account to the Commission for the expenditure from his personal accounts, any and all records in relation to this expenditure should have been retained and maintained by the Trustee in accordance with his duties as trustee of the charitable funds. The Inquiries have not seen any such records despite repeatedly requiring these, which is further evidence of mismanagement.
28. As of 1 April 2009 all trustees of charities with a gross income of £25,000 have a statutory duty to file annual accounts and annual returns with the Commission. The trustees of the Company failed to submit any of these documents to the Commission since the charity was registered in 2009. However, only the Trustee held the role of charity trustee for the entire duration of the Company's registration with the Commission. Consequently the Trustee was responsible for the failure to submit the required documents for each financial year; the other trustees resigned before the first set of accounts were due and shortly after the first set of accounts were due respectively.

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<sup>1</sup> Clause 3 of the governing document of both the Foundation and the Company

29. Section 393 of the Companies Act 2006 provides that:

“The directors of a company must not approve accounts for the purposes of this Chapter unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profits or loss., of the company.”

The Trustee signed off the Charity’s abbreviated accounts for the financial year ending 31 March 2010. These accounts were submitted to Companies House but not the Commission. The accounts show a balance of £1. The bank statements the Inquiries obtained and examined for the Company’s two bank accounts show that as of 31 March 2010 the Company had a balance of approximately £34,000. The Trustee was asked to, but did not, explain the discrepancy between the figures provided in the Companies House accounts and those recorded in the bank statements.

30. In paragraph C of the accounts submitted to Companies House the directors “acknowledge responsibility for ensuring the company keeps accounting records which comply with Section 386; and preparing accounts which give a true and fair view of the state of affairs of the company at the end of the financial year...”
31. The Inquiry found that the Company’s accounts for the financial year ending 31 March 2010 in the form submitted to Companies House were not a true and fair record of Company’s finances and so could not have been in compliance with the directors’ duties under section 393 of the Companies Act 2006. This in itself was further evidence of mismanagement and misconduct of the Company by the Trustee.
32. The Trustee’s failure to submit the accounts and annual returns for the financial year ending 31 March 2011, due to be submitted on 31 December 2011 to Companies House, resulted in Companies House issuing notice of its intention to strike the Company from its register on 3 April 2012. This action was discontinued following the intervention of the Commission. Should the strike off have proceeded at that time the Company would have ceased to exist and its assets would have become bona vacantia. The Inquiries consider that the Trustee’s failure to submit the required documents to Companies House placed the very existence of the Company at risk and was further evidence of mismanagement.

**Issue 3: The administration, governance and management of the Company by the trustees with specific regard to decision making and financial controls.**

33. When the Company registered with the Commission it had three directors (who under charity law are in the position of charity trustees), but according to Companies House records two directors resigned on 15 January 2010 and 15 April 2011 respectively leaving only the Trustee. One of the directors has disputed this resignation date, stating that he resigned in September 2009<sup>2</sup> but that the Company failed to file the appropriate records until January 2010. Paragraph 20 of the Company’s Articles of Association states clearly that the “number of Directors shall be not less than three”.
34. There must be a sufficient number of trustees to meet the minimum requirement in addition to ensuring the trustees only make decisions with the quorum required by their governing document so that the charity operates lawfully. Any decision made from when the Company did not have a sufficient number of trustees, and when the decisions were inquorate, were voidable and may not have been properly made. Consequently these decisions could have been subject to legal challenge.

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<sup>2</sup> This is prior to the date of any transfers of funds from the Company’s bank accounts

35. Good financial stewardship of a charity includes the appropriate use of a bank account, where access to the money is restricted to appropriate personnel and its movement can be easily traced. In order to operate effectively and transparently when undertaking charitable work, every charity needs access to banking facilities.
36. The Company's former bank, (the "Bank") confirmed to the Inquiries that on 7 October 2011 it took action to close the Company's bank accounts due "to the unsatisfactory nature by which they were being conducted." The Commission understands that the Trustee was on the bank mandate together with two others, both of whom had resigned as directors/trustees by this date.
37. As a result of the Bank's action taken on 7 October 2011, taken at a time when the Trustee was the sole trustee, the Company did not appear to have any banking facilities and as a result the residual funds amounting to £742.13 from the closed bank account had not been deposited and were unable to be applied for the Company's purposes. This was a result of the direct mismanagement of the Company by the Trustee and a failure in the administration, governance and management of the Company.
38. The Trustee was not a properly appointed trustee of the Foundation and should not have been authorised to transfer the funds of the Foundation to the Company in 2009. However, it is recorded in the minutes of a meeting of the 'Executive Committee' of the Foundation that the decision had been taken on 5 February 2009 to register the Company; the Executive Committee nominated the Trustee and two others to "carry out the necessary procedures" on the same date. The minutes also record that the Trustee was a member of the Executive Committee of the Foundation when this decision was taken, identifying the Trustee as the Chair. In addition, the Trustee was named on the bank mandate of the Foundation.
39. At the time the transfer was made, due to an internal dispute in the Foundation, there were no properly appointed charity trustees (although there were a number of individuals holding themselves out to be trustees). Therefore, even if the decision to transfer the funds had been taken by those individuals purporting to be trustees, the transfer could not have been legitimately made. The trustees of the Foundation informed the Inquiries that the decision to transfer the funds was never authorised at any level and indicated in a meeting with the Commission on 14 February 2012 that the Trustee had obtained either a cheque book, or credit and debit cards for the Foundation's account without the knowledge of the Foundation's trustees.
40. The transfers by the Company to the first personal account and the joint account were made by the Trustee. It should not have been possible for the Trustee, whilst acting alone, to transfer significant amounts of the Charitable Proceeds to his personal bank accounts in the United Kingdom or internationally. However, the bank mandate for the Company required only a single signatory to authorise transactions and consequently the Trustee was able to act independently. The Inquiries found that there was a serious failure by the trustees of the Company, prior to their respective resignations, to put in place appropriate financial controls and decision making procedures to protect charitable funds, such as requiring the approval of two or more trustee for any transfer of funds.

## Conclusions

41. There were clear breaches of charity law duties and responsibilities to safeguard funds, only use for proper purposes as well as failings in keeping records and submitting accounts.
42. The Inquiries subsequently found that the Trustee was either unable or unwilling to account for the expenditure of charitable funds from the first personal account or the joint account.
43. Charitable funds were misappropriated by the Trustee. Together with the police, it was proved that £627,000 of charitable funds were stolen by the Trustee. The Trustee obtained personal benefit from these charitable funds.
44. The Commission concluded that there was significant evidence of misconduct and mismanagement in the administration by the Trustee in relation to both the Company and the charitable funds he held and had custody of in his personal bank account and that he was responsible for them. This was so serious that he should be removed as trustee and the Commission proceeded to take action and served notice of intention to remove him. However, the Trustee pleaded guilty on 15 November 2012 to the theft of £627,000 between 11 November 2009 and 15 October 2010 and was sentenced to imprisonment for a period of three years. As a result the Trustee is disqualified from acting as a trustee for charity, or as a charity trustee, as a person convicted of an offence involving dishonesty or deception in accordance with section 178 of the Act. The conviction should become spent 7 years after the end of the sentence under the Rehabilitation of Offenders Act 1974<sup>3</sup>, and his disqualification will apply for this period.
45. The Commission concluded that any decision of the Company made after 15 January 2010 by the trustees of the Company, when the Company had an insufficient number of trustees and decisions were inquorate, will not have been properly made and were open to challenge as voidable. Prior to that date there was a serious failure by the trustees of the Company to put in place appropriate financial controls and decision making procedures to protect charitable funds which enabled the Trustee to act independently when transferring charitable funds to his personal bank accounts.

## Regulatory Action Taken

46. On 18 November 2011 the Commission took action to protect the residual funds remaining in the first personal account of the Trustee through its temporary protective powers under section 76(3)(d) of the Act<sup>4</sup>, ordering the Bank not to part with any property held in the first personal account without the permission of the Commission, effectively freezing the account. At the time of the Order the account held approximately £49,600.
47. On 18 November 2011 the Commission exercised its powers under section 47(2) of the Act to direct the Trustee to account for the transfer and expenditure of the charitable proceeds. Failure to respond to the direction constitutes a failure in the Trustee's duty to co-operate with the Commission.

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<sup>3</sup> As amended by the Legal Aid, Sentencing and Punishment Act 2012

<sup>4</sup> Formerly section 18(1)(iv) of the Charities Act 1993

48. On 8 February 2012 a referral was made to the Metropolitan Police regarding the alleged theft of charitable funds by the Trustee. An initial meeting with the Metropolitan police took place on 14 March 2012, which was followed by the disclosure of information, and the provision of a witness statement on 6 November 2012.
49. On 5 March 2012 the Commission took action to protect the residual funds remaining in the Company's bank account (the third bank account) through exercising its temporary protective powers under section 76(3)(d) of the Act<sup>5</sup>, ordering the Bank not to part with any property held in the third account without the permission of the Commission, effectively freezing the account. At the time of the order this amounted to £742.13.
50. On 12 March 2012 the Commission exercised its legal powers under section 76(3)(a) to suspend the Trustee from the exercise of his trusteeship, office and agency of the Company, pending consideration given to his removal. The Commission was satisfied that there was evidence that the Trustee was responsible for the misconduct in respect of the misapplication of charitable funds.
51. In August 2012 the Trustee contacted the Commission and indicated he would return to the UK in September of that year. The Commission disclosed this information to the Metropolitan Police who were subsequently able to arrest the Trustee upon his return to the jurisdiction.
52. On 15 November 2012 the Trustee pleaded guilty to the theft of £627,000 of charitable funds at Isleworth Crown Court and was sentenced to three years imprisonment. The Trustee was consequently automatically disqualified from acting as a trustee for charity, or as a charity trustee, as a person convicted of an offence involving dishonesty or deception under section 178 of the Act. The conviction should become spent 7 years after the end of the sentence under the Rehabilitation of Offenders Act 1974<sup>6</sup>, and his disqualification will apply for this period.
53. The removal procedure of the Trustee by the Commission subsequently came to an end as, following his automatic disqualification from trusteeship, it was no longer necessary.
54. On 7 December 2012 the Company was removed from the Register of Charities as it had no validly appointed trustees and had ceased to operate.
55. Following the conviction proceedings commenced under the Proceeds of Crime Act 2002; on 13 September 2013 a confiscation Order was issued for £702,605.14 to be paid by the Trustee by 13 October 2013. The Crown also obtained a compensation order in favour of the Foundation for £627,000 to be paid out of any confiscated funds. The Trustee failed to pay this debt by the deadline given and was subsequently sentenced to 4 years imprisonment<sup>7</sup> for that default.
56. The Commission authorised the release of the charitable funds held in the Trustee's first personal account to Her Majesty's Court and Tribunal Service (HMCTS) on 21 October 2013 following a payment order issued to the bank by Westminster Magistrates Court on 15 October 2013. £50,097 was subsequently transferred to HMCTS.
57. On 20 December 2013 the Commission used its powers under section 85 of the Act to direct National Westminster Bank plc to transfer the funds it holds on behalf of the Company to the Foundation so that it could be applied in line with the educational charitable objects of the Company.

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<sup>5</sup> Formerly section 18(1)(iv) of the Charities Act 1993

<sup>6</sup> As amended by the Legal Aid, Sentencing and Punishment Act 2012

<sup>7</sup> This period of imprisonment is to run consecutively to any other period of imprisonment

58. On 18 March 2014 both of the orders made under section 76(3)(d) were discharged and the Commission withdrew its objection to Companies House proposal to strike off the Company on the basis of its failure to file accounts, as there was no longer any risk of charitable assets going bona vacantia when the Company ceased to exist.

## Issues for the wider sector

59. The abuse of charities for criminal purposes is absolutely unacceptable. In instances where the Commission suspects a criminal offence such as the theft of charitable funds has taken place it will always report this and share information, with the police and if appropriate other law enforcement agencies, such as the National Crime Agency, Action Fraud, the National Fraud Intelligence Bureau, and the Serious Fraud Office.
60. The Commission will seek and support the police and Crown Prosecution Service in a prosecution where they believe that criminal activity relating to has taken place connected to a charity.
61. Trustees must report suspected crimes concerning the charity and the use of its funds to the police and should obtain a crime reference number. The more serious the crime, the more difficult it is to see how trustees could otherwise discharge their duties to act in the best interests of the charity and their duty of care to protect the charity, its assets and beneficiaries.
62. The fundamental responsibility for control of the charity's activities and funds is that of the trustees. It is therefore crucial that where the trustees administer the charity personally, they need proper segregation of duties among themselves, so that no one trustee is given too much authority.
63. It is the fundamental duty of all charity trustees to protect the property of their charity and to secure its application for the objects of the charity. Internal financial controls are essential checks and procedures that help charity trustees to:
- a. meet their legal duties to safeguard the charity's assets;
  - b. administer the charity's finances and assets in a way that identifies and manages risk; and
  - c. ensure the quality of financial reporting, by keeping adequate accounting records and preparing timely and relevant financial information.
64. Internal financial controls do not eliminate the risk of losses, including through theft and fraud. Internal financial controls should, however, reduce the risk of those things happening. If they do happen then internal financial controls should also help the trustees to find out sooner and take necessary action.
65. Good financial stewardship of the charity includes the appropriate use of a bank account, where access to the money is restricted and its movement can be easily traced. 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. Payments to trustees should be carefully scrutinised to ensure they are legitimate, have been properly authorised and are in furtherance of the charity's purposes and governing document. Trustees should never authorise payments to themselves. If an unusual payment to a trustee is detected, and it is not clear what it is for and/or has been properly authorised, then this should be reported to the appropriate person under its internal policy and procedures.

66. Trustees should exercise effective general control over their charity's bank accounts and make regular checks to ensure that their charity's bank accounts are operating as intended, and are consistent with the internal financial records. For practical advice on operating bank accounts see [Chapter 4](#) of the Toolkit.
67. 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 the Commission's website. There is also a self check-list for trustees which has been produced to enable trustees to evaluate their charity's performance against the legal requirements and good practice recommendations set out in Internal Financial Controls for Charities.

