



**Appeal number: CA/2018/0014**

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

**BETWEEN:**

**ICRI Ltd**

**APPELLANT**

**- and -**

**CHARITY COMMISSION FOR ENGLAND AND WALES    RESPONDENT**

**TRIBUNAL: Judge Peter Hinchliffe  
Ms Susan Elizabeth  
Ms Aisha Khan**

**The Tribunal sat in public at Field House, London on 31 July, 2019**

**The Appellant was represented by Ms Beth Grossman, Counsel  
The Respondent was represented by Mr Felix Rechtman, Head of Litigation at the  
Respondents.**

**DECISION**

**The appeal is refused.**

**REASONS**

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**The Decision Being Appealed**

- 1. The Appellant, ICRI Ltd (“ICRI”) appeals against the decision of the Respondents (the “Charity Commission”) on 18<sup>th</sup> October 2018 to refuse to discharge an order made under s.76 (3) (d) of the Charities Act 2011 (the “Act”) on 5<sup>th</sup> November 2015 (the “2015 Order”) requiring**

Barclays Bank Plc not to part with any property which it held in two bank accounts belonging to ICRI (the "Accounts") without the prior approval of the Charity Commission.

2. The Charity Commission notified ICRI of the 2015 Order on 6<sup>th</sup> November 2015 and provided a Statement of Reasons to ICRI in a letter of 4<sup>th</sup> December 2015. The Statement of Reasons explained the grounds for making the 2015 Order. The Charity Commission stated that they had instituted an inquiry under s.46 of the Act on 29 June 2015 into The Enfield Island Village, which is a registered charity (the "Charity"). The Charity Commission stated that rental payments that were payable to the Charity in respect of two flats owned by the Charity were paid into the Accounts and that the interim managers of the Charity had requested the transfer of the majority of the funds in the Accounts to an account that they controlled. Following this request some of the funds had been transferred to an account controlled by Mr Ioannou. As a consequence the Charity Commission asserts that the grounds in s.76(1)(b) of the Act had been met for the making of the 2015 Order. These grounds are that an inquiry has been instituted under s.46 of the Act by the Charity Commission and it is necessary or desirable to act for the purpose of (i) protecting the property of the charity, or (ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity.
3. The Charity Commission reviewed the 2015 Order on 18<sup>th</sup> October 2018 (the "Review") and on 23<sup>rd</sup> October 2018 wrote to ICRI to state that it was satisfied that the relevant factors remained unchanged and that the 2015 Order would therefore remain in place. The Charity Commission referred ICRI to the Statement of Reasons for a comprehensive explanation of why the 2015 Order was originally made and offered little additional explanation. The Charity Commission notified ICRI of its right of appeal against the outcome of the Review.

#### **Background and agreed facts**

4. There is a larger measure of agreement between the parties on the factual background to this appeal. This can be briefly summarised as follows:
  - The Charity entered into a contract for estate management services with a company now called VI Estate Management Ltd (the "Managing Agent") on 24<sup>th</sup> October 2014.
  - The Managing Agent has been and is controlled by Mr Vladimir Ioannou, who has also controlled ICRI since 2014 .
  - Mr Ioannou is a resident of Enfield Island Village and was for a time a director and a trustee of the Charity.
  - The Charity Commission opened a statutory inquiry into the Charity on 29<sup>th</sup> June 2015 and interim managers were appointed by the Charity Commission to the Charity on 9<sup>th</sup> September 2015.
  - In October 2015 the interim managers asked ICRI to transfer £175,000 that they believed ICRI held on behalf of the Charity. ICRI transferred £30,000 to the interim managers in response to this request, whilst also raising concerns over whether the Charity was in breach of the contract it had entered into with the Managing Agent for estate management services. The Managing Agent then invoiced the Charity for £306,250 under this contract. ICRI then transferred funds from the Accounts to another account controlled by Mr Ioannou.
  - Following the making of the 2015 Order 'freezing' the Accounts and the provision of the Statement of Reasons for making such order, the Charity Commission is obliged to review the 2015 Order under the terms of s.76(6) of the Act. The 2015 Order has been reviewed by the Charity Commission on 14<sup>th</sup> January 2016, 22<sup>nd</sup> March 2016, 1<sup>st</sup> June 2016, 25<sup>th</sup> November 2016, 25<sup>th</sup> March 2018 and 18<sup>th</sup> October 2018 and on each occasion the Charity Commission has decided not to discharge the 2015 Order.
  - The interim managers of the Charity were discharged on 17<sup>th</sup> July 2017.
  - On 29<sup>th</sup> March 2018 the Charity Commission issued an order under s.85 of the Act directing ICRI to transfer the funds in the Accounts to the Charity (the "2018 Order").

- ICRI has not complied with the 2018 Order.
- ICRI has standing to bring this appeal.

## Legislation

5. Section 76 of the Act provides for the appointment of interim managers and for the Charity Commission to issue orders to any person who holds any property on behalf of a charity after it has instituted an inquiry into that charity.

### “76 Suspension of trustees etc. and appointment of interim managers

(1) Subsection (3) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is satisfied—

- (a) that there is or has been a failure to comply with an order or direction of the Commission, a failure to remedy any breach specified in a warning under section 75A, or any other misconduct or mismanagement in the administration of the charity, or
- (b) that it is necessary or desirable to act for the purpose of—
  - (i) protecting the property of the charity, or
  - (ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity.

(2) The reference in subsection (1) to misconduct or mismanagement extends (regardless of anything in the trusts of the charity) to the employment—

- (a) for the remuneration or reward of persons acting in the affairs of the charity, or
  - (b) for other administrative purposes,
- of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.

(3) The Commission may of its own motion do one or more of the following—

- (a) by order suspend any person who is a trustee, charity trustee, officer, agent or employee of the charity from office or employment pending consideration being given to the person's removal (whether under section 79 or 80 or otherwise);
- (b) by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity;
- (c) by order—
  - (i) vest any property held by or in trust for the charity in the official custodian,
  - (ii) require the persons in whom any such property is vested to transfer it to the official custodian, or
  - (iii) appoint any person to transfer any such property to the official custodian;
- (d) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commission;
- (e) order any debtor of the charity not to make any payment in or towards the discharge of the debtor's liability to the charity without the approval of the Commission;
- (f) by order restrict (regardless of anything in the trusts of the charity) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commission;
- (g) by order appoint (in accordance with section 78) an interim manager, to act as receiver and manager in respect of the property and affairs of the charity.

(4) The Commission may not make an order under subsection (3)(a) so as to suspend a person from office or employment for a period of more than 12 months, subject to any extension under subsection (7).

(5) But any order under subsection (3)(a) made in the case of any person (“P”) may make provision, as respects the period of P's suspension for matters arising out of it, and in particular—

- (a) for enabling any person to execute any instrument in P's name or otherwise act for P, and
- (b) in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.

This does not affect the generality of section 337(1) and (2).

(6) The Commission—

- (a) must, at such intervals as it thinks fit, review any order made by it under paragraph (a), or any of paragraphs (c) to (g), of subsection (3), and

(b) if on any such review it appears to the Commission that it would be appropriate to discharge the order in whole or in part, must so discharge it (whether subject to any savings or other transitional provisions or not)”

**6. Section 319 of the Act provides for appeals against decisions of the Charity Commission to be brought to this Tribunal:**

“(3) The Commission is to be the respondent to such an appeal.

(4) In determining such an appeal the Tribunal—

- (a) must consider afresh the decision, direction or order appealed against, and
- (b) may take into account evidence which was not available to the Commission.

(5) The Tribunal may—

- (a) dismiss the appeal, or
- (b) if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of Schedule 6.”

**7. Schedule 6 of the Act sets out the decisions and actions of the Charity Commission that can be appealed, the persons who can bring such an appeal and the powers of the Tribunal in deciding such appeals and includes the following:**

<p>“Order made by the Commission under section 76(3) in relation to a charity.</p>	<p>The persons are—</p> <ul style="list-style-type: none"> <li>(a) the charity trustees of the charity,</li> <li>(b) (if a body corporate) the charity itself,</li> <li>(c) in a section 76(3)(a) case, any person suspended by the order, and</li> <li>(d) any other person who is or may be affected by the order.</li> </ul>	<p>Power to—</p> <ul style="list-style-type: none"> <li>(a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission;</li> <li>(b) substitute for all or part of the order any other order which could have been made by the Commission;</li> <li>(c) add to the order anything which could have been contained in an order made by the Commission”</li> </ul>
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**The Appeal**

**8.** ICRI submitted an appeal dated 30th November 2018 against the Charity Commission’s decision in the Review. In the appeal ICRI seeks the discharge of the 2015 Order in its entirety. Mr Ioannou on behalf of ICRI stated in the appeal that all of the assets in the Accounts are its own property or that of the Managing Agent and that the Charity Commission has produced no evidence that the Charity owns the assets in the Accounts. ICRI stated that the Charity Commission had acted ultra vires in making the 2015 Order and restricting the funds of ICRI. ICRI argue that the Charity Commission did not investigate adequately when making the 2015 Order and have ignored correspondence from them since then. ICRI state that the Charity Commission utilised temporary powers to restrict the use of the funds in the Accounts and that it must regularly review these powers and cannot use the powers for more than 2 years. ICRI state that no action has been taken by the Charity Commission to protect the Charity’s property or to clear up the issues that caused the inquiry to be instituted; instead they have just repeatedly renewed the 2015 Order.

**9.** Mr Ioannou stated that he has been unable to vindicate his good name for five years because the Charity Commission has not published any final findings on its inquiry into the Charity and his name remains on the Charity Commission website in connection with this inquiry. The interim managers had only spoken to him once and have not published a report

into the Charity despite the length of time of their appointment. He asserts that his human rights were affected by the unfair 2015 Order, which has affected the business he owns and his personal life. His personal life has been adversely affected by the other residents of Enfield Island Village being aware of the unresolved accusations of mismanagement.

10. Mr Ioannou, acting on behalf of ICRI enclosed extensive correspondence that he had with the Charity Commission relating to the inquiry into the Charity, the 2015 Order and the 2018 Order during the period since 2014

### **The Charity Commissions' response**

11. The response of the Charity Commission to the appeal set out the background to the 2015 Order and the appointment of interim managers to ICRI and referred to their repeated reviews of the 2015 Order. The Charity Commission stated that on 29<sup>th</sup> March 2018 they used their statutory powers under s.85 of the Act to make the 2018 Order and directed ICRI to transfer the funds in the Accounts to the Charity. The 2018 Order was made following the failure of ICRI to comply with the interim manager's request to transfer these funds. ICRI had sought to appeal the 2018 Order, but the appeal was ruled to have been made out of time. ICRI had failed to comply with the 2018 Order and therefore the Charity Commission stated that they saw the need to exercise its power to protect the funds in the Accounts, which it continues to believe are held on trust for the Charity. The Review concluded that the relevant factors that justified the 2015 Order remained unchanged.
12. The Charity Commission set out their view on the legal issues that they believe are relevant to this appeal and in particular, to the provisions of s.76 of the Act. They argue that the requirements of s.76 that justified the making of the 2015 Order continue to be satisfied: An inquiry had been instituted under s.46 of the Act and it was necessary to act to secure the proper application of the funds for the purposes of the Charity. The necessity to act arose as there was a material risk that the Charity's funds would be dissipated. This risk was evidenced by the failure of ICRI to return the funds in the Accounts to the Charity after being required by the interim manager to do so. Instead ICRI had transferred funds from the Accounts to another account under the control of Mr Ioannou. Since then ICRI had also failed to comply with the 2018 Order.
13. The Charity Commission stated that ICRI is a separate legal entity to the Charity, they deny that they have acted ultra vires and reject the argument that their powers under s.76 cannot be exercised for more than two years. The Charity Commission state that the funds in the Accounts are held in trust for the Charity. ICRI's claim to them is based on a claim that the Charity is in breach of the contract with the Managing Agent for the provision of estate management services. They state that this is a contractual dispute that the Tribunal cannot determine. The Charity Commission argue that, in order to protect the property of the Charity, or secure the proper application of that property, it remains proportionate to keep the 2015 Order in place.

### **The Hearing**

14. The factual matters that were agreed are summarised at 3. above and the parties submissions on these issues are not repeated here.
15. Ms Grossman, on behalf of ICRI, repeated and expanded on the arguments in the appeal that are set out above. She submitted that the Charity Commission had made up its mind on the issues in the appeal a long time ago and had a fixed institutional view that had prevented them from looking at new evidence and matters afresh. The lack of any conclusion to the inquiry into the Charity after such a long period was, she argued, telling. Mr Ioannou had explained repeatedly that he was validly entitled to the funds "frozen" by the 2015 Order as

he had been contractually entitled to such funds when they were transferred to the Accounts. The actions of the interim managers had put the Charity in breach of the estate management contract and Mr Ioannou had been entitled to payment for the services under the remaining term of that contract. The Tribunal had to take account of Article 1, Protocol 1 and Article 8 of the Human Rights Act 1998. It was also obliged to exercise its discretion in an objective and impartial way, which the Charity Commission had failed to do. More significantly in this case, Ms Grossman stated that the Charity Commission had to act in a proportionate way. In deciding upon the proportionality of the Charity Commission actions, the Tribunal should take account of the risk to the funds in the Accounts. She argued that there was no risk of dissipation that Mr Ioannou had given assurances in writing on this point, and that the Charity Commission had to consider the proportionality of their action afresh at the time of the Review.

- 16.** Mr Rechtman, on behalf of the Charity Commission, explained that the appeal does not cover the opening of the inquiry, the appointment of Interim Managers, the making of the 2015 Order, the successful actions that the Charity Commission had taken to recover funds for the Charity from ICRI or the 2018 Order. It is just concerned with the Review. The contract for estate management services was between the Charity and the Managing Agent and ICRI is not mentioned in the contract. The funds in the Accounts are derived from the rentals that the Charity received on two flats owned by the Charity. ICRI and the Managing Agent were connected by the fact that Mr Ioannou is a director and controller of both, but there was no contractual relationship between them that was relevant to this matter. Mr Rechtman stated that the burden of proof in the appeal was on ICRI

### **Witnesses**

- 17.** Mr Ioannou provided a witness statement on behalf of ICRI in which he explained the relationship between the Managing Agent and ICRI. He also gave further background to the disputes between the residents and trustees of the Charity prior to the Charity Commission deciding to open an inquiry into the charity. He explained that the appointment of the interim manager led to the breach by the Charity of the estate arrangement contract that the Charity had entered into with the Managing Agent. He had almost no communication with the interim managers despite the serious action taken by them in persuading the Charity Commission to make the 2015 Order. Mr Ioannou was questioned by Mr Rechtman about the contractual and legal position between the Charity, the Managing Agent and ICRI and about Mr Ioannou's movement of funds belonging to, or received from the Charity in the past. Mr Ioannou stated that the Managing Agent had entered into the estate arrangement contract with the Charity. ICRI had two staff plus Mr Ioannou and the Managing Agent had no staff so all work under the estate management contract had been done by the employees of ICRI. He had arranged for the rents on the flats owned by the Charity to be paid into ICRI's Accounts. There was no agreement in writing between the Managing Agent and ICRI.
- 18.** Ms Alison Burmiston, a senior investigator at the Charity Commission gave evidence for the Charity Commission. Ms Burmiston provided information about the circumstances in which the 2015 Order and 2018 Order were made. Ms Burmiston was questioned at length by Ms Grossman and in particular about the Statement of Reasons, the reliance that the Charity Commission had placed on information produced by the interim managers and the use to which estate managers could put funds derived from their clients. Ms Burmiston acknowledged that the Charity Commission had relied on the interim managers for the evidence on which they had based their decision to issue the 2015 Order. Ms Burmiston repeatedly confirmed that the Charity Commission regarded the funds in the Accounts as being the property of the Charity.
- 19.** In conclusion Ms Grossman reaffirmed that the money received in the Accounts was rent from properties owned by the Charity from which deductions had to be made in order to pay

for utilities, etc. She stated that the rent when it was paid into the Accounts ceased to be charitable funds. The funds were due and payable to ICRI. In response to questions from the Tribunal, Ms Grossman accepted that the creditors of the Charity could have a proprietary interest in the funds, but denied that the Charity had any ownership of the funds. The contract between ICRI and the Charity under which it received the rentals had not been terminated by the interim managers. Mr Ioannou had been clear throughout his dealings with the Charity Commission and the interim managers that he would not dissipate funds received from the Charity and there was no reason to believe that any such risk would arise now if the 2015 Order is lifted. Ms Grossman stated that it was remarkable that no conversation had taken place with Mr Ioannou for four years. The renewal of the 2015 Order was self-evidently a disproportionate exercise of discretion by the Charity Commission. The sums in the Accounts were insufficient to pay the amounts outstanding from the Charity for estate management services under the notice period in the contract for the provision of such services.

20. In Mr Rechtman's closing remarks he stated that the main basis for the renewal of the 2015 Order in the Review was the failure by ICRI to comply with the 2018 Order. This failure would be pursued as a contempt case and this had been delayed by the backlog of cases going to the High Court. Mr Rechtman stated that the funds in the Accounts were charity funds and this had been assessed and decided in the 2015 Order and 2018 Order. ICRI was not a party to the estate management contract. Mr Ioannou had referred during the hearing to a previous contract between ICRI and the Charity, but this has never been referred to before and had not been produced in written evidence. He stated that the Tribunal lacked the jurisdiction to decide a contractual dispute between the parties. Under clause 6 of the contract between the Charity and the Managing Agent for the provision of estate management services it was clearly stated that all funds were held on trust for the Charity. If the 2015 Order had not been renewed by the Review, there remained a real risk that Mr Ioannou would transfer the funds in the Accounts to another of his companies or another account and these would then be applied to settle the alleged breach of the estate management contract.

### **Findings of fact and law**

21. The role of the Tribunal in this appeal is to make the decision afresh on whether it is necessary or desirable to act for the purpose of (i) protecting the property of the Charity held in the Accounts, or (ii) securing a proper application for the purposes of the Charity of that property.
22. The Tribunal considered all of the arguments and evidence put forward by each of the parties before and at the hearing and took account of the facts that were agreed between them and concluded that, in order to make this decision in this case, the Tribunal needs to determine the following:
- Are the funds in the Account the property of the Charity?
  - Is the 2015 Order still necessary or desirable to protect these funds or secure their proper application for the purpose of the Charity?
  - The proportionality of the renewal of the 2015 Order including any impact in terms of human rights?
- The Tribunal did not need to decide on the merits of the decisions to issue the 2015 Order and 2018 Order.
23. The Tribunal finds that the evidence establishes that the funds in the Accounts were at all times charitable funds. The accounts were set up to receive the rentals that the Charity earned on two flats that it owned. By the end of the hearing this conclusion was not disputed by Mr Ioannou or Ms Grossman. The Tribunal accepts that the funds could be used to pay expenses associated with the management of these flats. However, the fact that some of the funds could

be properly spent for this purpose did not cause the funds to cease to be charitable funds. It was not necessary to resolve any contractual disputes between the Charity and either the Managing Agent or ICRI in order to come to this conclusion. The Tribunal was not provided with any evidence that indicated that a contract had come into existence between ICRI and the Charity.

- 24.** The Tribunal noted that ICRI was not a party to the contract between the Managing Agent and the Charity. It was not necessary for the Tribunal to determine if there had been a breach of the contract between the Managing Agent and the Charity for the provision of estate management services as the funds had been received by ICRI and not the Managing Agent. Furthermore if, as was suggested by Mr Ioannou, ICRI had been operating on behalf of or as an equitable assignee, of the Managing Agent then clause 6 of such contract for estate management services stated that:

“Any funds of the [Charity] shall be held on trust for the [Charity] in a clearly designated bank account”. The Tribunal concluded from the evidence, that even if ICRI had acted on behalf of or in substitution for the Managing Agent, they had received the funds in the Accounts on trust for the Charity.

- 25.** It was clear from the submissions on behalf of ICRI and from the evidence of Mr Ioannou that ICRI sought to overturn the Review and to bring the 2015 Order to an end in order that the Managing Agent could use the funds in the Accounts to set them off against sums due from the Charity to the Managing Agent under the estate management contract. It was clear that if this happened the funds in the Accounts would no longer be available to the Charity. The Tribunal concluded that using the funds in the Accounts to pay the Managing Agent would amount to dissipation of the charitable funds. ICRI’s refusal to comply with the 2018 Order was evidence of the continued risk to the proper application of the charitable funds if ICRI was no longer constrained in its ability to move such funds.
- 26.** The Tribunal therefore concluded that the renewal of the 2015 Order in the Review was necessary to secure their proper application for the purposes of the Charity.
- 27.** The Tribunal did not consider that the rights of the Managing Agent or Mr Ioannou under the Human Rights Act were affected by the Review. The funds in the Accounts did not belong to them and their property rights were not affected by the outcome of the Review. The funds were and remain the property of the Charity.
- 28.** The proportionality of the Charity Commission’s action in the Review was considered by the Tribunal. The 2015 Order has been in force for a very long time and the ‘freezing’ of a person’s bank account is an intrusive and serious step that should not be lightly undertaken. The Act had set out the basis upon which such a step could be taken and provided for the use of the power for an extended period to be the subject to regular review. The Tribunal acknowledged that ICRI had legitimate concerns about the extended duration of the 2015 Order, the lack of any outcome to the inquiry in to the Charity and the very limited contact between ICRI and the interim managers appointed by the Charity Commission to manage the Charity. However, the Tribunal found that the Charity Commission had sought to bring the 2015 Order to an end by making the 2018 Order. The 2018 Order set out the Charity Commission’s conclusions with regard to the proper use of the funds that were held in the Accounts. ICRI had failed to comply with the 2018 Order and the Tribunal did not consider that ICRI could argue that the outcome of the Review was a disproportionate exercise of the Charity Commission’s power in the light of the delay in bringing the inquiry to an end when their refusal to comply with the 2018 Order was the cause of further delay.

## **Conclusion**

In all of the circumstance of this case the Tribunal finds that that at the time of the Review it was necessary for the Charity Commission to act for the purpose of protecting the funds belonging to the Charity that were held in the Accounts in order to secure the proper application of those funds for the purposes of the Charity and the renewal of the 2015 Order was a proportionate means of achieving such protection.

## **Decision**

- 29.** The appeal is dismissed.
- 30.** A right of appeal, on a point of law only, lies to the Upper Tribunal against this decision. Any person seeking permission to appeal must make application in writing to this tribunal for permission to appeal no later than 28 days after this decision is issued; identifying the alleged error of law and state the result the person making the application is seeking.

Signed

Peter Hinchliffe  
Judge of the First-tier Tribunal

Date: 7 October 2019

Date of Promulgation: 08 October 2019