



Appeal number: CA/2019/0008

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

BETWEEN:

ABRAHAM SOLOMON

APPELLANT

- and -

CHARITY COMMISSION FOR ENGLAND AND WALES

RESPONDENT

**TRIBUNAL: Judge Peter Hinchliffe
A'isha Khan
Manu Duggal**

The Tribunal sat in public at Nottingham Justice Centre on 12 November 2019

The Appellant represented himself.

The Respondent was represented by Melissa Freed, an in-house Advocate at the Respondents.

DECISION

The appeal is dismissed.

REASONS

The Appeal

1. The Appellant, Mr Solomon appeals against an Order made by the Respondents (the “Charity Commission”) on 19th February 2019 to disqualify him from being a trustee for any and all charities and from holding any office or employment with senior management functions in any or all charities for a period of three years (the “Order”). The Order was made under s.181A of the Charities Act 2011 (the “Act”).
2. The Charity Commission notified Mr Solomon on 20th September 2018 of its intention to disqualify him from being a trustee for a charity and provided a provisional statement of reasons (the “Provisional Decision”). The Charity Commission invited Mr Solomon to submit representations in response to the Provisional Decision and Mr Solomon submitted extensive representations on 23rd October 2018 and 17th January 2019 in response. On 14th February 2019 the Charity Commission sent a letter to Mr Solomon setting out the conclusion of its review of his representations and of the Provisional Decision (the “Decision Review”) and setting out the terms in which the Order would be made.
3. Mr Solomon submitted an appeal against the Order on 1st April 2019. The grounds of the appeal are that the tests for disqualification as a trustee have not been met, the facts have been misrepresented and the action proposed in the Order is unreasonable and disproportionate. Mr Solomon stated that he is seeking to prevent the Order from taking effect.

Background

4. ANO (Aid for the Needy and Oppressed) is an unincorporated association (the “Charity”), governed by a constitution which was adopted on 17 July 2013 and amended on 25 May 2015 (“the Constitution”). The Charity registered with the Commission on 22 December 2013, with registered number 1155123.
5. Mr Solomon is one of the founding trustees of the Charity and was a trustee from 17 July 2013 until his resignation on 7 January 2019. He was the chair of the trustees of the Charity from its inception until his resignation. He was suspended by the Charity Commission from acting as a charity trustee or trustee for a charity from 21 September 2018 to 16 August 2019.
6. The Charity’s objects in the governing document are as follows:

“The relief of financial need and suffering among victims of natural or other kinds of disaster in the form of money (or other means deemed suitable) for persons, bodies, organisations and/or countries affected including the provision of medical aid.

The relief of financial need and assistance for asylum seekers’ flight and other travel expenses in order to return or visit families abroad.

The assistance or provisions of financial support with tuition fees for persons living in and outside of Britain.

The aiding of the homeless and less fortunate living in and around Leicester city in the form of food, shelter and other means deemed suitable.

The relief and assistance of people in any part of the world who are the victims of war or natural disaster, trouble, or catastrophe in particular by the supply of medical aid to such persons.”

Legislation

7. Section 181A of the Act gives the Charity Commission the power to issue orders disqualifying a person from being a charity trustee or trustee for a charity.
8. The relevant parts of sections 181A and 181B of the 2011 Act are as follows:

“181A Disqualification orders

- (1) The Commission may by order disqualify a person from being a charity trustee or trustee for a charity.
- (2) The order may disqualify a person—
 - (a) in relation to all charities, or
 - (b) in relation to such charities or classes of charity as may be specified or described in the order.
- (3) While a person is disqualified by virtue of an order under this section in relation to a charity, the person is also disqualified, subject to subsection (5), from holding an office or employment in the charity with senior management functions.
- (4) A function of an office or employment held by a person (“A”) is a senior management function if—
 - (a) it relates to the management of the charity, and A is not responsible for it to another officer or employee (other than a charity trustee or trustee for the charity), or
 - (b) it involves control over money and the only officer or employee (other than a charity trustee or trustee for the charity) to whom A is responsible for it is a person with senior management functions other than ones involving control over money.
- (5) An order under this section may provide for subsection (3) not to apply—
 - (a) generally, or
 - (b) in relation to a particular office or employment or to any office or employment of a particular description.
- (6) The Commission may make an order disqualifying a person under this section only if it is satisfied that—
 - (a) one or more of the conditions listed in subsection (7) are met in relation to the person,
 - (b) the person is unfit to be a charity trustee or trustee for a charity (either generally or in relation to the charities or classes of charity specified or described in the order), and
 - (c) making the order is desirable in the public interest in order to protect public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order.
- (7) These are the conditions—

...

D that the person was a trustee, charity trustee, officer, agent or employee of a charity at a time when there was misconduct or mismanagement in the administration of the charity, and—

- (a) the person was responsible for the misconduct or mismanagement,
- (b) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or
- (c) the person's conduct contributed to or facilitated the misconduct or mismanagement”.

181B Duration of disqualification, and suspension pending disqualification

- (1) An order under section 181A must specify the period for which the person is disqualified.
- (2) The period –
 - (a) must be not more than 15 years beginning with the day on which the order takes effect, and
 - (b) must be proportionate, having regard in particular to the time when a conviction becomes spent or, where condition B applies, would become spent if it were a conviction for the relevant disqualifying offence, and to circumstances in which the Commission may or must grant a waiver under section 181 where a person is disqualified under section 178.
- (3) An order takes effect –
 - (a) at the end of the time specified by Tribunal Procedure Rules for starting proceedings for an appeal against the order, if no proceedings are started within that time, or
 - (b) (subject to the decision on the appeal) when any proceedings started within that time are withdrawn or finally determined”.

9. Section 181B (4) of the Act also relates to the Commission’s power to suspend a person from being a charity trustee or trustee of a charity pending disqualification and section 181C of the 2011 Act sets out the procedure that the Commission must follow when making a disqualification order under

section 181A of the Act.

10. 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 is deciding such appeals and includes the following:

1 Decision, direction or order	2 Appellants/applicants	3 Tribunal powers if appeal or Application allowed
Order made by the Commission under section 181A.	The persons are the person who is the subject of the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission; (b) substitute for all or part of the order any other order which could have been made by the Commission; (c) add to the order anything which could have been contained in an order made by the Commission

The Charity Commissions' response

11. The response of the Charity Commission to the appeal set out the background to the Order and provided extensive background material from their investigation into the Charity and Mr Solomon, including a transcript of an interview with him on 21st September 2017. The Charity Commission stated that their view of the factors that justified the Order remained unchanged.

The Hearing

12. The Charity Commission explained that they were relying on ten instances of misconduct or mismanagement by Mr Solomon in the administration of the Charity. These are:
- (i). The failure of the Charity to take the steps that the Charity Commission had required under an action plan issued to the trustees of the Charity on 1st July 2014 pursuant to s.15(2) of the Act (the "First Action Plan").
 - (ii) The transfer of £107,595.61 by the Charity to Mr Solomon's bank account between March 2015 and July 2017.
 - (iii) The failure to undertake sufficient due diligence on a company and individual appointed to distribute funds in Somalia, a high risk area.
 - (iv) The inadequate steps taken by the Charity to safeguard charitable funds by monitoring the expenditure of charitable funds by the company and individual referred to in (iii) above.
 - (v) The failure to undertake sufficient due diligence on a company that it intended to use to distribute funds on the Turkey/Syria border prior to Mr Solomon travelling to meet them with a large amount of cash for them to distribute.
 - (vi) The failure of the Charity trustees to manage resources properly and to manage risk by agreeing that £11,425.49 should be transferred to a trustee's bank account in order for it to be taken in cash for distribution in Togo in 2016.
 - (vii) The failure to manage resources properly and to manage risk by agreeing that £19,300 should be transferred to Mr Solomon's bank account in order for it to be taken in cash for distribution on the Turkey/Syria border in December 2016. This resulted in the seizure of the cash by the Police when Mr Solomon was stopped by the Police at the airport whilst it was in his possession.
 - (viii) Mr Solomon's failure in December 2016 to comply with the regulations on the export of more than Euro10,000 from the UK to a non-EU country.

(ix) Paying Mr Solomon for services provided to the Charity whilst he was a trustee in breach of the Constitution and in breach of trust.

(x) Failing to comply with an order made by the Charity Commission under section 76(3)(f) of the Act directing the trustees to not make a payment to trustees or connected person, by making a payment of £180.00 to Mr Solomon in November 2018.

13. Mr Solomon's submission to the Tribunal stated that the Charity Commission had been mistaken in setting out the facts when concluding that there had been misconduct. Any breach of trust by him was as a result of a genuine mistake. He responded to some of the allegations of misconduct or mismanagement set out in the preceding paragraph as follow:

- (i) Other trustees had been responsible for undertaking the actions required in the First Action Plan and Mr Solomon had been disappointed when he discovered that they had failed to do what was required. He had ensured that the actions required by the Charity Commission in a second action plan were met.
- (ii) He had video recordings showing the distribution of funds to beneficiaries in Somalia. These were shown to the Tribunal. He identified and said that he knew the individual responsible for the distribution of funds in the recordings as he had helped to found the Charity and had worked as a volunteer for the Charity before going to Somalia.
- (iii) The Charity Commission was wrong to conclude that his service agreement with the Charity was an employment contract. The trustees had sought professional advice before executing it. Payment for his services to the Charity was permitted under the constitution. In any event he had now repaid the funds that he had received.
- (iv) He accepted that it looked bad that money was sent to his personal account for him to withdraw in cash in order to take it abroad, but this was agreed jointly by the trustees as the best way to deliver money to beneficiaries in the areas that they wished to support. This approach was, he believed, the only way to avoid the problem that they had with money transfers. He said that every penny has been accounted for.
- (v) He now accepts that the Charity should have not taken this risk of 'cash couriering'. However, they had assessed the risk, he had completed the required HMRC declaration (although he forgot to post it before going to the airport) and he had taken papers with him showing the source of the funds, the destination and the projects that they intended to support.
- (vi) The £180.00 paid to him in November 2018 was to reimburse him for emergency repairs to the van that he drove when undertaking work for the Charity's shops.
- (vii) A profit sharing arrangement in which he committed to contribute the profits from his removal business to the Charity as advertised on the business' website was legitimate and had been approved by the other trustees. A share of the modest profits from this business was paid to the Charity.

14. At the hearing it was common ground that all the payments referred to in paragraph 12 above had been made and that the cash seized by the Police had been held for a long time before being returned to the Charity.

A Disqualification Order

15. The role of the Tribunal in this appeal is to make the decision afresh on whether the Order should be made on a proper application of s.181A of the Act.

16. Under s.181A (6) an order disqualifying Mr Solomon under this section may only be made if the Charity Commission or, in this case the Tribunal, is satisfied that each of three conditions are satisfied. These conditions are:

- Firstly, that one or more of the conditions listed in subsection 181A (7) are met in relation to Mr Solomon. In this case the Commission chose condition D from subsection (7). Condition D takes effect if Mr Solomon was a trustee, charity trustee, officer, agent or employee of a charity at a time when there was misconduct or mismanagement in the administration of the charity, and -
 - (a) he was responsible for the misconduct or mismanagement,

- (b) he knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or
- (c) his conduct contributed to or facilitated the misconduct or mismanagement.

- Secondly, it must be concluded that Mr Solomon is unfit to be a charity trustee or trustee for a charity (either generally or in relation to the charities or classes of charity specified or described in the order). The word ‘unfitness’ is not defined in the Act. ‘Unfitness’ must therefore be given its ordinary English language meaning. The Tribunal notes that the Charity Commission has issued guidance, which is not binding on the Tribunal, which states that;
“Conduct does not need to be deliberate. Non-deliberate conduct, for example conduct which is reckless, negligent, or done in wilful disregard, or failing to act, could demonstrate a person’s unfitness to be a trustee.”
- Thirdly making the order must be desirable in the public interest in order to protect public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order.

17. If the Tribunal does determine that these conditions are met and an order should be made disqualifying Mr Solomon from being a trustee of a charity, then the Tribunal must also determine the duration of the order and its scope. The scope may vary by reference to whether one or more charities are covered by the order and, if it is more than one, whether all charities or a class of charities should be covered and whether the disqualification should extend to senior management functions as well as the trustee role. The expression ‘senior management role’ is defined in s.181(4).
18. In considering the application of section 181A of the Act, the Tribunal must consider the proportionality and reasonableness of any order that is the subject of an appeal.

Findings of Fact and law

19. The Tribunal concluded that Mr Solomon’s action in transferring charitable funds to his account in order to withdraw them as cash to be taken overseas constituted both misconduct and mismanagement in the administration of the Charity. Some funds were transferred directly from the Charity’s bank account to his account and some via the accounts of other trustees with his knowledge and consent. The risk of his actions in terms of the loss or misuse of charitable funds and the risk of damage to the Charity’s reputation should have been obvious to Mr Solomon, as it would be to any reasonable individual acting as a trustee of a charity. the Tribunal finds that Mr Solomon was responsible for this misconduct and mismanagement in the administration of the Charity.
20. The Tribunal also concluded that Mr Solomon failed to act with due diligence in selecting intermediaries who they believed could distribute funds to beneficiaries in difficult areas such as Somalia and on the Turkish/Syrian border. In relation to the activities in Somalia, Mr Solomon knew an individual who had been involved with the formation of the Charity and who had moved to Somalia and formed a company there. He knew that this individual was familiar with the work of the Charity and with the principles underlying the religious duty of ‘zakat’ and the collection and distribution of donations through zakat that is a widespread and important part of Islamic faith. This limited personal knowledge of the intermediary was enough for Mr Solomon to proceed with the project without any further checks and without taking any further precautions against loss, theft or misuse. Mr Solomon was unable to explain why his knowledge of the individual was an adequate assurance for him or the Charity. The Tribunal finds that Mr Solomon was responsible for the lack of due diligence and that this constitutes misconduct and mismanagement in the administration of the charity.
21. In reaching this conclusion, the Tribunal took into account Mr Solomon’s explanation that the funds were raised from the local community for the purpose of providing aid to particular areas and communities overseas and that the trustees had agreed to his plan to take cash overseas to these particular areas and communities, which in some cases, did not have access to cheap and easy money

transfer facilities. The Tribunal noted that Mr Solomon was aware that the areas in which he wished to distribute aid were difficult and suffering with war and terrorism, yet he did very little to assess the competence, capability and honesty of the people and organisation that he intended to use to distribute the cash he was taking. The Tribunal concluded that Mr Solomon's account of his reasons for taking such actions and the steps that he took in implementing them established that he had been reckless in discharging his responsibilities as a trustee and leader of the Charity. He had taken the Charity's money into his account, withdrawn it in cash, taken it overseas and given it to others to distribute without taking any steps to safeguard the Charity's funds or reputation at any of these stages. He had no plan on how to meet the legal and regulatory restrictions that were relevant to these activities, despite having an awareness of the controls on charities, the regulations on the export of large amounts of cash and on anti-terrorism legislation.

22. The monitoring of the use to which the charitable funds were put by the intermediary in Somalia was completely inadequate. Mr Solomon and his fellow trustees relied on short videos showing the intermediary in the company of unidentified local leaders handing out cash to unnamed women and children. Details of the recipients were limited to a redacted list of signatories with names concealed. No further action was thought necessary by Mr Solomon. The Tribunal finds that this was misconduct and mismanagement in the administration of the Charity and that Mr Solomon was responsible for it.
23. The due diligence undertaken by the Charity on aid projects before Mr Solomon set off for the Turkish / Syrian border in December 2016 was similarly inadequate. The decision to send funds to Togo by means of an individual trustee carrying a large quantity of cash was unsupported by any explanation of why this was appropriate and how the risks were to be managed. The availability of regulated payment transfer agencies between the UK and Togo appears to have been rejected without serious consideration. Mr Solomon was either responsible for this mismanagement of the Charity or knew of it and failed to take any reasonable step to oppose it.
24. The Tribunal took into account Mr Solomon's defence of his actions at the hearing and in his submissions and noted his acknowledgement that in hindsight he could see that the actions were risky and not thought through. Mr Solomon founded the Charity. The Tribunal noted that he was an energetic and effective fund raiser. Under his watch, the Charity raised a large amount in donations through encouraging various types of giving including 'zakat' and, in addition to raising funds, set up a number of shops, staffed them with volunteers and raised money through the shops by selling donated items. Mr Solomon assembled a group of volunteers and led them in successfully raising funds from his community. He sought to set up the Charity on a proper footing as he saw it. The Tribunal heard, and accepts, that since his suspension the Charity has run into difficulties and some shops have closed down and that its activities are greatly reduced.
25. The Charity Commission relied on other acts of misconduct in relation to Mr Solomon's receipt of funds from the Charity on a personal basis and in failing to take adequate steps to meet the requirements of the First Action Plan. These are referred to in paragraph 12 at sub-paragraphs (i), (ix) and (x). The Tribunal notes Mr Solomon's submission that other trustees had prime responsibility for ensuring that the Charity complied with the First Action Plan and accepts that. However, the Tribunal considers that the Charity Commission's actions made Mr Solomon aware of the need to ensure that the Charity complied with its obligations, which he failed to act upon. There is no dispute that payments were made to Mr Solomon by the Charity, but there is a dispute over the propriety of them. The Charity Commission accepts that these payments were made recklessly and not dishonestly and the Tribunal takes this into account. The payment of £180 in November 2028 in apparent breach of the order made by the Charity Commission under section 76(3)(f) of the Act appears, on the balance of probability, to be reimbursement for expenditure incurred by Mr Solomon on behalf of the Charity in repairing a van used by the Charity. The use of the Charity's name on his business website, and the references to donating profits to the Charity, when promoting his removal business, was also a concern to the Charity Commission. The Tribunal has considered these alleged acts of misconduct and does not find it necessary to come to a definitive conclusion on these allegations in order to determine this appeal. The Tribunal has already formed a view, on the basis of the matters set out above, that Mr Solomon was reckless in discharging his responsibilities as a charity trustee. He had limited

knowledge and experience of charities and of being a trustee and these acts, if established, would not add to the gravity of the failings referred to above.

26. The Tribunal's findings set out above, establish that Mr Solomon's misconduct and mismanagement was reckless, but not dishonest, and that he had very little interest in taking steps to improve his performance as a trustee or educating himself in the legal and regulatory duties of a trustee when the opportunities to do so were presented to him.

Conclusion

27. In all of the circumstance of this case the Tribunal finds that that Mr Solomon's cumulative actions in;
- (i) transferring large sums of cash from the Charity to his bank account and the accounts of another trustees;
 - (ii) withdrawing such funds in cash and taking them overseas, or seeking to do so;
 - (iii) handing such funds over to third parties without exercising due diligence on their integrity, competence or capability; and
 - (iv) having no credible plan for monitoring such expenditure;
- constitutes misconduct and mismanagement in the administration of a charity.
28. The high level of recklessness shown by Mr Solomon over a period of over two years indicates to the Tribunal that Mr Solomon is unfit to be a charity trustee and that it is in the public interest, in order to protect public trust and confidence in charities generally, that he be disqualified from acting as a trustee of any charity.
29. Mr Solomon's misconduct involved control over money and showed a complete disregard for financial controls and risk management. The Tribunal therefore concludes that the disqualification should extend to senior management functions in any charity.
30. Mr Solomon's conduct showed a reckless disregard for compliance with charity law and the duties of trustees. The Tribunal found that Mr Solomon's misconduct was such that it posed a serious risk to public trust and confidence. Mr Solomon chose to take funds raised under Islamic principles of worship and to take it to areas where terrorism is prevalent. He then chose to distribute it with inadequate safeguards. These are factors that point toward a lengthy period of disqualification. However, the Tribunal notes that the Charity chose, in some cases, to raise funds for, and distribute funds in, areas of desperate need where the normal controls, infrastructure and public institutions that assist in the good administration of charities are not present or are hard to apply. Mr Solomon was detained, but not prosecuted by the police or HMRC in the UK. The charitable funds that were seized have been returned to the Charity. It is not clear if the Charity has suffered any loss over and above being deprived of the use of funds for a significant period of time. At the relevant time Mr Solomon was an inexperienced and enthusiastic charity founder and worker, who achieved a degree of success in raising funds for charitable purposes. Mr Solomon's acknowledgement of his need to improve his understanding of the legal and practical steps that need to be taken to become a competent charity trustee has influenced the tribunal's conclusion with regard to the duration of the Order. These factors point to a shorter period of disqualification. In all of the circumstances and after careful deliberation, the Tribunal found no good reason to change the three year duration of the existing disqualification Order.
31. The Tribunal reviewed its overall conclusions and those of the Charity Commission and found that the Order in the form issued by the Charity Commission represents a proportionate and reasonable means of achieving a necessary level of protection.

Decision

32. The appeal is dismissed.
33. 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: 27 December 2019