

## **Inquiry Report made under Section 33 of the Charities and Trustee Investment (Scotland) Act 2005**

**Free Wheel North, SC039789**

### **Background**

Free Wheel North has been registered as a charitable company since 15 August 2008.

The charity is established with the following purposes:

- The advancement of health, mental and physical.
- The advancement of citizenship and community development, by encouraging volunteering, community engagement and regeneration through physical, social and economic infrastructure improvements.
- The provision of recreational facilities and activities with the object of improving the conditions of life for members of the public at large, but with a special emphasis on persons who have need of them through disability.
- Promotion of equality and diversity through campaigning on behalf of disabled people for better access to the outdoor environment.

The charity's principal activities are cycling projects; either facilitating and running cycling activity, or of an advisory nature working with local authorities and cycling organisations to bring about changes that improve walking and cycling infrastructure for the benefit of the public. The charity operates most of its activities at the cycling track at Glasgow Green.

### **Concerns received by OSCR**

Between January and March 2022, OSCR received concerns about the governance of the charity. When we receive concerns, we assess each one to identify if there are regulatory matters for us to deal with.

Our assessment of the concerns received indicated that there were some regulatory issues that we needed to make inquiries about. The issues were that:

- there was a possibility the number of charity trustees was going to fall below the minimum number stated in the constitution and
- in order to elect new charity trustees, the charity needed to have members, which it was alleged it did not have at the time.

OSCR subsequently received a significant number of concerns about other issues over a substantial period of time. In most circumstances, we would have expected the types of issues raised in those concerns to have been raised with the charity trustees or other bodies such as Glasgow City Council or the Health and Safety Executive in the first instance. However due to various factors, including the regularity with which the concerns were received, and the nature of the dissent displayed by some of those who raised concerns about the charity, we considered

the charity trustees would not be able to deal effectively with the concerns directly. OSCR therefore considered these as part of our inquiry.

### **OSCR's inquiry**

Based on our experience of undertaking inquiries we considered the best way to deal with the issues we had identified was to work with the charity by signposting the charity trustees to appropriate sources of support and suggesting actions they could take to deal with the issues.

It became apparent that the membership drive the charity had put in place had not followed the appropriate procedure which led to severe discontent among those who had applied for membership but had not been accepted nor notified of the decision. The discontent regarding the membership process and the general governance of the charity led to a heated annual general meeting that ultimately had to be abandoned.

We were also aware of a desire, among some of those who had made complaints, to take over the charity both in terms of running it and taking over its lease of the cycle track.

Due to the significant number of concerns OSCR received in the lead up to, and following the AGM, we published an interim inquiry report on 28 July 2022. The purpose of publishing that report was to make clear what our role as regulator is and to explain our interest in the charity and how we would conduct our inquiry. We also wanted to make it clear to anyone considering taking over the charity that it is the charity trustees who are in management and control of the charity and any decisions about the future running of the charity would be taken by them.

We wrote to the charity to seek information regarding the governance and financial situation at the charity. The charity provided the information requested and have continued to engage with us by providing further information and by meeting with us several times. We have had open and constructive dialogue with the charity trustees on a range of governance issues, allowing us to understand what has been happening within the charity during the period of our inquiry and to explain to the trustees what they need to consider in running the charity in line with their legal duties.

In the course of our inquiry we also received a number of concerns about health and safety and safeguarding. From the evidence we have received it is clear the charity has engaged with appropriate professionals in these fields and they are implementing changes as advised by those professionals.

### **Findings**

OSCR found that the charity trustees have not always fulfilled their legal duty to act in the interests of the charity; this includes the need to ensure that charity trustees follow the rules in the constitution. We have also found that the charity trustees have not always acted with the care and diligence OSCR would expect of charities trustees acting under the Charities and Trustee Investment (Scotland) Act 2005.

However, it is clear that events since January 2022 have been difficult for everyone involved. The charity trustees advised us that the nature of the dissent against the charity trustees was unmanageable and the reason they chose to take, or decided not to take, certain actions. While charity trustees must always act in line with their legal duties, we recognise the specific circumstances involved at certain times during the last 18 months and have taken these into account in concluding our inquiry.

We also recognise, from our continued engagement with the charity, the positive shift on the part of the current board of charity trustees in terms of compliance with their charity trustee duties and acknowledge the work undertaken to date and the plans they have for the future. While there are still changes and improvements that need to be made to how the charity is operating, there is now greater understanding and appreciation of how the charity needs to be run to avoid further issues arising and we would expect the charity trustees to continue to implement the necessary improvements in the coming months.

OSCR has concluded that it is neither necessary or proportionate to take formal action in relation to the failure of the charity trustees to meet their duties in the past. We have issued the charity with a number of recommendations about its governance and we will follow up on the charity's progress with implementing these in due course. It is important the charity trustees are allowed time to implement these and that they are given a fair opportunity by all concerned to make the necessary improvements.

### **Learning points for the wider charitable sector**

- Charity trustees must ensure they understand the terms of the charity's constitution and operate in line with it.
- It is important for charity trustees to seek appropriate support from sector advisors or specialists to deal with complex or challenging issues to avoid these escalating and potentially affecting the reputation of the charity.
- Charity trustees should seek to engage with those who have concerns about the charity. However, when this becomes unmanageable given the nature of dissent and has the possibility to stop them from being able to undertake their day to day activities, they should seek the appropriate professional advice on how best to deal with the situation.
- Charity trustees are the people who have general control and management of the charity and are responsible for making sure that the charity works to achieve its charity's purposes. The conduct of charity trustees' can have a significant impact on the reputation of the charity. It is important for the charity trustees to always act in the interests of the charity.