

Charities

The Statutory Inquiry into The Captain Tom Foundation

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In November 2024, the Charity Commission published a lengthy report on The Captain Tom Foundation which found repeated instances of misconduct and/or mismanagement. The subsequent commentary in the national media and professional press has been almost universally negative. This article attempts to present a more balanced analysis of the Charity Commission's report.

Introduction

Every reader of this journal will remember that on 23 March 2020 the UK was put into its first COVID-19 lockdown. Two weeks later, Captain Sir Thomas Moore (then known as “Captain Tom”) started a fundraising exercise called “Tom’s 100th Birthday Walk for the NHS”. He aimed to walk 100 laps of his 25-metre garden in 10 days. By the time Captain Tom turned 100 on 30 April 2020 he had raised just shy of £32.8 million on his JustGiving page.¹ Including Gift Aid, the Association of NHS Charities (trading as NHS Charities Together) received nearly £39 million.² In May 2020, The Captain Tom Foundation (“the Foundation”) was established in his name and with his consent. In its first two years, the Foundation raised nearly £1.5 million and distributed £370,000 between 10 different charities.

Unfortunately, this inspiring story quite quickly turned into a public relations fiasco. In February 2022, when the Foundation’s first annual report was published, the national media pounced on the payments which the Foundation had made to companies connected to Captain Tom’s family. The Charity Commission became involved almost immediately. What followed must have felt like a two-and-a-half-year trial by statutory inquiry and national media. For example, during that period, BBC News published 31 articles on the topic and The Daily Mail published a staggering 80 articles.

On 21 November 2024, the Charity Commission published a lengthy report of its statutory inquiry into the Foundation. In summary, the Charity Commission concluded that there had been repeated instances of misconduct and/or mismanagement in the administration of the Foundation. The report made national and international news across the English-speaking world.³

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¹ Gemma Huddleston, “Captain Tom Moore’s 100th Birthday Walk for the NHS”. The webpage is still available, <https://www.justgiving.com/fundraising/tomswalk> [Accessed 28 January 2025].

² “How our funding is making a difference around the UK”. See generally <https://nhscharitiestogether.co.uk/captain-sir-tom-moores-incredible-legacy/> [Accessed 28 January 2025].

³ For example, the report was commented on by *Antigua News*, *The Australian Broadcasting Corporation*, *The Canadian Broadcasting Corporation*, *The Guernsey Press*, *The Irish News*, *The Jersey Evening Post*, and *The New York Times*.

Since the report was published, the commentary on the Foundation has been almost universally negative. This article attempts to present a more balanced analysis. It will have four parts. First, it will explain the key background to the report. Second, it will summarise the report’s key conclusions. Third, it will set out seven arguments in favour of Captain Tom’s family. Fourth, it will set out five reasons why the Charity Commission was right to publish the report.

The background

The relevant people

Captain Tom died on 2 February 2021, aged 100. He was survived by his daughter and son-in-law, Hannah and Colin Ingram Moore (“Mr and Mrs Ingram-Moore”).

In addition, there are three relevant “entities”.

First, on 24 April 2020, Mr and Mrs Ingram-Moore incorporated Club Nook Ltd. The shares in Club Nook Ltd were held by Mr and Mrs Ingram-Moore and their two children.

Second, on 5 May 2020, the Foundation was incorporated as a company limited by guarantee. The application for registration as a charity stated that the Foundation was being established by Captain Tom’s family.⁴ During the registration process, Mr and Mrs Ingram-Moore told the Charity Commission that Captain Tom had consented to the name “Captain Tom” being used in connection with the Foundation. The Foundation was registered by the Charity Commission on 5 June 2020. In practice, the Foundation was a grant-giving charity whose core purposes were the advancement of health, the relief of poverty, and the promotion of social inclusion. Mrs Ingram-Moore was a trustee from 1 February 2021 to 15 March 2021, when she resigned to become the Foundation’s interim CEO. Mr Ingram-Moore was a trustee from 1 February 2021 until he was disqualified on 25 June 2024. There were also three independent trustees: David Thomas-Walls (2020–2021), Simon DeMaid (2020–2023) and Stephen Jones (2020 to date).

Third, on 13 May 2020, a private family trust was established for the benefit of the Ingram-Moore family (“the Family Trust”). Mr and Mrs Ingram-Moore and Mr Thomas-Walls were the trustees. Captain Tom assigned all of his intellectual property rights to the Family Trust. The trustees then licensed Captain Tom’s intellectual property rights to Club Nook Ltd, which orally licensed the rights to the Foundation for “philanthropic purposes”. Between May and August 2020, Club Nook Ltd applied to register various trademarks relating the names “Captain Tom”, “Captain Sir Tom”, “Captain Tom Moore”, and “Captain Tom 100”.⁵

The timeline of the statutory inquiry

On 7 February 2022, the Foundation filed its first annual accounts (for 2020–21). On 8 February 2022, *The Daily Mail* and *The Independent* ran stories expressing concern about the amount which the Foundation had spent on management costs. On 9 February 2022, the Charity Commission said that it would assess the accounts. In March 2022, the Charity Commission opened a regulatory compliance case into the Foundation.

On 16 June 2022, the Charity Commission opened a statutory inquiry into the Foundation pursuant to s.46 of the Charities Act 2011.

On 25 June 2024, the Charity Commission disqualified Mrs Ingram-Moore from acting as a trustee or senior manager of a charity for 10 years.⁶ Mr Ingram-Moore was disqualified from acting for eight years.

⁴ This is repeated in the annual reports for the Foundation.

⁵ Information on these trademarks can be found at <https://www.gov.uk/search-for-trademark> [Accessed 28 January 2025].

⁶ Pursuant to the Charities Act 2011 s.181A. See generally the Charity Commission’s “Explanatory statement: the discretionary disqualification power” and Operational Guidance 525, both available online.

Mr and Mrs Ingram-Moore said that “they fundamentally disagree[d] with the conclusions reached by the Charity Commission”,⁷ but they did not intend to appeal the decision.⁸

On 21 November 2024, the Charity Commission closed its inquiry into the Foundation with the publication of a 35-page decision (“the Report”).⁹ The ultimate conclusion was:

“there were serious and repeated instances of misconduct and/or mismanagement in the administration of the charity in respect of the conduct and actions of Mr and Mrs Ingram-Moore... there was [also] mismanagement by the unconflicted trustees who were in post at the relevant times.”

The Charity Commission concluded that Mr and Mrs Ingram-Moore had displayed a repeated pattern of behaviour which involved a failure to manage conflicts of interest and led to direct and indirect private benefit to them. The Report said that the unconflicted trustees did not always have sufficient oversight and control of the administration of the Foundation, but that their task was made “impossible” by Mr and Mrs Ingram-Moore’s failure to inform them of potential conflicts.

When the Report was published, the Chief Executive of the Charity Commission said that it was up to the remaining trustee whether to take legal action and the Commission “stood ready to provide advice as they considered that”. However, the Director of Communications for the Charity Commission confirmed that “we haven’t seen evidence of a crime”.¹⁰

Between 2020 and 2022, the Foundation attracted approximately £1.5 million in donations and distributed £370,000 between 10 different charities. The Foundation stopped accepting donations in July 2023. In January 2025, the Foundation’s website expired.¹¹ Although the Foundation has not formally been wound up, it seems clear that it will be closed soon. Judging by the Foundation’s micro accounts for 2022–23, there could be up to £250,000 to distribute in any winding up.

The Charity Commission’s conclusions

Issue 1: the role of family

For centuries, charities have been named after the original donor and run by family members. The courts confirmed long ago that there is nothing wrong with charity trustees being related to one another.¹² However, the Charity Commission’s guidance on conflicts of interest (CC29) reminds us that family relationships can lead to conflicts of loyalty.

In this case, the Charity Commission had a number of concerns about Mrs Ingram-Moore’s conduct.

First, Mrs Ingram-Moore had given inconsistent accounts publicly and privately about her role in the Foundation prior to becoming a trustee or interim CEO.

Second, Mrs Ingram-Moore was “disingenuous” in interviews about the discussions relating to her salary as interim CEO.

Third, in October 2021, Mrs Ingram-Moore acted as a judge and presenter of the Virgin Media Captain Tom Foundation Connector Awards. At the time, Mrs Ingram-Moore was interim CEO of the Foundation. The agreement between Mrs Ingram-Moore and Virgin Media provided that Mrs Ingram-Moore acted

⁷ The quote is taken from Danny Fullbrook and PA Media, “Captain Tom’s daughter disqualified from charity”, (*BBC News*, 3 July 2024), <https://www.bbc.co.uk/news/articles/cy79q7ej49yo> [Accessed 28 January 2025].

⁸ Any appeal would have been made to the First-tier Tribunal, where the matter would have been heard afresh: s.319 and Sch.6 of the Charities Act 2011. E.g. *Naik v Charity Commission for England and Wales* [2022] UKFTT 331 (GRC) and *Goodband v Charity Commission for England and Wales* [2024] UKFTT 111 (GRC).

⁹ “Charity Inquiry: The Captain Tom Foundation” (21 November 2024), <https://www.gov.uk/government/publications/charity-inquiry-the-captain-tom-foundation/charity-inquiry-the-captain-tom-foundation> [Accessed 28 January 2025].

¹⁰ Both quotes are taken from Jon Ironmonger, “Capt Tom’s family benefited from charity—inquiry”, (*BBC News*, 21 November 2024), <https://www.bbc.co.uk/news/articles/c86qdq67dd5o>.

¹¹ See <https://captaintom.org/> [Accessed 28 January 2025].

¹² *Re Lancaster Charities* (1860) 3 LT 582.

“on behalf of the Captain Tom Foundation”. As a result, the promotional materials for the awards ceremony featured the Foundation’s branding and logo. For her work, Mrs Ingram-Moore was paid £18,000 and the Foundation was paid £2,000. The unconflicted trustees did not find out about the details of Mrs Ingram-Moore’s agreement until the following year. The Charity Commission concluded that this created a conflict of interest which was not adequately managed and led to an unauthorised payment being made directly to Mrs Ingram-Moore and indirectly to Mr Ingram-Moore. This amounted to misconduct and/or mismanagement in the administration of the Foundation.

Issue 2: fundraising

Many charities rely on public generosity to carry out their work, but the law of charity fundraising is complex and not entirely free of difficulties.¹³ In this case, the Charity Commission identified three main areas of concern relating to the Foundation’s online shop, Captain Tom-themed alcohol, and Captain Tom-related books.

The first concern relates to the Captain Tom Foundation online store, which was live from April 2021 until early 2022. The online store was hosted by CTV (2020) Ltd, a company which Mr and Mrs Ingram-Moore controlled. The store sold some products directly and also provided links to third-party websites where other Captain Tom-branded goods could be purchased. The Foundation received 15% of the merchandise sales through the store but potentially nothing from third-party sales. The Charity Commission found that the trustees had mismanaged the Foundation by failing adequately to distinguish the Foundation’s fundraising from the store’s profit-making activities, and by failing to make it clear to the public exactly how much the Foundation would benefit from each product.

The second concern relates to the decision in November 2020 to sell two Captain Tom-themed gins made by Otterback Distillery. The Foundation had a written agreement with the Distillery for the regular Captain Tom gin. However, the non-conflicted trustees were not aware of the limited-edition Captain Tom gin because the contract had been negotiated orally by a consultant on behalf of the Foundation rather than by the trustees. The Charity Commission found that these acts amounted to mismanagement in the administration of the Foundation.

The third concern relates to the books which were published in association with Captain Tom’s name. On 13 May 2020, Club Nook Ltd signed a publishing agreement with Penguin Books under which Club Nook Ltd would receive £1.5 million as an advance on four books bearing Captain Tom’s name.¹⁴ The day after the deal was signed, a press release on the Foundation’s website, now deleted, said that two of the “books will support the launch of his [i.e. Captain Tom’s] newly formed charity”. The website also included a quote from Captain Tom that he was “so looking forward to sharing [his] autobiography with you which will help launch [his] new Foundation”.¹⁵ Similarly, in the prologue to the first book, *Tomorrow Will Be A Good Day*, Captain Tom said “with the offer to write this memoir I have... been given the chance to raise even more money for the charitable foundation now established in my name”. The Charity Commission concluded based on information from the publishers, literary agents, and unconflicted trustees that Mr and Mrs Ingram-Moore had represented that they would use the substantial advance to make a donation to the Foundation. However, they never did, even when prompted by the Charity Commission. Mr and Mrs Ingram-Moore justified their stance by arguing that the Foundation benefited indirectly from the free media publicity generated by the books. The Charity Commission accepted that this position may have been legitimate if Mr and Mrs Ingram-Moore had been more careful to explain that the books would

¹³ E.g. P. Luxton, “Control of fund-raising for charitable institutions: the new law. Part I” (1992) *Charity Law & Practice Review* 147–148.

¹⁴ In the end, only three books were published—*Tomorrow Will Be A Good Day* (Penguin Books, 2020), *One Hundred Steps: The Story of Captain Sir Tom Moore* (Penguin Books, 2020), and *Captain Tom’s Life Lessons* (Penguin Books, 2021)—and the advance to Club Nook Ltd was reduced to £1,466,667.

¹⁵ More generally, the Foundation’s 2021 annual report said, “[t]he Trustees continue to be the recipients of all future income generated from a variety of different sources, all of which have been inspired by Captain Sir Tom Moore”.

not benefit the Foundation directly. Furthermore, as Mr and Mrs Ingram-Moore were not trustees of the Foundation in May 2020, the Charity Commission could not make any findings of misconduct. Nevertheless, the Charity Commission concluded that their actions were likely to have damaged the reputation of and trust and confidence in the Foundation and charities generally.

Unfortunately, the book troubles did not end there. On 11 June 2021, two publishing agreements were signed relating to a fourth book entitled *One Hundred Reasons to Hope*. Under the first agreement, Penguin Books provided an advance of £30,000 to Club Nook Ltd in return for Mrs Ingram-Moore writing the introduction to the book. Under the second agreement, the Foundation granted Penguin Books a non-exclusive licence to use Captain Tom's name in connection with the book and in return the Foundation received £1 for every book sold (£17,682 in total). The Charity Commission criticised Mr Ingram-Moore for failing to manage his conflict of interest as trustee under the first agreement and criticised Mrs Ingram-Moore for purporting to sign the second agreement on behalf of the Foundation at a time when she was neither a trustee nor interim CEO.

Issue 3: intellectual property

As explained above, Captain Tom's intellectual property rights were managed by Mr and Mrs Ingram-Moore through the Family Trust and Club Nook Ltd. This gave rise to a general concern and a specific concern.

Starting with the general concern, on the day the Foundation was registered, the Charity Commission advised the trustees to ensure that appropriate written agreements were in place between the Foundation and any non-charitable partners. This advice expressly referred to relationships between the Foundation and the Ingram-Moore family in relation to Captain Tom's intellectual property rights. However, the Foundation only ever agreed an oral licence to use Captain Tom's intellectual property rights for "philanthropic purposes". This meant that the trustees could not be certain whether their future plans would fall within the scope of the oral licence without first seeking the permission of Club Nook Ltd. Furthermore, the Ingram-Moore family believed that they could terminate the licence at any time. This substantially limited what the Foundation could do with the intellectual property rights. Surprisingly, these points were not noticed by the lawyers and fundraising professionals who advised the trustees in 2020. As a result, the Charity Commission was not as critical of the trustees on these issues.

The specific concern relates to the proposed "Captain Tom Foundation Building". In August 2021, Mr and Mrs Ingram-Moore used the Foundation's name in an application for planning permission in relation to their home for the "erection of detached single-story building for use by occupiers of the Old Rectory and The Captain Tom Foundation".¹⁶ At that time, Mrs Ingram-Moore was interim CEO of the Foundation and Mr Ingram-Moore was a trustee. The Design and Access and Heritage Statement said "[t]he land and buildings are proposed to be used as home office space... together with charitable uses in connection with The Captain Tom Foundation". Central Bedfordshire Council granted planning permission in November 2021. The report of the Planning Officer, Ms Sarah Fortune, placed considerable weight on the connection to the Foundation when deciding whether the location and the size of the proposed building were appropriate. However, Mr and Mrs Ingram-Moore had submitted this application without the knowledge or approval of the Foundation. By early 2021, Mr and Mrs Ingram-Moore had started to construct a larger building than originally planned. In February 2022, they submitted a retrospective and revised planning application which did not refer to the Captain Tom Foundation anymore and which added a spa/pool facility.¹⁷ That application was refused, and the Council issued a demolition notice, which Mr and Mrs

¹⁶ The planning documents are available on the Central Bedfordshire Council planning website under application CB/21/03877/FULL.

¹⁷ The planning documents are available on the Central Bedfordshire Council planning website under application CB/22/00805/FULL. The only indirect reference to the Foundation is a letter dated 20 April 2022, which refers to the new building being used for "interviews, and charity functions" at the end of a list of non-charitable uses.

Ingram-Moore unsuccessfully appealed.¹⁸ The building was duly demolished in February 2024. This episode generated substantial negative press for the Foundation. Mr and Mrs Ingram-Moore said that they included the Foundation’s name in the original planning application in error at a time when they were very busy. Nevertheless, the Charity Commission concluded that the failure to consider the impact of their actions on the Foundation was misconduct and/or mismanagement in the administration of the charity.

“Issues for the wider sector”

Unusually, the Report ends with over four pages of commentary on “the broader issues arising from the Commission’s assessment of the issues raised publicly that may have relevance for other charities”. The Charity Commission summarises the key principles relating to conflicts of interest, trustee benefits, fundraising, and intellectual property, and provides links to its existing publications on the first three topics.¹⁹

Some arguments in favour of Mr and Mrs Ingram-Moore

Since the publication of the Report, commentary on Mr and Mrs Ingram-Moore has been almost universally negative. One notable exception to this is an interesting article by Ian MacQuillin in *Third Sector*.²⁰ Mr MacQuillin makes two overarching points.

First, the Charity Commission’s conclusion that Mr and Mrs Ingram-Moore’s conduct “has seriously damaged the reputation of the charity” may be overstated. Most of the negative coverage is directed at Mr and Mrs Ingram-Moore, rather than the Foundation or charities generally. And their situation was unique. In the middle of the first lockdown, in the space of one week, Captain Tom personally became a national fundraising brand. It is difficult to see how such an explosion into the charity sector could ever be repeated. Even if there are points of principle which are relevant to other charities, there is empirical research in New Zealand which shows that the public’s trust in charities is surprisingly resilient.²¹

Second, the treatment of Mr and Mrs Ingram-Moore in the media is harsh. Mr and Mrs Ingram-Moore were new to the charity sector. They found themselves unexpectedly involved in the creation of a new and high-profile organisation with limited volunteers during an unprecedented national lockdown. Instead of taking these factors into account and presenting both sides of the story, most media outlets have described a binary division between an innocent victim (charity) and a “villain” (Mr and Mrs Ingram-Moore).

If one wanted to continue Mr MacQuillin’s list and defend Mr and Mrs Ingram-Moore, one could make five additional points.

Third, much of the charitable work associated with Captain Tom’s name could not be criticised. In particular:

- All of the c.£39 million which Captain Tom raised during the first lockdown was transferred to the Association of NHS Charities. There was never any suggestion of wrongdoing in relation to this money.
- Before the statutory inquiry was even opened, the Foundation had satisfied the Charity Commission that the payments which initially sparked public interest in the management

¹⁸ Decision APP/P0240/C/23/3319582 of the Planning Inspectorate dated 7 November 2023.

¹⁹ E.g. CC29 on conflicts of interest, CC11 on trustee benefits, and CC20 on charity fundraising (respectively).

²⁰ Ian MacQuillin, “The villains and victims of the Captain Tom saga” (26 November 2024), <https://www.thirdsector.co.uk/ian-macquillin-villains-victims-captain-tom-saga/fundraising/article/1897587> [Accessed 28 January 2025].

²¹ Similarly, the Charity Commission’s 2024 report into public trust in charities found that “negative stories tended to lead to some distrust in charities, but, particularly for those with lower knowledge of the Charity Commission, distrust in the media muted this impact. There was agreement that the media often sensationalises stories and only picks the negative cases, saying ‘good news doesn’t sell stories’”: <https://www.gov.uk/government/publications/research-into-public-trust-in-charities-and-trustees-experience-of-their-role-2024/public-trust-in-charities-2024> [Accessed 28 January 2025].

of the Foundation were reasonable reimbursements for expenses for which conflicts of interest had been adequately identified and managed.

- The Report mentioned that the Foundation had appropriate fundraising agreements in place for the Captain Tom Roses, which raised £33,750 for the Foundation, and the Captain Tom regular gin, which raised £8,960 for the Foundation.

Fourth, some of the fundraising-related criticisms made of the trustees concerned acts which were arguably primarily the responsibility of third-party commercial participators. The Charity Commission was critical of the content of the online store, which was run by a commercial participator called CTV (2020) Ltd. The Charity Commission concluded that there was mismanagement in the administration of the Foundation because “the store was linked to the charity’s own website and as such the trustees should have ensured that its content met any requirements under charity law and the Code [of Fundraising Practice]”. This conclusion arguably punishes the wrong people. Similarly, the Charity Commission was concerned that the Foundation did not have the required written agreement with Otterbeck Distillery, a commercial participator, for the limited-edition Captain Tom gin. However, technically, s.59 of the Charities Act 1992 only imposes these obligations on the commercial participator, and not the charity or its trustees (although it is clearly desirable for a charity to insist on compliance). Furthermore, the Foundation received 25% of the sale proceeds of the 21 bottles of limited-edition Captain Tom gin that were sold. Given that the primary duty was on Otterbeck Distillery and no loss was suffered by the Foundation, it seems harsh to say that this amounted to misconduct.

Fifth, it is arguable that the Charity Commission assumed that Mrs Ingram-Moore was at all times subject to the full range of fiduciary duties which bind charity trustees. However, as the Report acknowledges, “Mrs Ingram-Moore’s... conduct... fell into the period when she was either the CEO or did not hold a formal position in the charity”. Generally, prospective trustees,²² former trustees,²³ employees,²⁴ and CEOs do not automatically owe fiduciary duties to a charitable company, even if they are the “public face” of the charity.²⁵ It is of course possible to prove on the facts that such a person was a fiduciary,²⁶ but the Report does not include a detailed analysis of this issue.²⁷ It is highly likely that members of *the public* assumed that Mrs Ingram-Moore was acting on behalf of the Foundation,²⁸ but the imposition of fiduciary duties is based on what *the Foundation* could reasonably expect from Mrs Ingram-Moore. It is quite possible that Mrs Ingram-Moore was in a fiduciary position as CEO, but this was not explicitly discussed in the Report.

Sixth, the Charity Commission’s criticisms of Mrs Ingram-Moore’s salary as interim CEO of the Foundation are arguably a little harsh. Generally, charities must be able to offer competitive salaries to attract the right people.²⁹ Clearly, Mrs Ingram-Moore was in a unique position to draw donations to a Foundation which was set up to honour her father. Indeed, the Foundation’s articles of association expressly distinguished “Family Trustees” (i.e. trustees who are descended from Captain Tom) from unrelated trustees. Specifically, it is harsh to criticise Mrs Ingram-Moore for saying publicly that she was “not offered” a “six figure salary” solely because she asked for such a salary. Mrs Ingram-Moore was paid

²² Cf. *Belsner v CAM Legal Services Ltd* [2022] EWCA Civ 1387; [2023] 1 W.L.R. 1043, at [72]–[81] per Sir Geoffrey Vos MR. See generally J. McGhee et al, *Snell’s Equity*, 35th edn (London: Sweet & Maxwell, 2024), para.7-016.

²³ *Re Boles and British Land Co’s Contract* [1902] 1 Ch. 244.

²⁴ *Ranson v Customer Systems Plc* [2012] EWCA Civ 841; [2012] I.R.L.R. 769.

²⁵ *Re Keeping Kids Co* [2021] EWHC 175 (Ch) at [167], [706] and [736] per Falk J.

²⁶ For the appropriate “test” to apply, see *Grimaldi v Chameleon Mining NL (No.2)* (2012) 200 FCR 296 at [117] per Finn J, cited in *Children’s Investment Fund Foundation (UK) v Attorney General* [2020] UKSC 33; [2022] A.C. 155, at [47] per Lady Arden.

²⁷ The subsection of the Report entitled “The roles of Mr and Mrs Ingram-Moore at the charity and how this changed over time” refers to three documents from 2020 and 2021 in which Mrs Ingram-Moore claimed that she was the “founder”, “face” and/or “leader” of the Foundation, but the Charity Commission does not reach any conclusions on this point.

²⁸ Liz Brownsell, “Captain Tom: where did the money go?” (7 February 2024), see <https://www.birketts.co.uk/legal-update/captain-tom-where-did-the-money-go/> [Accessed 28 January 2025].

²⁹ Dami Adewale, “Charity leaders criticise commission chief’s ‘tone deaf’ comments on senior pay”, see <https://www.thirdsector.co.uk/charity-leaders-criticise-commission-chiefs-tone-deaf-comments-senior-pay/governance/article/1903126> [Accessed 28 January 2025].

£85,000 pro rata for nine months, in accordance with art.8.1 of the Foundation’s articles of association and an order of the Charity Commission dated 16 August 2021. The fact that she had asked for more and been rebuffed is hardly relevant.

Seventh, whatever the merits of the conclusions in the Report, there can be no doubt that the two-and-a-half-year process must have taken a “serious toll” on Mr and Mrs Ingram-Moore, as they have suggested. The Charity Commission’s investigation also had a significant effect on the Foundation. The Foundation’s annual report for 2021–22 explains how the statutory inquiry substantially inhibited the Foundation from operating effectively. For example, all of the applicants for trustee withdrew from the process, the Foundation’s Captain Tom Day 2022 was cancelled, and the trustees felt unable to make further grants. As Liz Brownsell has eloquently written elsewhere:³⁰

“Investigations are time consuming and expensive, and high-profile cases are often sensationalised in the media. While headlines abound when something goes wrong, by the time the Commission concludes its inquiry, interest has usually waned, leaving only negative perceptions in the public mind. However, the consequences for individual trustees can be devastating.”

The arguments in support of the Report

Despite the above arguments, the impact which an inquiry might have on individual trustees cannot be used to stifle effective regulation by the Charity Commission. Furthermore, there were clearly matters relating to the management of the Foundation which needed investigating. In particular, it is submitted that the Report identified five important points which justified the statutory inquiry.

First, trustees must “walk the walk”. In 2020, the Foundation had all of the building blocks of an effective charity: reputable solicitors, trustee recruiters, and fundraising consultants, and various policies including a “conflicting interests” policy. However, the right advice and the right policies will only get you so far. What matters is how trustees act.

Second, this case is a good example of just how difficult it is to run a charity and a profit-making enterprise simultaneously using the same branding and/or intellectual property. Unless there are very clear rules, running two such organisations side by side can cause problems both for the trustees, the profit-making party and the public:

- As for trustees, it can be difficult to understand who has the ultimate decision-making power over particular issues. For example, Mrs Ingram-Moore signed contracts without authority and without the knowledge of the unconflicted trustees, and the trustees believed they needed to ask the permission of Club Nook Ltd to capitalise on the intellectual property rights over which the Foundation had a licence. This substantially affected the way in which the Foundation was run.
- As for the profit-making party, it can be all too easy to try to rely on the connection to the charity for personal gain. No better example can be given than Mr and Mrs Ingram-Moore’s reference to the Foundation to obtain planning permission for their home. This temptation puts the charity’s reputation at risk.
- As for the public, it can be very difficult to distinguish goods which are sold for personal profit and goods which are sold for the benefit of the Foundation. For example, three of the four books which were published in association with Captain Tom’s name were for private profit but the fourth resulted in donations to the Foundation. Customers can quite rightly feel misled if the distinction is not clear. This can damage the charity’s reputation.

³⁰ L. Brownsell, “Conflict of interest?” (2024) *New Law Journal* 12 (27 September 2024).

It is telling that in an interview with Piers Morgan in October 2023, Mr Ingram-Moore said that using Captain Tom’s name for the Foundation was “probably in hindsight... the wrong thing to do”.

Third, Mrs Ingram-Moore’s participation in the Virgin Media awards ceremony shows how and why the rules against private benefit are strict. The rule prohibits a fiduciary from obtaining “any [unauthorised] benefit or gain obtained or received by reason of or by use of his fiduciary position or of opportunity or knowledge resulting from it”.³¹ It does not matter that the fiduciary acted honestly, that the principal (e.g. the charity) could not have obtained the benefit for itself, or that the principal did not suffer a loss.³² In this case, the name of the awards ceremony, the promotional materials, and the awards themselves all mentioned the Foundation. Furthermore, the agreement which Mrs Ingram-Moore signed said that she was acting “on behalf of” the Foundation. It seems highly unlikely that Mrs Ingram-Moore would have been invited to present the awards ceremony if she was not associated with the Foundation. In those circumstances, assuming that Mrs Ingram-Moore was a fiduciary when acting as interim CEO, there can be little doubt that she breached her duties by accepting a payment which was nine times greater than the donation to the Foundation. This affected the Foundation not just financially but also reputationally.

Fourth, this case shows why it is so important for trustees to have clear written agreements relating to the charity’s assets. The Family Trust granted the Foundation an oral licence to use Captain Tom’s intellectual property for “philanthropic purposes”. This raised three problems. First, oral contracts are inherently riskier than written contracts.³³ Second, the word “philanthropic” is notoriously difficult to define.³⁴ Third, this dual layer of uncertainty limited how the Foundation could use its assets. For example, the trustees admitted that they would even need to ask Club Nook Ltd whether the Foundation was permitted to sell basic items like a mug printed with the Foundation’s name on it.

Fifth, this case is a good example of why those representing charities should think carefully about public media appearances. As Jeremy Vine put it, “every attempt by the family to explain themselves seemed to make it worse”.³⁵ For example, in October 2023, Mr and Mrs Ingram-Moore were interviewed by Piers Morgan. The interview led to a number of negative articles in the press and criticism by the Charity Commission about how Mrs Ingram-Moore described her salary as interim CEO. Trustees who are considering giving an interview would be wise to apply the Charity Commission’s guidance on social media by analogy: “It is important to think about how your charity can use... media effectively to benefit your charity, the risks it may bring, and how you can manage those risks, including by acting reasonably and responsibly to protect your charity”.³⁶

Conclusion

With rising costs and demands for charitable services,³⁷ trust in the charitable sector is more important than ever. This need for trust “underscores the crucial role of robust and effective regulation in maintaining the health and integrity of [the charity] sector”.³⁸ In that context, it is unsurprising that the Charity Commission was concerned by the conduct of Mr and Mrs Ingram-Moore, which involved some obvious misconduct and led to a vast amount of negative publicity about a high-profile charity.

³¹ *Chan (Kak Loui) v Zacharia* [1984] HCA 36, at [24]; *Chan (Kak Loui) v Zacharia* (1984) 154 C.L.R. 178, 199 per Deane J, approved in *FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45; [2015] A.C. 250, at [45] per Lord Neuberger.

³² E.g. *Regal (Hastings) Ltd v Gulliver* [1967] 2 A.C. 134.

³³ E.g. *Barton v Morris* [2023] UKSC 3; [2023] A.C. 684, at [13] per Lady Rose.

³⁴ *Re Macduff* [1896] 2 Ch. 451, 464 per Lindley LJ and 470 per Rigby LJ.

³⁵ Comments made in “Captain Tom: What Happened Next?”, a documentary broadcast on Channel 5 on 4 February 2024.

³⁶ Charities and social media” (18 September 2023), see <https://www.gov.uk/government/publications/charities-and-social-media/charities-and-social-media> [Accessed 28 January 2025].

³⁷ E.g. “How to protect your charity as the sector continues to face financial pressures” (23 September 2024), <https://charitycommission.blog.gov.uk/2024/09/23/how-to-protect-your-charity-as-the-sector-continues-to-face-financial-pressures/> [Accessed 28 January 2025].

³⁸ “Charity Commission’s report on the Captain Tom Foundation: ACEVO’s statement” (21 November 2024), see <https://www.acevo.org.uk/2024/11/charity-commissions-report-on-the-captain-tom-foundation-acevos-statement/> [Accessed 28 January 2025].

Overall, while there are some arguments in defence of Mr and Mrs Ingram-Moore, this author respectfully agrees with many of the conclusions reached by the Charity Commission and shares the hope expressed by John Tribe that the Report “will help to maintain high standards from charity management, which in turn will help charities to function as they should”.³⁹

³⁹“Captain Tom Foundation report is a welcome reminder that charity is supposed to be solely for the public good” (27 November 2024), see <https://theconversation.com/captain-tom-foundation-report-is-a-welcome-reminder-that-charity-is-supposed-to-be-solely-for-the-public-good-244363> [Accessed 28 January 2025].