



Appeal Numbers: CA/2013/0006, CA/2013/0007 AND CA/2013/0008

**FIRST TIER TRIBUNAL (CHARITY)
GENERAL REGULATORY CHAMBER**

REMITTED FROM THE UPPER TRIBUNAL TAX AND CHANCERY CHAMBER JOINED APPEAL

BETWEEN

**STEPHEN BADDELEY
ELIZABETH BLOOR
DERWENT CAMPBELL
DAVID DURDAN
SIMON EMERY
GEOFFREY FAIRCLOUGH
MICHAEL LAUGHTON
CHRIS WATT
ANGELA LEWIS**

(the Trustees for the time being of the Recreation Ground, Bath)

**(1) JACK SPARROW
(2) ROSEMARY CARNE
(3) NIGEL WEBSPER
(4) THE CHARITY COMMISSION
FOR ENGLAND AND WALES**

Respondents

Sitting in public at Bristol Magistrates' Court on 8 February 2016

DIRECTIONS

UPON HEARING from all parties at a Case Management Hearing on 8 February 2016

AND UPON reviewing a draft Scheme ("Draft Scheme") prepared by the Appellant's Solicitors and a draft List of Issues ("List of Issues") as between the parties in respect of the proposed new Scheme for the charity known as "Bath Recreation Ground Trust"

IT IS DIRECTED as follows:

Mode and Length of Hearing

1. This matter is to be listed for an oral hearing in Bristol with a time estimate of one day on 8 June 2016, the parties having agreed their availability for this date.

The Scope of the Hearing

2. The issues for determination at the hearing are those issues listed in the List of Issues and appended to these Directions. For the avoidance of doubt, the hearing shall be solely concerned with determining the terms of a proposed new Scheme. In particular, to the extent that matters referred to in the 'Narrative' document and in Minutes of meetings between the parties held on 14 September 2015, 5 October 2015 and 9 November 2015 touch upon matters that are not the subject of the Draft Scheme, the hearing of this appeal shall not consider those other matters but shall be strictly confined to consideration of the terms of the Draft Scheme.
3. All skeleton arguments submitted for the hearing, and the contents of any oral evidence or oral submissions at the hearing, shall relate to the matters contained in the List of Issues only and no other matter.

List of Issues

4. The Respondents, and each of them, have confirmed the provisions in the Draft Scheme prepared by the Appellants with which they disagree is as appears in the List of Issues appended to these Directions. Each Respondent is directed to set out in writing their reasons for their disagreement in respect of each relevant provision in the Draft Scheme and add any provisions which they consider should be included in the Draft Scheme in a copy of the List of Issues (in the column in which their disagreement is noted) and shall send their amended copy to each of the other parties by 8 April 2016.
5. Tab 8 of the Case Management Hearing bundle (to be included in the Hearing Bundle – referred to in the appended Hearing Bundle Index as 'Draft Scheme (Text)' (differentiated by

colour)', sets out in blue typescript the Appellants' submission concerning the substantive changes required to the former Scheme flowing from the decision of the Upper Tribunal in setting aside the original decision of the Tribunal in this appeal. The Respondents, and each of them, are directed to focus on those aspects in complying with the direction set out at paragraph 4.

6. The said Tab 8 (to be included in the Hearing Bundle – referred to in the appended Hearing Bundle Index as 'Draft Scheme (Text) (differentiated by colour)', also sets out in green typescript the Appellants' submission that those provisions of the Draft Scheme were administrative matters within the powers of the Appellants, as trustees of the Charity, in any event. In complying with the direction set out in paragraph 4, the Respondents, and each of them, are directed to be mindful of the undoubted strength of that submission.

Bundle of Documents

7. By no less than 35 days before the hearing date, the Appellants shall provide the Respondents, and each of them, with a hard copy of the hearing bundle, prepared in accordance with the Hearing Bundle Index appended to these Directions. For the avoidance of doubt, the said Hearing Bundle shall be populated in full with the relevant dates and page numbers of the various documents by the Appellants in agreement with the Respondents and each of them before the consolidated Hearing Bundle is furnished to the Tribunal.

Witness Statements

8. No party indicated that it wished to call any witness evidence. Accordingly, no witness evidence may be called by any party.

Skeleton Arguments

9. The parties are directed to exchange Skeleton Arguments with the other parties no later than 21 days before the hearing. These shall be included in the consolidated bundle.
10. The contents of the Skeleton Arguments shall be strictly confined to arguments relating to the List of Issues and nothing else.

Bundle of Authorities and Statutory Materials

11. The parties are to use their best endeavours to agree a bundle of authorities and statutory materials ('the authorities bundle')
12. The Appellants shall prepare a first draft of the authorities bundle and serve same on the Respondents and each of them by no later than 14 days before the date of hearing.
13. The Respondents, and each of them, are to notify the Appellants whether there is any additional materials they wish to have included in the authorities bundle by no later than 10 days before the date of hearing.

14. No party may seek include in the authorities bundle any authority that is not specifically referred to in the Skeleton Arguments.

Lodging of Bundles with the Tribunal

15. By no later than 7 days before the hearing the Appellants shall send to the Tribunal four copies of a consolidated bundle, to include the documents in the Hearing Bundle Index appended to these Directions, the Skeleton Arguments and the authorities and statutory materials contained in the consolidated authorities bundle.

Other

16. Any party has permission to apply to vary these Directions or to apply for further directions provided such application is in writing setting out full reasons for the application and, where applicable, before the time limit for complying with the Direction has expired, and sending a copy of the application to each of the other parties.

Dated 3 March 2016

**Damien McMahon
Tribunal Judge**

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-and-

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FOR ENGLAND AND WALES**

Respondents

Sitting in public at Bristol Magistrates' Court on 8 February 2016

LIST OF ISSUES

List of Issues

The issues in this appeal are the individual clauses of the Draft Scheme for the Charity. This document is to be read in conjunction with the document entitled 'Draft Scheme (Text) (Differentiated by Colour)' contained in the Hearing Bundle Index and a copy of which document is in the possession of each party.

| Clause in draft Scheme | Draft provisions | Agree or disagree with clause in draft Scheme (plus comments to be added where there is disagreement) | | | |
|------------------------|---|---|------------|--------------|--|
| | | Mr J Sparrow | Ms R Carne | Mr N Websper | Charity Commission for England & Wales |
| 1.1 | <p>In this scheme:</p> <p>"AGM" means an annual general meeting of the Charity.</p> <p>"Bath Recreation Ground" means the land identified in part 1 to the schedule.</p> <p>"Sports and Leisure Centre" means the buildings and related car-parking space known as the Bath Sports and Leisure Centre which are located on Bath Recreation Ground.</p> <p>"Charity" means the charitable trust known as the Bath Recreation Ground Trust established by the 1956 Conveyance.</p> <p>"Charity Commission" means the Charity Commission for England and Wales.</p> <p>"Conflict of Interest" means any interest of a Trustee that conflicts, or may conflict, with the interests of the Charity and includes a conflict of interests and duty and a conflict of duties</p> <p>"1956 Conveyance" means the conveyance of the Bath Recreation Ground by The Bath and County Recreation Ground Company Limited to the Mayor Alderman and the Citizens of the City of Bath dated 1 February 1956</p> <p>"Co-opted Trustees" means the Trustees appointed in accordance with clause 9.1.</p> <p>"Council" means Bath and North East Somerset Council (and any other authority or body which acts as successor to Bath and North East Somerset Council).</p> <p>"Interest" means any direct or indirect interest (and includes any interest a Trustee may have as a consequence of any legal duty he or she may owe to any other person).</p> | Disagree | Disagree | Disagree | Agree |

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|---|-----------------|-----------------|-----------------|-----------------|
| <p>2.1</p> <p>The Objects of the Charity are the provision, with or without charge, of property in or near Bath (including, but not limited to, the Bath Recreation Ground) for use as outdoor recreational facilities for the benefit of the public.</p> | <p>Disagree</p> | <p>Disagree</p> | <p>Disagree</p> | <p>Agree</p> |
| <p>2.2</p> <p>For the avoidance of doubt, the preservation of the Bath Recreation Ground in specie as an open space is not one of the charitable purposes of the Charity and does not form part of the Objects.</p> | <p>Disagree</p> | <p>Disagree</p> | <p>Disagree</p> | <p>Agree</p> |
| <p>2.3</p> <p>The Trustees shall ensure that in advancing the Objects:</p> <p>(a) the property of the Charity is maintained, equipped and otherwise laid out as the Trustees shall think fit for use principally for games and sports of all kinds and for tournaments, fetes, shows, exhibitions, displays, amusements, entertainments or other activities of a similar kind which advance the Objects;</p> <p>(b) the Charity shall not show any undue preference in favour of any particular game or sport or to any particular person, club, body or</p> | <p>Disagree</p> | <p>Disagree</p> | <p>Disagree</p> | <p>Disagree</p> |
| <p>2.1</p> <p>"1995 Lease" means the lease of part of the Bath Recreation Ground to Bath Rugby Club dated 23 May 1995 as amended by a deed of variation dated 20 August 2014 made between (1) Bath and North East Somerset Council as custodian trustee for the Charity (then known as the Recreation Ground, Bath Trust) and (2) Bath Rugby Limited.</p> <p>"Nominating Body" has the meaning given in clause 8.1 of the scheme</p> <p>"Nominated Trustees" means the Trustees nominated for appointment in accordance with clause 8.2</p> <p>"Objects" means the charitable objects set out clause 2.1 of this scheme.</p> <p>"property" means the land held by the Trustees from time to time for the Objects of the Charity.</p> <p>"existing trusts" means the trusts contained in the 1956 Conveyance and all schemes made previously by the Charity Commission (including any scheme amended by any Court or Tribunal) in relation to the Charity.</p> <p>"schedule" means the schedule to this scheme.</p> <p>"Trustees" means the charity trustees of the Charity from time to time appointed in accordance with clause 7.</p> | <p>Disagree</p> | <p>Disagree</p> | <p>Disagree</p> | |

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| | <p>organisation; and</p> <p>(c) the Charity shall not use the Bath Recreation Ground otherwise than as an open space;</p> <p>provided that nothing in this clause 2 shall restrict or exclude the Trustees' ability in furtherance of the Objects to exercise all and any of the powers of an absolute owner referred to in clause 5 or which are otherwise exercisable by them including, for the avoidance of doubt, the power to sell, lease, licence or otherwise dispose of all or any part of the Bath Recreation Ground on terms which do not require any purchaser, tenant, licensee or other third party to comply with the provisions of clauses 2.3(a) to (c) (inclusive) with which the Charity is obliged to comply.</p> | | | | |
| 2.4 | <p>The net income of the Charity and (where permissible) permanent endowment of the Charity shall be applied in the repair, insurance, maintenance and improvement of the property of the Charity and otherwise in furtherance of the Objects.</p> | Disagree | Disagree | Agree | Agree |
| 3.1 | <p>The property of the Charity is to be held and administered in furtherance of its Objects and otherwise administered in accordance with the provisions of this scheme. This scheme replaces the existing trusts of the Charity.</p> | Disagree | Disagree | Disagree | Agree |
| 3.2 | <p>For the avoidance of doubt, the Trustees may advance the Objects of the Charity on other property in addition to, or in substitution for, the Bath Recreation Ground.</p> | Disagree | Disagree | Disagree | Agree |
| 4.1 | <p>The Trustees must (with the benefit of such professional advice as the Trustees consider is necessary):</p> <p>(a) seek to negotiate and enter into such lease and/or such other legally binding arrangements with the Council in respect of the Sports and Leisure Centre as the Trustees shall consider are necessary for its ongoing maintenance and its continued occupation of part of the Bath Recreation Ground and for the demolition of the Sports and Leisure Centre when it is no longer fit for use for indoor recreation for the benefit of the public whereupon the land previously occupied by the Sports and Leisure Centre shall be held as property of the Charity to be administered in accordance with clause 3.1; and</p> <p>(b) seek to negotiate and enter into a legally binding settlement of all and any claims that the Charity has against the Council in respect of the post operation of the Sports and Leisure Centre</p> | Disagree | Disagree | Agree | Agree |

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| | <p>and the car parks which are situated on the Charity's property.</p> | | | | |
| 5.1 | <p>The Trustees have (in accordance with the Trusts of Land and Appointment of Trustees Act 1996) in relation to the property of the Charity, including the Bath Recreation Ground, all of the powers of an absolute owner, including (but without limitation) the following powers:</p> <p>(a) to sell, lease, licence or otherwise dispose of all or any part of any property;</p> <p>(b) to accept a surrender of any lease of all or any part of any property; and</p> <p>to exchange or swap all or any part of any property of the Charity for any other replacement land in or near Bath.</p> | Disagree | Disagree | Disagree | Agree |
| 5.2 | <p>The exercise by the Trustees of their powers pursuant to clause 5.1 is subject to the following provisos:</p> <p>(a) the Trustees must comply with the restrictions on the disposal of land in Part 7 of the Charities Act 2011;</p> <p>(b) the Trustees must after the date of this scheme not sell, transfer or otherwise dispose (or enter into any agreement to sell or otherwise dispose) of any freehold interest in all or part of the Bath Recreation Ground (except that the Trustees may exchange any part of the Bath Recreation Ground for any other replacement land which is adjacent to Bath Recreation Ground) or grant any lease (or enter into any agreement to grant such a lease) of all or any part of the Bath Recreation Ground for a term of years ending more than 75 years after it is granted;</p> <p>(c) any lease of all or any part of the Bath Recreation Ground granted after the date of this scheme for a term of years ending 10 years or more after it is granted, shall contain such provisions as the Trustees shall reasonably determine will address the matters set out in part 2 of the schedule (provided that this clause 5.2(c) shall not apply to any lease granted by the Trustees pursuant to clause 4.1(a) of this scheme); and</p> <p>In granting (or agreeing to grant) any licence or other right to use the Bath Recreation Ground after the date of this scheme for any event which the Trustees shall determine involves more than, or could involve more</p> | Disagree | Disagree | Disagree | Agree |

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| | <p>than, 1,000 participants, the Trustees shall ensure that they have first prepared and considered an impact assessment which will contain such sufficient and suitable information in respect of each of the matters set out in part 3 of the Schedule as the Trustees shall consider appropriate and shall consult with (but shall not be bound by the views of) such properly constituted association(s) of the owners of properties neighbouring the Bath Recreation Ground as the Trustees shall in their absolute discretion think fit.</p> | | | | |
| 5.3 | <p>The Trustees may at any time resolve to alter or amend any of the provisions set out in clause 5.2(b) to (d) (inclusive) provided that:</p> <p>(a) any such resolution must be considered and approved at a meeting of the Trustees attended by at least 75% of those Trustees who are then in office;</p> <p>(b) at least 21 days' notice of the meeting at which the resolution is to be considered must be given to all of the Trustees in accordance with clause 16 of this scheme; and</p> <p>(c) the Trustees must before considering any such resolution carry out such consultation with those they determine have an actual or potential interest in the resolution as they shall consider to be fair and reasonable (including providing sufficient information about the proposal and an adequate period for responses to be received) and shall take the responses to such consultation into account before making any decision to pass such resolution (but, for the avoidance of doubt, such consultation and/or the responses to it shall not restrict, fetter or otherwise limit the exercise of the Trustees' discretion).</p> | Disagree | Disagree | Disagree | Agree |
| 5.4 | <p>In determining the term of years of any lease for the purposes of clause 5.2, any term of years for which the relevant tenant has the legal right to renew the lease shall be taken into account (but subject always to the provisions of any legislation or statutory regulations which oblige the Trustees to grant a lease for a longer term of years).</p> | Disagree | Disagree | Disagree | Agree |

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| 5.5 | <p>In exercising any of their powers (and in administering and managing the Charity), the Trustees must:</p> <p>(a) act only in the best interests of the Charity to further the Objects for the public benefit;</p> <p>(b) act in good faith (meaning acting in a way that the Trustees honestly believe to be in the best interests of the Charity);</p> <p>(c) take into account all relevant factors and disregard any irrelevant factors;</p> <p>(d) take such professional advice as they consider is necessary; and</p> <p>adequately inform themselves, including having regard to the views of those who have an interest in the Charity.</p> | Disagree | Disagree | Disagree | Agree |
| Sch Part 1 | <p>The freehold land in the City of Bath known as The Recreation Ground, Bath and registered at the Land Registry with title number S1275096, which was conveyed by the 1956 Conveyance and is held by the Official Custodian for Charities as custodian trustee for the Charity as at the date of this scheme.</p> | Disagree | Disagree | Agree | Agree |
| Sch Part 2(1) | <p>Any lease of any part of the Bath Recreation Ground on which a stadium is or may be built shall provide that the stadium shall have the capacity to accommodate no more than 18,000 spectators.</p> | Disagree | Disagree | Disagree | Agree |
| Sch Part 2(2) | <p>Any lease of the Bath Recreation Ground shall provide that the stands to the North and East of the pitch which forms part of any stadium built on it may be used for any purpose on any day on which a sports match is held but must otherwise only be used between the hours of 7am and 10pm for the purposes of the community or for administrative or office purposes.</p> | Disagree | Disagree | Disagree | Agree |
| Sch Part 2(3) | <p>Any lease of any part of the Bath Recreation Ground on which a stadium is or may be built shall ensure that on any day, and subject to any requirements in respect of emergency access, any access gate to the Bath Recreation Ground from the pathway alongside the banks of the River Avon is locked between the hours of 10pm and 7am and that access to and from any stand to the West of the pitch which forms part of any stadium built on it between the hours of 10pm and 7am is only available directly from the pathway alongside the banks of the River Avon (except on any day on which a match or any event which is the subject of an impact assessment in accordance with the provisions of</p> | Disagree | Disagree | Agree | Agree |

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|-------------------------------------|--|----------|----------|----------|-------|
| | <i>this schedule is held).</i> | | | | |
| Sch Part 2(4) | Any lease shall contain a provision prohibiting its assignment without the prior written consent of the Trustees as landlord (but may provide that such consent shall not be unreasonably withheld). For the purposes of this provision, the leases shall contain a provision that any change of control in respect of the tenant shall be deemed to constitute an assignment of the lease. | Disagree | Disagree | Agree | Agree |
| Sch Part 2(5) | Any lease shall contain a covenant by the tenant acting reasonably to minimise the impact of the permitted use of the property subject to the lease on the residents of neighbouring properties and their successors in title (but without prejudice to the tenant's ability to build, develop and operate stadium facilities on any part of the Bath Recreation Ground). | Disagree | Disagree | Disagree | Agree |
| Sch Part 2(6) | Any lease of any part of Bath Recreation Ground shall provide that the tenant shall carry out an impact assessment in respect of any event for which the consent of the Trustees as landlord is required and that the impact assessment will be in writing and delivered to the Trustees and will provide such sufficient and suitable information in respect of each of the matters set out in part 3 of the Schedule as the Trustees shall from time to time consider appropriate and which shall enable the Trustees to consult with (but without being bound by the views of) such properly constituted association(s) of the owners of properties neighbouring the Bath Recreation Ground as the Trustees shall in their absolute discretion think fit. | Disagree | Disagree | Disagree | Agree |
| Sch Part 2(7) | Any lease of any part of Bath Recreation Ground shall provide that the tenant shall notify the Trustees as landlord in writing of the tenant's intention to carry out any building works for which the consent of the Trustees as landlord is required, and that if so required by the Trustees as landlord, the tenant shall carry out an impact assessment in respect of any such building works and that the impact assessment shall be in writing and delivered to the Trustees and will provide such sufficient and suitable information in respect of each of the matters set out in part 3 of the Schedule as the Trustees shall enable the Trustees to consult with (but without being bound by the views of) such properly constituted association(s) of the owners of the properties neighbouring the Bath Recreation Ground as the Trustees shall in their absolute discretion think fit. | Disagree | Disagree | Disagree | Agree |
| Additional clauses not presently in | | | | | |

| draft Scheme but which the Respondents consider should be added | | | | | |
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(CHARITY)
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and

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(3) NIGEL WEBSPER
(4) THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondents

HEARING BUNDLE INDEX

Documents

| Item | Description of document | Date | Pages |
|-------------|---|---------------|--------------|
| 1 | Order of the FTT (amending the Charity Commission Scheme of 12 June 2013) | 24 April 2014 | |
| 2 | Draft Scheme (Tabular) | | |
| 3 | Draft Scheme (Text) (differentiated by colour) | | |
| 4 | Narrative document on Draft Scheme | | |
| 5 | Minutes of Meetings between the parties held on 14 | | |

| | | | |
|----|--|-----------------|--|
| | September 2015, 5 October 2015 and 9 November 2015 Addendum to the said Meeting held on 9 November 2015 | | |
| 6 | Document entitled 'Follow-up Thoughts' referred to in the said Meeting held on 14 September 2015. | | |
| 7 | Document entitled 'Extracts from Bath Ruby 1995 Lease referred to in the said Meeting held on 14 September 2015. | | |
| 8 | List of Issues | | |
| 9 | Decision of the Upper Tribunal | 30 July 2015 | |
| 10 | Conveyance between (1) The Bath and County Recreation Ground Company Limited and (2) The Mayor Aldermen and Citizens of the City of Bath | 1 February 1956 | |
| 11 | Conveyance between (1) Captain Francis W. Forester and (2) The Bath and County Recreation Ground Ltd. | 6 April 1922 | |
| 12 | Site map | | |
| 13 | High Court ruling of Mr Justice Hart | 31 July 2002 | |
| 14 | Appellants' Skeleton Argument | | |
| 15 | First Respondent's Skeleton Argument | | |
| 16 | Second Respondent's Skeleton Argument | | |
| 17 | Third Respondent's Skeleton Argument | | |
| 18 | Fourth Respondent's Skeleton Argument | | |