

Section 66 Inspectors' report

**Cabhru Housing Association Services
(CHAS)
Company Limited by Guarantee
(Registered Charity Number 20008543)**

Final Report

14th July 2021

Inspectors' Report

Cabhru Housing Association Services ("CHAS") (Registered Number 20008543)

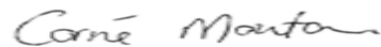
We have, in accordance with the provisions of Section 64 of the Charities Act 2009 carried out an investigation into the affairs of CHAS.

We hereby submit our report to the Charities Regulatory Authority in accordance with Section 66 of the Act.

Signed:



Thomas Mulholland
Inspector
The Charities Regulator



Corné Mouton
Inspector
Mazars

Dated: 14th July 2021

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1. Introduction

1.1 Background to the Report

1.1.1 Cabhru Housing Association Services ("CHAS" or "the Charity"), formerly known as the Catholic Housing Aid Society, provides independent living for elderly people in Dublin. The Charity was founded in December 1965 and became a Company Limited by Guarantee in June 2015. The Charity is directed by a voluntary Board and has a small number of staff.

1.1.2 The Charity was established to achieve the following primary objectives:

- To provide, with or without payment, houses, flats or other accommodation, food and shelter and other social and human amenities and comforts in life for:
 - aged, infirm and other deserving classes who are unable to provide for themselves or any persons who have been deprived of their places of abode by reasons of flooding, storm, tempest or act of God.
 - persons deprived of their places of abode by reasons of state of repairs, unsanitary conditions, generally unsuitability, demolition, ejection, unforeseen or unpreventable circumstances.
 - newly wedded couples on short-term lease until such time as they may be housed by the Local Authority or until such a time as they have saved or acquired a sufficient deposit to enable them to purchase their own homes.
- To relieve pain, suffering and general hardship of persons classified above.

1.1.3 The Powers of the (Directors of the) Charity include but are not limited to the following:

- To sell, manage, lease, mortgage, dispose of or otherwise deal with all or any part of the property of the association.
- To borrow and raise money in such a manner as the association may see fit.
- To undertake and execute any trusts or any agency business which may seem directly or indirectly conducive to any of the objectives of the association.
- To purchase, take on lease or exchange, hire or otherwise acquire any real and personal estate which may be deemed necessary or convenient for any purposes of the association.
- To provide a fund out of which money may be made available to such persons classified above by way of loan upon such terms and conditions as the association may decide to enable them to pay deposits on houses, flats or other living accommodation.

1.1.4 Per Part 6 of the Constitution of the Charity, "The Income and property of the Company shall be applied solely towards the promotion of the object(s) as set forth in this Constitution."

- 1.1.5 The Charity's details can be viewed on the Charities Regulators Register of Charities <https://www.charitiesregulator.ie/en/information-for-the-public/search-the-register-of-charities/charity-detail?srchstr=Cabhru®id=20008543>.
- 1.1.6 The latest filed audited accounts for the Charity relate to the year-end 31 December 2019. The Charity reported an operating surplus for 2019 of €291,635 (2018: €216,095) and Total Net Assets of €6,193,277 (2018: €6,165,762). During 2019, the average number of employees was 5 (2018: 4).
- 1.1.7 In January 2020, the Charities Regulator received an email from a journalist alleging that the former CEO of the Charity and a family member were potentially living in a housing unit owned by the Charity. Following this enquiry, the Charities Regulator was also made aware of various news articles published between October 2018 and December 2018 alleging that the Charity was moving out its elderly social housing tenants and renting the units to students instead.
- 1.1.8 The Charities Regulator promptly wrote to the Charity requesting a response to the allegations raised. The Charity responded stating that a report would be provided on these matters to the Charities Regulator.
- 1.1.9 Having considered the information provided to the Charities Regulator by the Charity, as well as discussions with the Housing Agency and Dublin City Council during the period February to March 2020, the Compliance Unit of the Charities Regulator determined that a statutory investigation was warranted due to the serious nature of the concerns raised and recommended appointing an inspector or inspectors, as provided for in Section 64 of the Act, to investigate the affairs of the charity and to report to the Authority in accordance with Section 66 of the Act. .
- 1.1.10 On 2 April 2020, the Charities Regulator appointed two Inspectors: Mr. Cornè Mouton from Mazars and Mr Thomas Mulholland, Director of Compliance and Enforcement with the Charities Regulator, pursuant to section 64 of the Charities Act 2009 ("the Act"), in order to investigate the affairs of the Charity and to prepare a report thereon.
- 1.1.11 On 22 April 2020, a formal letter was issued to the Charity to produce documentation pursuant to section 65 (1) (a) of the Charities Act 2009.

1.2 Basis of the Report

- 1.2.1 This Report is based on investigation work undertaken in the period commencing April 2020 to December 2020. This report includes investigation findings in respect of issues and matters arising from 1st January 2017 to the commencement of the investigation.

The factual findings have been made in the context of these periods and have not been adjusted to take account of any matters arising in subsequent periods.

- 1.2.2 The investigation giving rise to this Report included:

(a) Establishing relevant facts in respect of all matters specific to concerns raised in relation to the private use of charitable assets or funds. This included a specific focus on ascertaining the timelines involved, the nature of the use of charitable assets or funds, any evidence of authorisation and

approval, including any involvement of the Board, management and/or staff and the methods used to obtain use of charitable assets or funds;

(b) Establishing relevant facts in respect of all matters specific to concerns raised in relation to the use of social housing units owned by the Charity used for the purpose of recording an address for company filing records which are not related to the Charity.

(c) Reviewing governance processes operated by the Board with a specific focus on financial governance practices (evidenced by way of agendas, minutes and reporting to the Board), and reviewing the extent to which the Board applied good governance practices in respect of the concerns raised in relation to the use of charitable assets or funds and the process with respect to moving out of elderly social-housing tenants and renting the same units out to students.

(d) Reviewing the internal report prepared by the Charity in respect of the concerns raised.

1.3 Investigation Process

1.3.1 The investigation process, which this Report reflects, was commenced in April 2020. This followed on from the issuing of our letter to the Charity of 14th April 2020 requesting the nomination of an official, 'nominated liaison(s)', to act as a point of contact for the inspectors and the issuing of our letter to the Charity of 22nd April 2020 which set out a description of the purpose of the investigation and a listing of information requested to be produced pursuant to section 65 (1) (a) of the Charities Act 2009 by the 7th May 2020.

1.3.2 The investigation process included (but was not limited to) the following:

- Requesting detailed information and documentation from the Charity relating to its affairs for the period under review.
- Obtaining and examining detailed documentation and information necessary for the purposes of the investigation, which included (but was not limited to) correspondence, memoranda, minutes, invoices, internal and external reports, e-mails, records, external data (e.g. CRO, google etc.) and notes.
- Performing searches of securely obtained electronic data and information provided by the Charity with respect to the information requested.
- Interviews with a total of eleven (11) individuals who were identified as either present or past Charity employees, present or past members of the Board of Directors, and a friend of the Former CEO/Consultant's family, all of whom agreed to co-operate and attend for interview. Such individuals were identified by the inspectors as being of potential assistance to the Inspectors. Not all past employees or Directors were asked to attend for interview. Those who attended for individual interview are listed in the table below, including roles and titles used within the body of this report:

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No.	Role	Title used in the body of this report
1.	Current Chair of the Board Board Member (2017 to present)	Chairperson (Board Member 1)
2.	Staff Member - Finance Officer (2017 to present)	Finance Officer
3.	Former Board Member (2005 – 2018)	Board Member 4 - Former
4.	Staff Member - Tenant Officer (2015 to present)	Tenant Liaison Officer
5.	Vice-Chair of the Board Board Member (2012 to present)	Board Member 2
6.	Staff Member – Development Officer (2019 to present)	Development Officer
7.	Staff Member – Administrator and Company Secretary (2010 to present)	Administrator
8.	Deputy Chief Executive for Dublin City Council, Housing, Cleaning and Emergency Services	Deputy Chief Executive for Dublin City Council
9.	Current Chair of the Finance Committee Board Member (2017 to present)	Board Member 3
10.	Former CEO/Consultant (September 2016 to February 2020)	Former CEO/Consultant
11.	Friend of the Former CEO/Consultant's family	Friend of the Former CEO/Consultant's family

- Interviews were recorded by way of a Dictaphone at each Investigation interview meeting. The recordings were then sent by secure means to confidential typists who transcribed the interview and transmitted same to the Inspectors by secure means. A copy of each interview transcript was circulated to those who attended for interview and an opportunity was provided to those individuals for further comment based upon the transcript of the meeting.
- At all times, the Investigation was performed with regard to relevant legal principles and the requirements of fair procedure, including due process and natural justice.
- At all times, the Inspectors retained sole control of the procedures and processes of the Investigation and were the final decision-makers on all matters of procedure relating to the Investigation.
- Preliminary reporting in line with fair procedures, included the circulation of draft findings to those who may be subject to adverse findings.

1.4 This Report

- 1.4.1 This Report is confidential and has been prepared solely for the Charities Regulator as per section 66(1) of the Act. We acknowledge the right of the Charities Regulator as per section 66(3) of the Act to publish this report in such manner as it considers appropriate and to furnish a copy of the report, if it considers it appropriate, to those listed in section 66(3) of the Act. We reserve the right to amend the layout, observations and conclusions set out in this report, prior to any submission in any potential legal proceedings.
- 1.4.2 This report is based on work carried out and on information provided to us to date. As new information may be made available in the future, we reserve the right to review and update our observations and conclusions as necessary.

2. Summary of Findings

In summary the inspectors found:

2.1 In respect of the two apartments (No. 74 Father Scully House and No. 21 McSweeney House), the Inspectors concluded as follows:

- 2.1.1 There appears to have been an agreed arrangement in place between the Former CEO/Consultant and the Board of the Charity that facilitated the use of these vacant apartments for office purposes and/or occasional overnight stays by the Former CEO/Consultant; this arrangement was made on the basis that it should not prevent occupation by valid tenants, and that the Former CEO/Consultant had to commute to / from County Down.
- 2.1.2 A formal procedure for assessment of the requirement to use these two apartments for office purposes and/or occasional overnight stays, and formal approval by the Board did not take place, although some Board members did confirm awareness of the arrangement.
- 2.1.3 A review of utility bills and costs relating to these apartments confirmed the likely use of the units for day to day office purposes and/or occasional overnight stays by the Former CEO/Consultant.

2.2 In respect of apartment No. 5 McSweeney House, the Inspectors concluded as follows:

- 2.2.1 The Former CEO/Consultant stated at interview that he was allocated this apartment on the same basis as per the arrangement in place for his use of previous vacant apartments but never used it.
- 2.2.2 A formal procedure for assessment of the requirement to use this apartment for office purposes and/or occasional overnight stays, and formal approval by the Board did not take place.
- 2.2.3 A review of utility bills and costs relating to this apartment confirmed a higher than expected usage of the apartment, likely in excess of what would have been the case for day to day office purposes and/or occasional overnight stays by the Former CEO/Consultant.
- 2.2.4 The Friend of the Former CEO/Consultant's family did stay overnight in the apartment on at least one occasion and was observed being present in and using the apartment; the Board was not aware of this arrangement and did not give approval for it.
- 2.2.5 The staff of the Charity, upon becoming concerned about the potential private / unauthorised use of the apartment, notified the Board and the Board took prompt action.

2.3 Based on a review of the company information relating to Project Implementation Limited, the Inspectors concluded that:

- 2.3.1 The use of an address relating to a housing unit owned by the Charity for the purpose of registering and/or operating a company not related to the Charity, was inappropriate.
- 2.3.2 While the accountants of Project Implementation Limited may have managed the submission of documents to the Companies Registration Office, the onus is on company officers to ensure that the address details used for directors and company officers are correctly listed.

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2.3.3 The address of the unit owned by the Charity was most likely used as a practical measure for the Former CEO/Consultant to receive company information in a timely manner at his place of work.

2.3.4 At the time of drafting our observations, the address of the unit owned by the Charity was removed from the records of Project Implementation Limited in the Companies Registration Office.

2.4 Based on a review of the company information relating to Foras Voluntary Housing Association clg, the Inspectors concluded that:

2.4.1 The use of an address relating to a housing unit owned by the Charity for the purpose of registering and/or operating a company not related to the Charity, was inappropriate.

2.4.2 While the accountants of the companies may have managed the submission of documents to the Companies Registration Office, the onus is on company officers to ensure that the address details used for directors and company officers are correctly listed.

2.4.3 The Inspectors have confirmed that a member of the Former CEO/Consultant's family is a Director of Foras Voluntary Housing Association clg.

2.4.4 At the time of drafting our observations, the address of a unit owned by the Charity continues to be listed as the address of one of the directors of Foras Voluntary Housing Association clg, but that company has applied to be voluntarily struck off the Register of Companies in the Companies Registration Office.

2.5 In respect of the renting of the Charity's accommodation units to students, and commercial letting arrangements, the Inspectors found that:

2.5.1 While the Charity did facilitate short term renting agreements with students, this practice was put in place to ensure that some value was obtained from the Charity assets while the de-tenanting process was taking place for the purpose of re-developing McSweeney House.

2.5.2 No evidence was provided to suggest that existing tenants were removed from McSweeney House with a view to increase profits generated through student rentals.

2.5.3 The Board of the Charity approved the steps taken to progress the re-development of McSweeney House. At interview, the directors indicated that there was no overall strategic/development plan to track timelines, actions and resources required for the project, but a development plan dated April 2019 was subsequently presented to the Inspectors. Dublin City Council was however fully aware of the planned re-development and confirmed the funding authorisation in place.

2.5.4 The Board and Former CEO/Consultant of the Charity did not adequately secure the interests of the Charity by ensuring signed rental agreements were in place for the commercial letting to the student agency, and short-term lettings to students.

2.5.5 No evidence was provided to suggest that commercial rents and student rental income was not utilised for charitable purposes. However, while the Board have advised that the matter was discussed and approved at a Board meeting, this was not recorded in the minutes. There is no

record of the Board of the Charity having considered the implications of changing the use of an asset of the Charity from a charitable purpose to an income generation purpose.

- 2.5.6 The Inspectors noted that the Charity also has separate agreements in place for the commercial letting of a crèche space in Father Scully House, and a residential property bequeathed to the Charity. The Charity is currently reviewing these arrangements with a view to ensuring they remain in line with the Charity's objectives.

2.6 In respect of the Former CEO/Consultant's contractual position with the Charity, the Inspectors concluded as follows:

- 2.6.1 The Former CEO/Consultant was employed by Charity, initially to achieve stated objectives, but this role evolved over time into a full-time management role equivalent to that of a (interim) CEO either through his direct employment by the Charity or by engaging his services through his company.
- 2.6.2 No signed agreement was put in place between the Charity and the Former CEO/Consultant, despite numerous decisions regarding his role, remuneration and appointment being minuted during Board meetings.
- 2.6.3 The Charity did not initially seek advice regarding the Former CEO/Consultant's employment status and related taxation implications but have recently made an unprompted declaration to Revenue clarifying this status.
- 2.6.4 The engagement with the Former CEO/Consultant and his company ended in February 2020.

2.7 In respect of the internal report prepared by the Charity in respect of the concerns raised, the inspectors found that:

- 2.7.1 The Board carried out a preliminary enquiry into the concerns raised by the Charities Regulator but this was overtaken by the Charities Regulator's investigation.
- 2.7.2 In consequence the Charity did not proceed with the preparation of a formal report but merely noted actions taken.

3. Detail of Findings

3.1 Private Use of Charitable Assets or Funds

- 3.1.1 The Charities Regulator received a complaint during January 2020 alleging that the Former CEO/Consultant of the Charity and a family member were potentially living in a housing unit owned by the Charity.
- 3.1.2 The Inspectors sought to obtain information in respect of any housing units potentially being used for office purposes or for occasional overnight or permanent accommodation purposes by the Former CEO/Consultant or any family members of the Former CEO/Consultant, as alleged. The information obtained is set out below.

Apartment No. 74 Father Scully House and Apartment No. 21 McSweeney House

- 3.1.3 The Inspectors confirmed through interview with several Board members and the Former CEO/Consultant that an arrangement existed for the Former CEO/Consultant to initially use apartment No. 74 Father Scully House for day to day office purposes and/or occasional overnight stays. The Chairperson noted that the Former CEO/Consultant was *"commuting from Down and the office accommodation at that time, in 2016 into 2017, was not ideally suited for expanding, I am talking about a very small number of staff expanding, so he had no office space. So, I gather what happened is that he realised that there was an empty apartment available that he could use as an office because in his role, he would need some degree of privacy. So, then he discussed it with the then Chairperson... who saw no problem with it."*
- 3.1.4 The Inspectors were not presented with evidence of an explicit procedure followed for approval of this arrangement by the Board, or any criteria in terms of how 'occasional overnight stays' was defined but did note references to this arrangement in Board minutes. The Former CEO/Consultant during his interview also confirmed he had discussions and an agreement in respect of this arrangement with the former Chairperson and confirmed that he used the apartment for overnight stays 'perhaps three or four times'.
- 3.1.5 Apartment No. 74 Father Scully House was utilised by the Former CEO/Consultant at a time when it was vacant, and the Chairperson noted that *"it took quite a long time to get 99 units in Father Scully House occupied."* When a tenant was secured for apartment No. 74 Father Scully House during June 2017, the Former CEO/Consultant vacated the apartment and started using apartment No. 21 McSweeney House for similar purposes as previously agreed. At the time (in 2017), a decision had already been taken by the Board to re-develop McSweeney House (as noted elsewhere in this report), and a process of de-tenanting had started, resulting in vacant apartments not being filled with new tenants. The Inspectors confirmed that apartment No. 21 McSweeney House was indeed marked as vacant during this time.
- 3.1.6 This change by the Former CEO/Consultant from using apartment No. 74 Father Scully House to using apartment No. 21 McSweeney House, was also not subject to a formal approval procedure by the Board but is again noted in Board minutes which indicates awareness by Board members. Several Board members could not remember a discussion relating to this specific apartment, but it was stated by the Chairperson that *"from a pragmatic point of view, I don't think anybody would*

have any issue with somebody staying there occasionally." This statement was made on the basis that the apartment was vacant and not being required for tenants due to the de-tenanting process. The Former CEO/Consultant confirmed during interview that he stayed overnight in the apartment at No. 21 McSweeney House on a 'number of occasions'.

3.1.7 The Inspectors reviewed the utility bills for the period during which the Former CEO/Consultant utilised both apartments No. 74 Father Scully House and No. 21 McSweeney House for office purposes and/or occasional overnight stays. The utility bills were in line with what appeared to be an agreed arrangement at the time to utilise these apartments for office purposes and/or occasional overnight use.

3.1.8 In respect of these two apartments (No. 74 Father Scully House and No. 21 McSweeney House), the Inspectors concluded as follows:

- There appears to have been an agreed arrangement in place between the Former CEO/Consultant and the Board of the Charity that facilitated the use of these vacant apartments for office purposes and/or occasional overnight stays by the Former CEO/Consultant; this arrangement was made on the basis that it should not prevent occupation by valid tenants, and it arose due to the Former CEO/Consultant having to commute to / from County Down.
- A formal procedure for assessment of the requirement to use these two apartments for office purposes and/or occasional overnight stays, and formal approval by the Board did not take place, although some Board members did confirm awareness of the arrangement.
- A review of utility bills and costs relating to these apartments confirmed the likely use of the units for day to day office purposes and/or occasional overnight stays by the Former CEO/Consultant.

Apartment No. 5 McSweeney House

3.1.9 The Former CEO/Consultant stated at interview that apartment No. 5 McSweeney House was also vacant as part of the de-tenanting process, and the arrangement for its use was the same as for No. 21 McSweeney House i.e. office purposes and/or occasional overnight stays. However, the Former CEO/Consultant stated that he *"didn't need it then because my son by that stage had got himself a three-bed apartment in Swords and I was actually commuting back and forward to him"*. When asked at interview if he had used No. 5 McSweeney House at any time for office and/or overnight stay the Former CEO/Consultant stated *"I don't believe so"*

3.1.10 A number of matters were noted by the Inspectors in respect of this apartment, as follows:

3.1.11 Board members interviewed indicated that they were not aware of the use of this apartment for office purposes and/or occasional overnight stays, and Board awareness of the usage of this apartment was not noted in the Board minutes.

3.1.12 The Administrator noted during interview that it was their understanding that the arrangement that was in place for apartment No. 21 McSweeney House also applied to apartment No. 5 McSweeney House. The Administrator also noted that apartment No. 5 McSweeney House was the *"best equipped apartment in that building"* and that *"if he was going to be using No. 21 and No. 5 became available, it made sense that he was going to be moving to that... it was just a logical move"*.

- 3.1.13 The Development Officer of the Charity noted during interview that he was aware that the Former CEO/Consultant was using apartment No. 5 McSweeney House. He understood this was to reduce the Former CEO/Consultant's need to travel from Northern Ireland and that he used No. 5 McSweeney House to sleep in overnight as it was vacant. The Development Officer also stated that the Former CEO/Consultant had access to the keys of all the apartments, as did other staff of the Charity. He noted that *"All the keys for McSweeney House, they are held in Father Scully House, so we have one press with all the keys for Father Scully House, for McSweeney and other two properties, McGee and Nordell."*
- 3.1.14 The Development Officer recounted that he conducted a routine check on the electricity reading for apartments in McSweeney House during September or October of 2019. During this check, which is done at ground floor level, he heard noises coming from apartment No. 5 McSweeney House and knocked on the door. The door was opened by an unknown person (which he later identified during the 2019 Christmas party as a Friend of the Former CEO/Consultant's family). The apartment at the time was noted as vacant and the person who answered the door only mentioned that he should speak to the Former CEO/Consultant about him being there. The Development Officer said that he spoke to the Former CEO/Consultant about the interaction and that he was told it was a friend of the family and not to worry about it. The Development Officer confirmed that he also informed other staff members of this interaction (as confirmed in interview by the Administrator, Finance Officer and Tenant Liaison Officer), but there is no evidence that the matter was progressed further at this time. The Development Officer subsequently attended the Christmas party of the Charity during December 2019 and confirmed that the Friend of the Former CEO/Consultant's family also attended. It is noted that the Former CEO/Consultant did not recall the events as recounted by the Development Officer during September or October of 2019.
- 3.1.15 During the Christmas party of the Charity in December 2019, a number of staff members interacted with the Friend of the Former CEO/Consultant's family. Several staff members confirmed during interview that they became aware that he was the person first observed in apartment No. 5 McSweeney House by the Development Officer during the summer of 2019. One staff member also recounted that their spouse was talking to the Friend of the Former CEO/Consultant's family at the party, and that during this conversation, this person indicated that he was living in McSweeney House.
- 3.1.16 Based on interviews with staff members of the Charity, the Inspectors confirmed that the events at the Christmas party prompted discussions between the Administrator, Finance Officer and Tenant Liaison Officer, regarding potential personal use of an apartment owned by the Charity by the Friend of the Former CEO/Consultant's family, and the Administrator ultimately notified these concerns directly to the Chairperson in the 3rd week of January 2020.
- 3.1.17 The Charity reviewed the utility bills for apartment No. 5 McSweeney House for the period from September 2018 to January 2020 and confirmed to the Inspectors that the utilisation appeared higher than expected for day to day office use, and/or occasional overnight stays.
- 3.1.18 The Former CEO/Consultant during interview confirmed that in relation to the Friend of the Former CEO/Consultant's family and No. 21 McSweeney House, there were *"two occasions when he was in the flat, I don't know that he stayed overnight."* As is noted above, at interview the Former CEO/Consultant stated that he was allocated No. 5 McSweeney House but never used it and had no recollection of being informed that someone was using the apartment.

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- 3.1.19 The Friend of the Former CEO/Consultant's family noted during interview with the Inspectors that he does recall the interaction with the Development Officer during the summer of 2019 in McSweeney House, and that *"As far as I can remember, I think I was getting a lift from (the Former CEO/Consultant). I can't remember if it was, I got a lift the night before and stayed with him the night, or if I was getting the lift that afternoon"*. He also confirmed that he did stay in or visit McSweeney House with the Former CEO/Consultant *"Only a handful of times. Less than.... Less than two or three in a space of a couple of months"* and in terms of occasions where he stayed overnight in McSweeney House, he noted *"I wouldn't be able to put a number on it. It's very small though."* He further clarified that he did interact with Charity staff at the Christmas party of the Charity during December 2019, and noted that he said to a staff member *"I live in the North but I have on occasion stayed with (the Former CEO/Consultant) in McSweeney"*.
- 3.1.20 The Chairperson confirmed during interview that the Former CEO/Consultant was asked about his usage of the McSweeney House apartments at a meeting with the Housing Director of Dublin City Council, where the Chairperson stated *"the questions asked was "Have you every stayed in Berkeley Road?" and he said no." "I knew straight away, this is serious. If he had said "Look, I do occasionally stay there". If he had been straight up, but the fact that he denied it meant that this was a very serious issue"*. The Deputy Chief Executive for Dublin City Council also confirmed to the Inspectors that *"every time we raised that (allegations that the Former CEO/Consultant had been staying in McSweeney House) with (the Former CEO/Consultant), he said no, that there was no case of that, that he didn't stay there"*.
- 3.1.21 The Chairperson subsequently informed other Board members of these events and ultimately the Charities Regulator.
- 3.1.22 It is noted by the Inspectors that the Former CEO/Consultant disputes what was said at the meeting with Dublin City Council, and stated that *"I said I was not using them as a place I lived in, I did not live in them at any point"*.
- 3.1.23 During a review of office documentation, the Charity discovered correspondence from the Luas company addressed to the Friend of the Former CEO/Consultant's family at McSweeney House. The Friend of the Former CEO/Consultant's family confirmed to Inspectors in interview that he gave this address to the Luas company as they had *"pushed for an address in the Republic"* and that he had the Former CEO/Consultant's consent to do so.
- 3.1.24 In respect of apartment No. 5 McSweeney House, the Inspectors concluded as follows:
- The Former CEO/Consultant stated at interview that he was allocated this apartment on the same basis as per the arrangement in place for his use of previous vacant apartments but never used it.
 - A formal procedure for assessment of the requirement to use this apartment for office purposes and/or occasional overnight stays, and formal approval by the Board did not take place.
 - A review of utility bills and costs relating to this apartment confirmed a higher than expected usage of the apartment, likely in excess of what would have been the case for day to day office purposes and/or occasional overnight stays by the Former CEO/Consultant.

- The Friend of the Former CEO/Consultant's family did stay overnight in the apartment on at least one occasion and was observed being present in and using the apartment; the Board was not aware of this arrangement and did not give approval for it.
- The staff of the Charity, upon becoming concerned about the potential private / unauthorised use of the apartment, notified the Board and the Board took prompt action.

3.2 Use of Charity Addresses for Company Filing Records

3.2.1 The Charity confirmed at the commencement of the investigation they had identified through their own enquiries that the son of the Former CEO/Consultant of the Charity had used the address of Apartment No. 74 Father Scully House, which is owned by the Charity, as his residential address for the purposes of company filing records relating to a company connected to the Former CEO/Consultant.

3.2.2 The Inspectors obtained the company filing documents in respect of the company (Project Implementation Limited), and confirmed the following:

- Project Implementation Limited was set up on 30th January 2017. As part of the company filing documents when setting up the company, an 'A1 – application to incorporate a company' was completed which listed the son of the Former CEO/Consultant as the Company Secretary. The address listed for this person was No. 74 Father Scully House, Middle Gardiner Street, Dublin 1. The Inspectors confirmed through interview with the Former CEO/Consultant that the Company Secretary is the son of the Former CEO/Consultant.
- This address remained unchanged as the address for the Company Secretary on the company filings for the following documents:
 - B1 Annual Return to July 2017
 - B1 Annual Return to July 2018
 - B1 Annual Return to September 2018
 - B1 Annual Return to September 2019
- In January 2020 a B10 was filed and the address of the Company Secretary was updated, with the address of Apartment No. 74 Father Scully House then removed as part of the records for Project Implementation Limited.

3.2.3 There is no evidence that the son of the Former CEO/Consultant ever stayed at No. 74 Father Scully House.

3.2.4 The Former CEO/Consultant informed the Inspectors during the interview process of the following with respect to his understanding about his son having used a social housing address of the charity for company filing records:

“Just for clarification, I want to say that the position was (our accountants), (name person of the accountants). They were responsible for setting up the company and the address that they had for me, because my work address was No. 74 Fr. Scully House, as we have discussed earlier, that's the flat that I was using as my office.”

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“So, they were sending me documents to that address. They knew because my son at that stage was a contractor, he works in the banking industry. He was a contractor as well and they were doing his – so they knew what his home address was, they just forgot to change the company – it says either the company’s address or the person’s address and the company’s address ultimately was (the accountants), so it was a mistake by the accountants.”

- 3.2.5 During the investigation process, the Charity submitted additional information related to this matter to the Inspectors in September 2020. The Charity advised that they had found an email prepared by the Former CEO/Consultant, addressed to the Director of Housing in Cavan Co. Council, wherein he described himself as the Development Agent for a company called Foras Voluntary Housing Association clg. Upon inspection of company filing records for this company, the Charity identified the use of another address belonging to the Charity for the purpose of company filing records.
- 3.2.6 In documents filed in the Companies Registration Office for Foras Voluntary Housing Association clg, a director for that company named as (named director) has listed 21 McSweeney House as his residential address. The Charity confirmed to the Inspectors that they have no knowledge or awareness of Foras Voluntary Housing Association clg or the named director.
- 3.2.7 The Inspectors obtained the company filing documents in respect of Foras Voluntary Housing Association clg, and confirmed the following:
- Foras Voluntary Housing Association clg was set up on 16th January 2009. The address 21 McSweeney House is listed as the address for (named director) as Director on the company filings for the following documents:
 - B10 – Commencement of Directorship – September 2017
 - B1 Annual Return to July 2018
 - B1 Annual Return to July 2019
- 3.2.8 The Former CEO/Consultant informed the Inspectors during the interview process that he is aware of Foras Voluntary Housing Association clg and the named director for whom the address of the Charity housing unit was used, that (the named director) *“was a board member of Foras Housing Association, which is based in Dundalk. It never traded and has now been taken off the list”*. The Former CEO/Consultant initially could not clarify to the Inspectors any reason as to why a social housing address belonging to the Charity, was recorded as part of the company filing records of Foras Voluntary Housing Association clg as the address for (a named director). The Former CEO/Consultant subsequently confirmed that one of his sons is also a Director of Foras Voluntary Housing Association clg. The Former CEO/Consultant confirmed that Foras Voluntary Housing Association clg was *“a housing association they wanted to form but it never traded, it’s never received any money, it’s never had a bank account.”*
- 3.2.9 Upon further enquiry during the interview, the Former CEO/Consultant stated that a possible reason for the address of No. 21 McSweeney House being used was *“Unless it was being sent to me at the time, I don’t know”* which the Inspectors understood to be a reference to receiving company documents from the accountants who were the appointed accountants for both Foras and Project Implementation Limited.
- 3.2.10 There is no evidence that (named director) of Foras Voluntary Housing Association clg ever stayed at No. 21 McSweeney House.

3.2.11 Based on a review of the company information relating to both Project Implementation Limited and Foras Voluntary Housing Association clg, the Inspectors concluded that:

- The use of addresses relating to housing units owned by the Charity for the purpose of registering and/or operating companies not related to the Charity, was inappropriate.
- While the accountants of the companies may have managed the submission of documents to the Companies Registration Office, the onus is on company officers to ensure that the address details used for directors and company officers are correctly listed.
- The addresses of the Charity were most likely used as a practical measure for the Former CEO/Consultant to receive company information in a timely manner at his place of work.
- At the time of drafting our observations, the Charity address was removed from the records of Project Implementation Limited, but the records of Foras Voluntary Housing Association clg had not been corrected. Foras Voluntary Housing Association clg has applied to be voluntarily struck off the Register of Companies in the Companies Registration Office.

3.3 De-Tenancing Process of McSweeney House and Short-Term Lettings to Students

3.3.1 The Charities Regulator was initially notified of a concern which was also the subject of media attention, alleging that the Charity had moved “*elderly social housing tenants, paying €238 per month out, and rented the flats to students for €800 per month*”.

3.3.2 As part of the Investigation process, the Inspectors sought to establish with the Charity the events that occurred in relation to moving out existing elderly tenants from McSweeney House and allowing students to utilise the property on short-term lettings.

3.3.3 The Inspectors also sought to review the governance processes operated by the Board, through review of minutes and Board reports, as well as interviews, to confirm the approval processes in place in relation to these matters.

3.3.4 Through discussion with Charity Directors and based on a review of Charity documents, the Inspectors confirmed that the Charity had embarked on a strategy to re-develop McSweeney House. Prior to the commencement of any re-development works, existing tenants that were living in McSweeney House would have to be relocated to suitable alternative accommodation. There are a total of 21 apartments in McSweeney House, the majority of which were occupied at the time of the decision to commence the de-tenancing process. This decision was approved by the Board of the Charity several years ago and the Inspectors confirmed that Dublin City Council was informed of the re-development plan and de-tenancing decision.

3.3.5 The redevelopment project required a number of steps to be followed including applying for funding through government sources, submitting planning applications, holding meetings with Dublin City Council with respect to the existing lease, procuring numerous services such as architects, design teams and building contractors.

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- 3.3.6 In order to confirm that these actions were adequately tracked and overseen by the Board of the Charity, the Inspectors sought to obtain a copy of a formal Strategic Plan / Development Plan for the project. The Charity advised that the idea for the project developed over time and while various documents were prepared and submitted to the relevant authorities, for example planning applications etc., at interview the Directors of the Charity indicated that there was no overall Strategic Plan/Development Plan in place for this project, however the Inspectors were subsequently presented with a development plan dated April 2019.
- 3.3.7 The de-tenanting process resulted in the Charity not filling apartments in McSweeney House that became vacant with new full-time tenants. The Charity advised that the de-tenanting process had been a challenging and lengthy process which spanned a number of years, as alternative / similar accommodation had to be found and agreed with a number of elderly tenants. A number of tenants were relocated to Father Scully House, while some tenants moved into accommodation made available by Dublin City Council.
- 3.3.8 The Charity has an existing commercial tenant at Father Scully House, a student agency which offers various student related services to international students coming to Ireland, including sourcing of accommodation. Through interview, Directors of the Charity informed the Inspectors that in early 2018, the Former CEO/Consultant suggested at a Board meeting that the Charity could fill some of the now vacant properties with students from this student agency on a short-term basis, which could generate some additional income for the Charity while the de-tenanting process continued. The Board approved this approach on a short-term basis due to the length of time the de-tenanting process was taking. Several Board members and staff of the Charity confirmed that consultation took place with existing tenants, to discuss and agree this approach.
- 3.3.9 The Charity was unable to provide a signed commercial lease agreement for the commercial letting of the space in Father Scully House to the student agency, or a signed short-term letting agreement between the Charity and the student agency for the purpose of letting accommodation to students. The Former CEO/Consultant at interview suggested that these documents may be in place, but the Inspectors confirmed with the Director of the student agency that these documents were not finalised or signed.
- 3.3.10 The initial rate per apartment to be paid by students appeared to be €800 per month which was then reduced to €400 per month – per the Charity this was due to the short nature of the rental period, the flexibility required by the Charity and the basic condition of some of the apartments.
- 3.3.11 McSweeney House has a total of 21 apartments. The Charity provided a schedule of occupancy for each of its properties, which set out when apartments were vacant or occupied. Based on occupancy analysis provided by the Charity and reviewed by the Inspectors, the number of units occupied by the Charity tenants, students and vacant apartments during 2018 to 2019 are set out below.

	2018		2019	
	January	December	August	December
No. of units occupied by Charity Tenants	17	11	9	6
No. of units occupied by students	0	7	8	5
Total no. units occupied	17	18	17	11
Total no. of units	21	21	21	21
Total no. of vacant Units	4	3	4	10

3.3.12 With respect to the income raised through the short-term lettings to students, the Inspectors confirmed that in excess of €115k was generated through this mechanism. While the audited financial statements do not specifically separate the income received from commercial activities, the Charity confirmed that all income raised through the commercial units and the income raised through student lettings was used for the purpose of charitable activities. The Inspectors found no evidence to the contrary.

3.3.13 In conclusion, the Inspectors found that:

- While the Charity did facilitate short term renting agreements with students, this practice was put in place to ensure that some value was obtained from the Charity assets while the de-tenanting process was taking place for the purpose of re-developing McSweeney House.
- No evidence was provided to suggest that existing tenants were removed from McSweeney House with a view to increase profits generated through student rentals.
- While the Board of the Charity approved the steps taken to progress the re-development of McSweeney House, at interview the Directors of the Charity indicated that there was no overall Strategic Plan/Development Plan in place for this project, however the Inspectors were subsequently presented with a development plan dated April 2019. Dublin City Council was however fully aware of the planned re-development and confirmed the funding authorisation in place.
- The Board and Former CEO/Consultant of the Charity did not adequately secure the interests of the Charity by ensuring signed rental agreements were in place for the commercial letting by the student agency, and short-term lettings by students. No consideration was given to the change of use of the assets of the Charity from a charitable purpose to an income generation purpose.
- No evidence was provided to suggest that commercial rents and student rental income was not utilised for charitable purposes.
- The Inspectors noted that the Charity also has separate agreements in place for the commercial letting of a crèche space in Father Scully House, and a residential property bequeathed to the Charity. The Charity is currently reviewing these arrangements with a view to ensuring they remain in line with the Charity's objectives.

3.4 Former CEO/Consultancy Contract

3.4.1 As part of the investigation process the Inspectors sought copies of documented roles and responsibilities and an employment contract and/or consultancy contract for the Former CEO/Consultant.

3.4.2 The Charity advised the Inspectors that the Former CEO/Consultant was initially engaged in July 2016 to provide consultancy services and that the arrangement with the Former CEO/Consultant and his company ended in February 2020. The Charity confirmed that no signed contract for either the role of former CEO or the role of consultant to the Charity was in place at any stage.

3.4.3 The Inspectors reviewed Board minutes from January 2017 onwards and noted the following with respect to the engagement:

- 11th January 2017 – Discussions were held in relation to recommendations from a consultant (i.e. the Former CEO/Consultant).
- 22nd March 2017 – A proposal received from the Former CEO/Consultant was discussed by the Board. The Board felt that the Former CEO/Consultant was proposing a temporary CEO position for himself.
- 25th April 2017 – Decision was made to progress with the Former CEO/Consultant's report and to progress registration with the Housing Agency.
- 18th May 2017 – The Board agreed to the appointment of the Former CEO/Consultant as an Interim CEO, tasked with progressing Regulatory Registration, as well as implementing certain restructuring tasks.
- 6th July 2017 – First Interim CEO Report was presented to the Board.
- 21st November 2017 – A CEO Interim Report was presented to the Board.
- 30th January 2018 – A CEO Interim Report was presented to the Board.

At the same meeting one of the Board members raised an issue in respect of the Former CEO/Consultant, querying as to whether he was an “an *acting CEO or a Consultant*” and that the “*the legal position should be clarified*”. Following this, the Board resolved that the Former CEO/Consultant be retained as temporary CEO. The CEO's remuneration was also discussed and agreed by the Board.

- 27th February 2018 - the Former CEO/Consultant referenced that his contract would expire in July 2018.
- 15th May 2018 – At a Finance Committee meeting, the Former CEO/Consultant presented his proposal for a new contract.
- 26th June 2018 – The Finance Committee presented a CEO contract to the Board for 3 days per week at a cost of €6,750 per month + VAT to the end of October 2018, but noted that a more robust contract was then needed. This contract was not signed.
- 23rd October 2018 – the Finance Committee extended the “*CEO's contract to 31st Jan.19.*” It was noted that professional advice was to be sought before expiry of this period.
- 12th February 2019 – the Board approved to extend the “*CEO contract until June 2019 with view to complete discussions by June 2019.*”

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- 19th March 2019 – the Board approved a new contract, stating that the Former CEO/Consultant was “engaged as consultant on full time basis for a 3-year period, with option to extend for further 2 years. Annual Cost of €90k plus VAT, including entitlement to 25 days annual leave and paid bank holidays.”
- 14th May 2019 – the Board approved a new contract for the Former CEO/Consultant, stating that he is “engaged as consultant on full time basis”.
- 10th December 2019 - CEO Annual Report 2019 presented
- 11th February 2020 – allegations against the Former CEO/Consultant were discussed. The Former CEO/Consultant was “prepared to resign if these issues were seen to be the cause of preventing progress with McSweeney House”.
- 1st March 2020 - CEO “relinquished his position with immediate effect on Friday 14th Feb”.

3.4.4 The Inspectors noted that, despite numerous decisions minuted by the Board in respect of the Former CEO/Consultant’s contractual position, a formally signed contract and performance review process was never put in place for this role. The role appears to have evolved from an initial ad-hoc engagement, to a part-time and later full-time engagement. Although draft contracts were prepared at various stages, these were never agreed and signed.

3.4.5 The Charity advised that the Former CEO/Consultant’s remuneration and role was benchmarked in November 2018 by an independent external 3rd party, and provided a copy of this 3rd party report to the Inspectors. The Charity also noted that the Former CEO/Consultant stated that “he stressed his wish not to be an employee. At the time it was believed that we did not wish to lose his services, but it was believed that by having a contract it gave flexibility to both parties and it avoided long term commitments”.

3.4.6 From a review of the fees / payments made to the Former CEO/Consultant all fees paid during the period under review were paid based on invoices received by the Charity from the Former CEO/Consultant.

The total fees paid were as follows:

Year	Total
2017	€ 50,300
2018	€ 97,056
2019	€ 108,854
2020 – (January only)	€ 9,225
Combined Total 2017 to Jan-2020	€ 265,435

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- 3.4.7 In 2017, the invoices received did not charge any VAT. From January 2018 onwards, VAT was included on the invoices. The invoices received up to August 2017 were from the Former CEO/Consultant directly. All subsequent invoices provided to the Charity were received from the Former CEO/Consultant's company Project Implementation Limited ("PIL").
- 3.4.8 The Inspectors noted that the Board did not seek advice or clarify whether the payment of the Former CEO/Consultant's fees should be on the basis of VAT invoices, or whether these should attract employment taxes. We understand that the Charity is currently reviewing these matters with a view to resolving the position with Revenue.
- 3.4.9 Subsequent to the interview process, the Charity provided a copy of an "Unprompted Qualifying Disclosure" submitted to Revenue on 16th October 2020. The disclosure to Revenue stated that the Former CEO/Consultant was appointed as interim CEO on 22nd May 2017 and that he should have been deemed an employee for payroll tax purposes under Schedule E for the period 22 May 2017 to 31 August 2017. PAYE taxes, and associated interest and penalties were returned to Revenue as part of this Unprompted Qualifying Disclosure.
- 3.4.10 The Charity also advised Revenue that from September 2017 to February 2020, the Charity engaged the Former CEO/Consultant's company (Project Implementation Limited), and that this engagement has now ceased.
- 3.4.11 During the interview process, Board members expressed different views as to whether the Former CEO/Consultant was referred to as the CEO, interim CEO or a contractor / consultant. All Board members confirmed that no agreement was signed between the Charity and the Former CEO/Consultant. The Former CEO/Consultant stated that he was acting as CEO and that no agreement was ever signed in this regard.
- 3.4.12 As part of the investigation process, the Inspectors sought to establish how the Former CEO/Consultant left the organisation. The Inspectors confirmed that there was a discussion between the Board and the Former CEO/Consultant regarding allegations in a number of newspaper articles, queries received by the Charities Regulator, and potential allegations raised by staff following the Christmas party in 2019. There is disagreement as to the exact content of that discussion, but ultimately the engagement with the Former CEO/Consultant and his company ended in February 2020.
- 3.4.13 The Charity advised that the Former CEO/Consultant sent an e-mail on 23rd February 2020 proposing a draft letter of resignation wherein he proposed to depart for health reasons. A copy of same was provided to the Inspectors. The Board agreed that, in the circumstances surrounding his departure, the Charity could not accept the proposed letter.
- 3.4.14 In respect of the Former CEO/Consultant's position with the Charity, the Inspectors concluded as follows:
- The Former CEO/Consultant was engaged by the Charity, initially to achieve stated objectives, but this role evolved into a full-time management role equivalent to that of a (interim) CEO either through his direct employment or by engaging his services through his company.

- No signed agreement was put in place between the Charity and the Former CEO/Consultant, despite numerous decisions regarding his role, remuneration and appointment being minuted during Board meetings.
- The Charity did not initially seek advice regarding the Former CEO/Consultant's employment status and the related taxation implications but they have recently made an unprompted declaration to Revenue.
- The engagement with the Former CEO/Consultant and his company ended in February 2020.

3.5 Internal Report Prepared by the Charity in Respect of the Concerns Raised

- 3.5.1 The inspectors were provided with an internal report prepared by the Charity in respect of the concerns raised. This was a three page document signed by the Chair of the Board dated 6th May 2020 which set out the order of events in respect of the concerns raised.
- 3.5.2 Two articles were published by a digital newsletter, the Dublin Inquirer, in December 2019 and January 2020 raising queries about the operations of the Charity and the Former CEO/Consultant.
- 3.5.3 In a letter to the Charity in January 2020 the Charities Regulator raised concerns that the Former CEO/Consultant and his son were currently or were previously living in accommodation owned by the Charity.
- 3.5.4 In January 2020 the Chair of the Board was contacted by a staff member who made him aware of staff concerns about the private use of one of the Charities apartments by a person connected with the Former CEO/Consultant.
- 3.5.5 Three members of the Board met in early February 2020 to discuss appropriate action. They then met with the Former CEO/Consultant who denied any knowledge of the occupancy of an apartment. The engagement with the Former CEO/Consultant and his company ended in February 2020.
- 3.5.6 The Board then briefed the Director of Housing in DCC of events who advised that in the circumstances the work on McSweeney house would have to be put on hold.
- 3.5.7 The Board met in February and agreed to engage an independent external investigator.
- 3.5.8 The Board then met with the Housing Regulator to update them on events and following that meeting engaged legal advisers to commence the process of engaging an external investigator.
- 3.5.9 When the Charities Regulator appointed Inspectors to investigate the affairs of the Charity the Charity "*regarded the function of conducting an independent investigation as effectively subsumed with the inspection process*" and in consequence did not proceed with the preparation of a report.

4. Conclusions

- 4.1 In respect of the two apartments (No. 74 Father Scully House and No. 21 McSweeney House), the Inspectors conclude, in the absence of a formal procedure for assessment and formal approval by the Board of the use of these two apartments for office purposes and/or occasional overnight stays, that the Charity did not operate in accordance with governance best practice.
- 4.2 In respect of apartment No. 5 McSweeney House, the Inspectors conclude, based on interview statements and an analysis of utility bills that this apartment was likely to have been used as a place of residence by the Former CEO/Consultant and/or a friend of his family, for a longer period than the single occasion that was admitted by the friend of the Former CEO/Consultant's family. The Inspectors note that once the Board was notified of the potential private / unauthorised use of the apartment, the Board took prompt action to ensure that such an event would not reoccur.
- 4.3 Based on a review of the company information filed in the Companies Registration Office relating to both Project Implementation Limited and Foras Voluntary Housing Association clg, the Inspectors concluded that the use of addresses relating to housing units owned by the Charity for the purpose of registering and/or operating companies not related to the Charity, was inappropriate.
- 4.4 In respect of the renting of the Charity's accommodation units to students, and commercial letting arrangements, the Inspectors found that the short term renting agreements with students did ensure that some value was obtained from the Charity assets while the de-tenancing process was taking place for the purpose of re-developing McSweeney House and that the Board of the Charity approved the steps taken to progress the re-development of McSweeney House. However the Board and Former CEO/Consultant of the Charity did not adequately secure the interests of the Charity by ensuring signed rental agreements were in place for the commercial letting by the student agency, and short-term lettings by students. This exposed the Charity to possible risks regarding the accommodation rights of the student tenants. The Inspectors conclude the Board did not implement suitable procedures to safeguard the Charity's assets in respect of these events. The Board of the Charity also did not give any consideration to the change of use of the assets of the Charity from a charitable purpose to an income generation purpose. Under the constitution of the Charity, "The Income and property of the Company shall be applied solely towards the promotion of the object(s) as set forth in this Constitution".
- 4.5 The Charity Trustees have a duty to carry out their functions with due skill and care in the best interests of the Charity. In respect of the Former CEO/Consultant's contractual/employment position with the Charity, the Inspectors concluded that the lack of an agreed contract and the lack of clarity regarding the position of the Former CEO/Consultant by the Board has created a potential financial liability for the Charity.