

The Alfred Stewart Trust, Scottish Charity Number SC041929:

Interim report on the inquiry conducted by the Scottish Charity Regulator

Background

The Alfred Stewart Trust (the charity) is a Scottish registered charity with currently five charity trustees. It was entered on to the Scottish Charity Register on 26 November 2010.

We opened an inquiry into the charity and its wholly owned trading subsidiaries following receipt of concerns about the actions of the charity trustees and their management of the charity.

Alfred Stewart died on 29 April 2008. The principal beneficiary under his will was the Alfred Stewart Trust, a trust established or to be established for medical and/or community purposes. The charity was established by Deed of Trust by the three executors of the late Mr Stewart's estate in August 2010. The executors and four others declared themselves as trustees of the Trust.

The executors also appointed themselves as directors of the charity's trading subsidiaries, namely Alfred Stewart Properties Limited (ASPL), Alfred Stewart Property Foundation Limited (ASPFL) and Spinningdale Limited.

Progress of inquiry

Our initial inquiries gave us concerns about the financial management of the charity and its subsidiary companies. It appeared that the trustees were not acting in the interests of the charity and with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, which is a legal duty of a charity trustee.

In addition the Law Society of Scotland notified us that it was conducting an investigation into the practice of the sole practitioner who had been appointed as solicitor to the Executry of Mr Stewart. As a result of its inquiry, the Law Society petitioned the Court of Session for the appointment of an interim Judicial Factor to the estate of the sole practitioner following his death. The appointment was confirmed on 14 November 2014.

In the course of the investigation the Judicial Factor identified certain matters relating to the management of the charity and of the estate of the late Alfred Stewart which caused them concern. In their opinion, there was clear evidence of breach of trust; that conflicts of interest arose between two of the trustee's positions in the charity, the Executry and trading subsidiaries; and that funds had been mixed between the charity, the Executry and trading subsidiaries.

While our inquiries are still at an early stage, on the basis of the findings of the Judicial Factor and the information we have gathered so far, we are concerned that there is misconduct in the administration of the charity, and it is necessary for us to take action to protect its assets.

Regulator's action

We have taken the following actions:

- On 11 December, we suspended all of the charity's trustees from the management and control of the charity under section 31(4) of the 2005 Act. The company directors have also been suspended from the management and control of the trading subsidiaries. The suspension is effective from 11 December 2014 and is valid for a period of 6 months.
- We issued formal Directions to banks, that we were aware held accounts in the name of the charity and/or trading subsidiaries, preventing them from parting with any property of the charity without OSCR's consent.
- We petitioned the Court of Session for the appointment of an interim Judicial Factor to the charity. On 16 December 2014 William Cleghorn of Aver Chartered Accountants was appointed as interim Judicial Factor. The Court of Session made his appointment permanent on 3 February 2015.

Following our decision to suspend the charity trustees from their roles, one trustee informed us that he had resigned from his position in October 2014. The other five trustees requested reviews of our decision to suspend them as charity trustees

The reviews are now complete.

The decisions to suspend the two trustees who are also directors of the trading subsidiaries were confirmed on review. These trustees have now lodged appeals to the Scottish Appeal Panel (SCAP) against the decisions to confirm their suspensions.

The suspensions of the other trustees are no longer in force.

UPDATE

On 1 June 2015, the two trustees withdrew their appeals to the Scottish Appeal Panel (SCAP). The suspensions of these 2 trustees expired on 10 June and are no longer in force. They resigned from their positions as trustees of the charity in July 2015. The Judicial Factor remains in management of the charity at this stage.