

# Inquiry Report

Stanbridge Earls School Trust

Registered Charity Number 307342



# A statement of the results of an inquiry into Stanbridge Earls School Trust (registered charity number 307342).

Published on 22 December 2014.

## The charity

Stanbridge Earls School Trust ('the Charity') was registered on 26 February 1964. It is governed by memorandum and articles of association dated 23 November 1951 and last amended by resolutions dated 13 and 29 May 2013.

Its objects are to advance education, by the provision and conduct of a day and/or boarding school for boys and girls by ancillary or incidental education activities and other associated activities for the benefit of the community. In practice, the Charity, which is based in Hampshire, provided boarding and day education for boys and girls with special educational needs. The specific learning difficulties of pupils included dyslexia, dyspraxia and dyscalculia, and some who have social and communication difficulties such as Asperger's syndrome and mild autism.

More details about the Charity are available on the [register of charities](#).

## Background and context leading up to the opening of the inquiry

In June 2012 the Charity Commission was notified by the Charity that proceedings had been initiated by a parent on behalf of their child at the school in the First Tier Tribunal for Special Educational Needs and Disability ('the Tribunal') for a claim for disability discrimination under various provisions of the Equalities Act 2010. Proceedings in respect of a claim for sexual discrimination were also initiated in the County Court.

The case in the Tribunal was heard during November and December 2012 and found in favour of the appellant. The Commission has been advised that the County Court claim is currently in process: liability has been admitted and the matter outstanding is the amount of damages payable. This claim, by order of the Court, has been added to a negligence claim which will be transferred to the High Court with the agreement of all parties.

In January 2013 Ofsted conducted an emergency unannounced inspection of the Charity on the instruction of the Department for Education ('DfE'), following receipt of the serious safeguarding concerns identified by the Tribunal in its judgement ('the January Inspection').

The commission may not always be the only (or even the main) regulator for a charity. There are sometimes other government departments which are responsible for particular aspects of the law which affect charities, such as tax, and health and safety. As the main operation of the Charity was the running of a school, the primary regulator was the DfE, as the government department responsible for education and children's services in England.

Following the January Inspection, the DfE concluded that some of the independent school standards and some of the National Minimum Standards for Boarding (NMS) were not being met. On 15 February 2013 the Secretary of State served notice on the Charity's Trustees ('the Trustees') requiring them to draw up an Action Plan detailing the steps the Charity would take to meet the standards required ('the Action Plan'). The Action Plan was to be submitted to the DfE by 15 March 2013.

In February 2013 Ofsted informed the commission that the Trustees were taking the issues identified in the Secretary of State notice very seriously and appropriate steps were being taken to enhance safeguarding and governance at the Charity. In March 2013 the Charity submitted the Action Plan to the DfE and it was evaluated by Ofsted who advised that it would need amendment before it could be considered fit for purpose. The Action Plan was subsequently rejected by the DfE.

## Issues under investigation

The commission had been liaising with the DfE regarding the concerns identified by the Ofsted inspection in January 2013, and in March 2013 the commission was informed by the DfE that some of the key concerns identified related to the governance and leadership at the Charity. Consequently the commission considered that significant regulatory concerns had been raised which required further examination by the commission as a charity regulator. On 3 April 2013 the commission opened a statutory inquiry ('the Inquiry') into the Charity under section 46 of the Charities Act 2011.

The Inquiry closed on 1 December 2014.

The issues examined by the commission as part of the Inquiry were:

- issue 1: overall administration, governance and management of the Charity by the Trustees, including whether the Trustees fulfilled and were capable of fulfilling their legal duties and responsibilities; in particular their ability to put in place and implement an Action Plan that was acceptable to the DfE
- issue 2: monitoring the implementation of an Action Plan and the financial situation of the Charity

The Inquiry included an examination of how the Trustees responded to the issues raised by the DfE and Ofsted and how the allegations and subsequent litigation was handled.

The commission is not responsible for safeguarding matters or dealing with incidents of actual abuse, and does not administer the legislation on safeguarding children and vulnerable adults. The police, local authorities and the Disclosure and Barring Service have particular statutory roles. As stated above the commission may not always be the primary regulator of a charity and sometimes other government departments which are responsible for particular aspects of the law which affect charities. In this case the relevant agencies were the DfE and Ofsted. The commission has an important regulatory role in ensuring that trustees comply with their legal duties and responsibilities as trustees in managing and administering their charity.

Whilst the Inquiry was ongoing the Charity was still being monitored by the DfE and underwent two further inspections by Ofsted (April 2013 and June 2013) and an inspection by the Independent Schools Inspectorate (April 2013). Throughout its investigation the commission was mindful not to compromise those agencies investigations nor the Trustees' ability to engage with the other agencies and/or hinder their ability to take the necessary action required to address their concerns.

## Findings

### **Issue 1: overall administration, governance and management of the Charity by the Trustees, including whether the Trustees fulfilled and were capable of fulfilling their legal duties and responsibilities; in particular their ability to put in place and implement an Action Plan acceptable to the DfE.**

The trustee body was made up of 13 individuals with a wide range of skills and experience, including former and practising Ofsted and Independent Schools Inspectorate Inspectors<sup>1</sup>. The Inquiry established that the Trustees held regular meetings which comprised the trustee body and the various separate standing committees established to govern the Charity. The standing committees included a Finance Committee, Education Committee, Property and Risk Assessment Committee, and Child Protection and Safeguarding Committee. Detailed minutes of the various meetings were recorded, and a sample of these was examined by the Inquiry.

The Child Protection and Safeguarding Committee had been established in response to the concerns raised by the DfE. However, whilst historically there was no separate committee in relation to child protection and safeguarding issues there was a process in place whereby the Trustee (a former Ofsted Inspector with Special Educational Needs experience) with designated responsibility for safeguarding would inspect the school twice a term and would report their findings to their fellow Trustees. During the May 2013 meeting with the Inquiry team the Trustees confirmed that each inspection would cover different aspects, from record keeping to conditions in the boarding houses, and that over the course of a year all areas connected to Child Protection and Safeguarding would be covered. Reports of these inspections would be directly fed back to the Trustees, or sometimes in conjunction with the Deputy Head Pastoral's own report. It was the Trustees' view these assessments were not contradicted by the findings of the official inspections by Ofsted and/or the Independent Schools Inspectorate<sup>2</sup>. For example, during the period post the event that resulted in the Tribunal and prior to the publication of the Tribunal's findings, the school was subject to two Ofsted Inspections in January 2012 and May 2012. The January 2012 inspection (being a limited inspection) found that specific standards were met and May 2012 rated the school as Outstanding. This was subsequently revised in June 2014<sup>3</sup>.

Based on the evidence viewed and the explanations provided the Inquiry found that the overall administration, governance and management of the Charity by the Trustees was satisfactory.

The Inquiry found that in dealing with the incident and the Tribunal, at all times the Trustees acted prudently and obtained relevant professional advice to inform their decisions. The Inquiry considers that the Trustees' decisions relating to these matters were within a range of reasonable decisions as required under charity law.

In November 2011 the incident which resulted in the exclusion of the subject who brought the action in the Tribunal was properly reported to the commission by the Charity under the Serious Incident Reporting regime.

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1 At the date this report was published the Charity has 9 Trustees.

2 As a residential school Ofsted conducted an inspection of the Charity annually and the Independent Schools Inspectorate conduct an inspection every 3 to 6 years based on the outcome of the previous inspection.

3 In June 2014 Ofsted published a report following an inquiry to consider the inspection history of Stanbridge Earls School from January 2011 to January 2013. The Ofsted inquiry found that the three inspections in June 2011, January 2012, and May 2012 were flawed but for different reasons. As a result, the judgements were not safe in the light of what was known at that time. The full report can be found on Ofsted's website.

During the May 2013 meeting the Trustees acknowledged the seriousness of the situation in which the Charity found itself and confirmed that they were committed to compiling and implementing an Action Plan that was acceptable to the DfE. The Trustees informed the Inquiry that in response to the Tribunal's judgement they set up a sub-committee (the Governors' Response Group) to ensure that all the requirements of the Tribunal were met in full and on time. The sub-committee met on three occasions to complete its task.

In response to the DfE's requirements for an Action Plan, the Trustees informed the Inquiry that they provided a two-tier response: one from the Trustees, dealing with broader matters of governance; and one from the school, addressing all matters of practice highlighted in Ofsted's January Inspection report. Both responses had to address the fact that the school's level of child protection and safeguarding needed to be elevated to meet the greater vulnerability of children who were then in the school.

During the Inquiry the commission received complaints from parents of children who attended the school raising concerns that only a small number of the Trustees were fully abreast of the issues that surrounded the Tribunal case. When these concerns were addressed with the Trustees during the May 2013 meeting the Inquiry was informed that in line with the Charity's policy, an emergency committee was established to allow swift action as the situation was developing. It was a conscious decision that not all the Trustees were made aware of all the facts so that should a review be requested by the parents there would be a sufficient number of independent trustees capable of conducting the review; this included a trustee with Special Educational Needs (SEN) experience. The Inquiry is satisfied that the approach adopted by the Trustees in this regard was within the range of reasonable decisions open to them to take and noted it was action in line with the Charity's agreed policy.

From January 2013 to August 2013 the Trustees worked to devise an Action Plan that was acceptable to the DfE and worked towards improving the Charity's safeguarding and governance processes. This included the appointment of a number of consultants and professional advisors which it was hoped would provide the Trustees with specialist advice to make the requisite changes required by the DfE.

However, it soon became apparent that, for various reasons, the financial future of the Charity was becoming uncertain and required the urgent attention of the Trustees. The Charity was already preparing to address a drop in revenue as a result of a large number of school leavers at the end of that academic year. This, in addition to events surrounding the Tribunal and subsequent DfE and Ofsted action exacerbated the decrease in pupil numbers calling into question the Charity's ability to maintain the running of the school.

## **Issue 2: monitoring the implementation of an Action Plan and the financial situation of the Charity.**

The Inquiry monitored the Trustees' progress in devising an Action Plan acceptable to the DfE and its handling of the concerns relating to the financial situation at the Charity.

The Charity entered into negotiations with a number of third parties regarding a potential takeover of the school to secure its future operation. Unfortunately no agreement could be reached. On 15 August 2013 the Trustees submitted an Action Plan ('the Final Plan') to the DfE. However, before matters could progress on 16 August 2013 the Trustees' decided that the Charity should be placed into administration as the financial future of the Charity could not be secured<sup>4</sup>. Subsequently the Final Plan was not assessed by the DfE and/or Ofsted.

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<sup>4</sup> David John Blenkarn and Gregory Andrew Palfrey, of Smith & Williamson LLP were appointed administrators of the charitable company on 3 September 2013.

The Inquiry met with the Trustees in September 2013. During the September 2013 meeting the Trustees stated that in hindsight, due to the intense time pressure and the DfE's involvement, they did not take sufficient time to ensure that the professional advice they received in one case was the most suitable for the Charity's particular needs and situation.

During the same meeting the Trustees also highlighted that new guidance by the DfE with regards to National Minimum Standards was issued in January 2013. The January 2013, May 2013 and July 2013 Ofsted inspections were carried out against this new guidance. The Trustees stated that although the regulations had not changed themselves, the new guidance was much clearer in what it expected the trustees to do to satisfy the requirements relating to leadership, management and governance. They stated that this guidance had not been made available prior to January 2013, and this may have accounted for some of the complications they had experienced in failing to address the DfE's concerns in time.

The Trustees informed the Inquiry that in normal circumstances the Charity would have had time to digest the new information and implement any changes or improvements that were required. The Trustees considered they were not given the time needed to incorporate these changes within the school's structure, and that this impacted on the findings reached by the DfE and Ofsted.

The Trustees did accept that in hindsight it may have assisted them to have reacted to developing risks more efficiently than they had as it was noted that the pupil body at the school had, diversified and the school was catering for pupils with a wider spectrum of special education needs than was the case in previous years, and the Charity had not always reacted to these changes sufficiently. The advancement in technology and the rise in the use of social media were also acknowledged by the Trustees as an area where staff and pupils may have benefited from more robust guidance/policy than existed.

With regard to the takeover negotiations the Inquiry was aware that there was a key third party with whom at one point negotiations had reached an advanced stage. During the September 2013 meeting the Trustees explained that a number of factors contributed to the subsequent failure of these negotiations. The Trustees advised that:

- as negotiations progressed the financial risk of the takeover for the key third party grew to the point that the transaction was no longer viable from its perspective
- the proposal put forward by the key third party did not have universal support from the parents and/or staff of the school
- the Charity was subject to frequent adverse publicity surrounding the Tribunal action and subsequent events which impacted adversely on its negotiating position and power

The Inquiry accepted that the Trustees found themselves in an increasingly pressurised position where the ability to take decisions and actions to address the concerns identified by Ofsted and the DfE with a suitable Action Plan were overshadowed by the financial security of the Charity as a going concern.

The Inquiry found that during the final months the Trustees focussed on addressing the Charity's pressing financial situation and in securing the future of the school through its transfer to a third party school approved by the DfE, rather than the concerns identified by Ofsted and a suitable Action Plan for DfE. The Inquiry considers that given it was not clear at the time that the school could definitively continue to operate; the Trustees' decisions relating to these matters were within a range of reasonable decisions that could have been taken at that time.

## The charity in administration

The Charity was placed into administration on 3 September 2013 and since then the commission has liaised with the administrators obtaining updates regarding the progress of process but also asking for any information that the commission should be made aware of as part of its investigation. The commission was advised by the administrator in correspondence of 20 May 2014 that *“The Trustees have been helpful and co-operative throughout the administration and I hold regular meetings with them to update them on developments. I have not been made aware of any issues regarding the Trust or the Trustees which I consider should be reported to you.”*

In addition, as part of the administration process, under the Company Directors Disqualification Act 1986 the administrators have a duty to make a submission to the Secretary of State for Business Innovation and Skills (‘BIS’) on the conduct of all those persons who were directors at the date the Company entered administration, or who held office at any time during the three years immediately preceding the administration. In this case the Charity was a company, and the Trustees’ roles were those of directors.

As of 16 June 2014 the Joint Administrator’s latest progress report stated that no matters that might lead to recoveries for the Charity or which require further investigation have been identified by the administrators. In July 2014 the administrators submitted notification that the administration process had been extended until September 2015.

The administration process remains ongoing.

The commission is continuing to liaise with the administrators and will monitor the administration process to ensure that any charitable residual funds are applied in accordance with the Charity’s governing document.

## Conclusions

The commission concludes that the decisions taken by the Trustee body, with specific regard to the Tribunal action and subsequent engagement with the DfE and Ofsted were all within the range of reasonable decisions open to them at the relevant time.

As the Charity went into administration before the Final Plan was assessed by the DfE and Ofsted the commission is unable to draw any conclusions regarding the Trustees’ ability to take sufficient steps to address the safeguarding and leadership concerns as identified by Ofsted to the satisfaction of the DfE.

## Regulatory action taken

The Inquiry met with the Trustees in May 2013 and September 2013 and examined the records of the Charity relevant to (i) the structure and governance of the Charity (ii) the events relating to the incidents which gave rise to the Tribunal’s judgement (iii) the actions taken by the Trustees following the Tribunal’s judgement, the subsequent Ofsted inspection, the DfE’s requirement to prepare an Action Plan, and the DfE’s subsequent rejection of that Plan.

The documents were examined prior to the meeting in May 2013, the purpose of which was to better understand the Charity’s governance structure and to obtain a clear understanding of the chain of events that resulted in the intervention by the DfE.

In light of extension to the administration process and that there are no further regulatory issues that have been identified by the commission or the administrators, it was decided that the report into the Inquiry should be published without further delay. The commission will continue to monitor the administration until its anticipated completion next year.

## Issues for the wider sector

The purpose of this section is to highlight the broader issues arising from the commission's assessment of the issues raised publicly that may have relevance for other charities. It is not intended as further comment on the Charity in addition to the findings and conclusions set out in the earlier sections of this report, but is included because of their wider applicability and interest to the charitable sector

As a trustee, you can take advice about the law, finance, property, and so on. But the decisions you make in the end are down to you and your fellow trustees.

When you make decisions about your charity, you must:

- act within your powers
- act in good faith, and only in the interests of your charity
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors
- ignore any irrelevant factors
- identify and manage **conflicts of interest**
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances

See more at: **Charity meetings: making decisions and voting**

To ensure their decision is within the range of decisions that a reasonable trustee body could make trustees must decide which option is in the best interests of the charity. The courts and the commission cannot judge whether the trustees' decision was right, or the best decision or not. We can only consider whether the decision was within the range of decisions that a reasonable trustee body could have made, and whether the trustees have followed proper processes and principles.

Trustees should identify the options open to them. They should take time to stand back from their decision and consider:

- have they given enough time and consideration to this decision, have they missed anything
- have they taken and considered professional or other specialist advice or read any relevant guidance where they should have done so, and if they have not followed the advice or guidance, can this be justified
- is this the kind of decision the charity's beneficiaries or supporters would expect the trustees to make (and if not, how much weight should the trustees give to these views)



- can the trustees justify the decision in the circumstances could this decision appear inconsistent with decisions the trustees have made in the past, and if so, can the difference in approach be explained
- what grounds could anyone have for saying the trustees had acted unreasonably

The extent to which they need to do this depends on the significance and potential impact of the decision for the charity. - See more at: [It's your decision: charity trustees and decision making](#)