



Appeal number: CA/2013/0016

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

ALAN BARTLEY

Appellant

- and -

**THE CHARITY COMMISSION FOR ENGLAND
AND WALES**

Respondent

**TRIBUNAL: JUDGE JONATHAN HOLBROOK
MR MANU DUGGAL
MR STUART REYNOLDS**

DECISION AND REASONS

**DATE TRIBUNAL MET FOR 30 June 2014
PAPER CONSIDERATION :**

**SUBJECT MATTER: Appeal to the Tribunal against a scheme
made by the Commission under section 69
of the Charities Act 2011 in relation to
Westminster Chapel (Unincorporated)
Charity and Westminster Chapel Manse
Trust**

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DECISION**

The appeal is dismissed.

REASONS

Introduction

1. Mr Alan Bartley appeals to the Tribunal against an order of the Charity Commission (“the Commission”) dated 14 November 2013 by which the Commission made a scheme (“the Scheme”) under section 69(1) of the Charities Act 2011 (“the Act”). The Scheme relates to two charities; namely, Westminster Chapel (Unincorporated) Charity and Westminster Chapel Manse Trust.

2. Following a case management hearing conducted by telephone on 4 March 2014, Judge McKenna issued directions for the conduct of these proceedings. The parties were directed to endeavour to agree a list of issues for determination, a bundle of documents and witness statements. The parties agreed that the appeal should be listed for determination without a further oral hearing, and directions were given for the filing of written submissions.

3. On 4 April 2014 Judge McKenna further directed that the Commission’s draft list of issues be adopted by the Tribunal. This was on the basis that Mr Bartley had failed to comply with previous directions relating to that list.

4. The Tribunal accordingly convened to consider the appeal in the absence of the parties on 30 June 2014. It had before it an agreed bundle of documents together with the written submissions of the parties.

The charities

5. These proceedings concern two charitable trusts. The first of these relates to the land and buildings which comprise Westminster Chapel on Buckingham Gate in London (“the Chapel”). The Chapel land and buildings are held on the trusts declared in a deed dated 23 December 1842 (“the Chapel Trust Deed”), under which the Chapel is held upon trust for use as a place of worship by “such persons being Protestant Dissenters of the Independent Denomination as shall for the time being be desirous of attending Divine service”. Ministers of the Chapel must belong to this denomination and must “profess and preach the religious doctrines held by the Congregational Union of England and Wales”.

6. The second charitable trust relates to residential properties purchased to provide accommodation for the Chapel’s Minister(s). These properties are held on trusts for that purpose declared in a deed dated 22 September 1969 (“the Manse Trust Deed”).

Background to the Commission’s decision

7. In 2007 the charities’ solicitor, under instruction from the trustees of the charities, approached the Commission with a proposal that a charitable company should be established to act as trustee of the trusts described above. The Commission

subsequently agreed to make a scheme to appoint Westminster Chapel (a company limited by guarantee and registered as a charity) (“the Company”) as trustee of the Chapel property and of the manse trust. The proposed scheme would also provide for the trusts declared by the Chapel Trust Deed and the Manse Trust Deed to be administered together under the name of Westminster Chapel Property Trust, and for the objects of the charity to be amended.

8. The objects which were to be amended were those stated in the Chapel Trust Deed. In agreeing to amend the objects, the Commission accepted the trustees’ view that a *cy-près* occasion had arisen on the basis, first, that the expression “Protestant Dissenters of the Independent Denomination” had ceased to be suitable in the modern day and, second, that it was unclear as to what was meant by “the religious doctrines held by the Congregational Union of England and Wales”. That body no longer existed and there was no single successor body. The trustees therefore considered that the original purposes could not be carried out, or at least not according to the directions given and to the spirit of the gift and had therefore ceased to provide a suitable and effective method of using the trust property.

9. On 5 January 2012 the Commission published a proposed scheme for consultation. It subsequently received a number of responses objecting to it, including an objection from Mr Bartley. In essence, Mr Bartley contended that it remained possible for the trust property to be used for the original purposes, as stated in the Chapel Trust Deed. He took the view that the proposed reformulation of the objects would be an impermissible departure from those purposes. Mr Bartley also held (and still holds) the view that the congregation which currently worships at the Chapel (which Mr Bartley refers to as the “ensconced” congregation) does not adhere to the original doctrines and traditions of the congregational denomination. In short, Mr Bartley contends that the current congregation are not “Protestant Dissenters of the Independent Denomination” because they only practice adult, or believer’s, baptism and do not practice infant baptism. In addition, because of his Baptist principles, the current Minister did not (in Mr Bartley’s view) adhere to the requirement to “profess and preach the religious doctrines held by the Congregational Union of England and Wales”, and worshippers who believe in infant baptism were effectively excluded from membership of the Chapel. Mr Bartley argued that the refusal to practice infant baptism meant that the trustees were not members of an Independent Church and that they were accordingly disqualified from acting as trustees under the Chapel Trust Deed. He also argued that the appointment of a corporate trustee would take decision-making out of the hands of the Chapel’s membership and would thereby disenfranchise the congregation.

10. Following consideration of the objections raised by Mr Bartley and others, together with the response thereto of the trustees, the Commission conducted a formal review of its decision to make a scheme (and of the proposed terms thereof). The review was carried out in accordance with the Commission’s Decision Review procedure by Mr Neil Robertson, the Commission’s Head of Operations in Taunton.

11. The outcome of Mr Robertson’s decision review is recorded in a final decision document dated 14 November 2013. He concluded that the question of whether the current congregation falls within the meaning of the expression “Protestant Dissenters of the Independent Denomination” is a question of doctrine and, as such, is not a matter which the Commission can determine. Consequently, he decided that it would be inappropriate for the Commission to make a *cy-près* scheme reformulating the

objects. Mr Robertson also concluded that it was neither necessary nor appropriate to amalgamate the Chapel trust with the manse trust so as to create a single charity.

12. Nevertheless, Mr Robertson also concluded that it would be expedient to make a scheme to regulate the administration of the charities. The Commission accordingly made a revised scheme (the Scheme) on 14 November 2013. It is that decision and the resulting scheme which forms the basis of this appeal.

Effects of the Scheme

13. The effects of the Scheme may be summarised as follows:

13.1 The Company is appointed as the trustee of both the charities.

13.2 The property (being the Chapel land and buildings and the manse properties) is transferred to the Company to be held in trust for the respective charity.

13.3 The Company must use the Chapel land and buildings for worship by persons being Protestant Dissenters of the Independent Denomination. In the event that it ceases to do so, the Company must immediately apply to the Commission for an order to appoint new trustees of the charities.

13.4 The Chapel trust is to be administered in accordance with the Chapel Trust Deed (as amended by the Scheme) under the name of Westminster Chapel (Unincorporated) Charity.

13.5 The manse trust is to be administered in accordance with the Manse Trust Deed (as amended by the Scheme).

13.6 In addition to appointing the Company as trustee, the Scheme amends the Chapel Trust Deed by providing that, so long as the Company remains trustee, the powers exercisable under that Deed by members or communicants belonging to the Chapel shall be exercisable by members of the Company, and the requirement that trustees be members of any Independent Church shall cease to apply.

13.7 Consequential amendments of similar effect are made to the Manse Trust Deed.

The Appeal

14. Mr Bartley stated in his Notice of Appeal that he was appealing in the capacity “possibly as trustee possibly as any other person”. We consider that the appeal should proceed on the basis that Mr Bartley is a person who is or may be affected by the Scheme – we have seen no persuasive evidence that Mr Bartley is, or has ever been, a trustee of the charities.

15. In summary, Mr Bartley stated the following grounds for appeal:

15.1 That the Scheme was effectively a cy-près order and had not been made in accordance with the requisite procedures;

15.2 That the Commission was precluded from making the Scheme by section 70(8) of the Act because of the contentious nature of the Scheme's subject matter;

15.3 That, by making the Scheme, the Commission had determined title to the Chapel land and buildings, but that it had no jurisdiction to do so under section 70(1) of the Act; and

15.4 That the transfer of the trust property to the Company amounted to a breach of the human rights of members of the congregation.

16. In subsequent written submissions, Mr Bartley sought to add a further ground of appeal – that the Commission had no jurisdiction to make the Scheme because the charities are exempt charities.

The Tribunal's powers

17. As far as the disposal of this appeal is concerned, the Tribunal's powers derive from section 319(5) and from the relevant entry in the table in Schedule 6 to the Act. Consequently, the Tribunal may dismiss the appeal or, if it allows the appeal, may quash the order in whole or in part and (if appropriate) remit the matter to the Commission; substitute for all or part of the order any other order which could have been made by the Commission; or add to the order anything which could have been contained in an order made by the Commission.

18. In determining the appeal the Tribunal must consider afresh the Commission's decision to make the Scheme. In doing so, the Tribunal may take into account evidence which was not available to the Commission (section 319(4) of the Act).

Relevant statutory provisions for the making of schemes

19. The circumstances in which the original purposes of a charitable gift can be altered to allow the gifted property to be applied cy-près are set out in section 62(1) of the Act, and the court or the Commission may make schemes for the application of property cy-près in accordance with section 67.

20. Under section 69(1) of the Act, the Commission may also, by order, exercise the same jurisdictions and powers as are exercisable by the High Court in charity proceedings for the following purposes:

- Establishing a scheme for the administration of a charity;
- Appointing, discharging or removing a charity trustee or trustee for a charity;
- Vesting or transferring property.

21. Section 70 imposes restrictions on the Commission's jurisdiction to make an order under section 69. In particular:

21.1 The Commission does not have jurisdiction under section 69 to try or determine the legal or beneficial title to any property as between (a) a

charity or trustee for a charity, and (b) a person holding or claiming the property or an interest in it adversely to the charity (section 70(1)(a)).

21.2 Ordinarily, the Commission may only exercise its jurisdiction under section 69 on the application of the charity (section 70(2)).

21.3 The Commission must not exercise its jurisdiction under section 69 in a case which, because of its contentious character, or any special question of law or fact which it may involve, the Commission may consider more fit to be adjudicated on by the court (section 70(8)(a)).

22. Before making a scheme for the administration of a charity, or an order appointing, discharging or removing a charity trustee, the Commission must ordinarily give public notice of its proposals, invite representations thereon, and take into account any representations it receives (sections 88 and 89 of the Act).

The legal nature of the Scheme

23. We find that the Scheme is wholly administrative in nature. Its effect is simply to appoint the Company as trustee of the charities and to transfer to the Company legal title to the trust property in order to facilitate more efficient administration of the charities' property. The Scheme does not alter the purposes for which the trust property is held (indeed it expressly states that the Company must use the Chapel land and buildings for worship by persons being Protestant Dissenters of the Independent Denomination). Nor does the Scheme permit any of the trust property to be used by other charities.

24. Mr Bartley has argued that the democratic governance of the Chapel by its congregation is a principle of doctrine which may not be interfered with. It is not within the jurisdiction of the Commission (or indeed the Tribunal) to determine questions of religious doctrine. We find that the Scheme does not dilute any existing powers of the congregation in relation to the administration of the charities: any powers which were exercisable by members of the congregation under the trust deeds prior to the making of the Scheme are now exercisable by them in their capacity as members of the Company. The effect of the Scheme cannot, it seems to us, be characterised as a change in the purpose or objects of the charities.

25. Had the Commission proceeded with the original draft scheme (under which the objects of the Chapel trust would have been reformulated) then the alteration of those objects would have resulted in a cy-près scheme. However, the Scheme which was made following consultation and review was more modest and precise in scope and, as already stated, was wholly administrative in nature. The power to make the Scheme is conferred by section 69 of the Act (not by section 67) and it is the restrictions and procedural requirements to which that power is subject which must be considered.

26. Given that the Act requires the Tribunal to consider the decision to make the Scheme afresh (and thus not simply to review the procedure which the Commission followed in making that decision), the question of procedural compliance by the Commission is not critical to the outcome of this appeal. Nevertheless, for the sake of completeness, we find that the Commission did comply with the relevant requirements in the Act for notice and consultation before making the Scheme.

Validity of the application to the Commission

27. Mr Bartley contends that the Commission should not have exercised its power to make a scheme under section 69 of the Act because it had not received a valid application for such a scheme from the charities. This argument flows from Mr Bartley's belief that the trustees were not members of an Independent Church and were therefore disqualified from acting as trustees of the charities.

28. Mr Bartley's arguments in this regard are based on his own historical analysis of events surrounding the establishment of the Chapel and of subsequent events and on a personal interpretation of doctrinal matters. Mr Bartley's reasoning is at times difficult to follow and his conclusions are largely uncorroborated by primary evidence. He has not sought to show any specific impropriety or procedural deficiency in the appointment of the individuals who were acting as trustees at the relevant time. We can see no reason why the Commission should not have accepted an application by those trustees as a valid application, and in considering the matter afresh we are satisfied from the evidence presented that a valid application has been made by the trustees of the charities.

29. It follows that there is no need for the Tribunal to consider Mr Bartley's contention that the charities are exempt charities: the Commission has power to make a scheme under section 69 of the Act in relation to a charity (whether exempt or not) on application by the trustees.

Title to the trust property

30. One effect of the Scheme is to transfer legal title to the trust property from the former trustees to the Company. Mr Bartley argues that, in doing so, the Commission has breached section 70(1) of the Act because it has determined the ownership of the property in favour of the present congregation, thereby ignoring the existence and beneficial entitlement of the unincorporated association which existed when the Chapel was established, and has alienated title to the Company.

31. Section 70(1) provides:

The Commission does not have jurisdiction under section 69 to try or determine—

(a) the title at law or in equity to any property as between—

(i) a charity or trustee for a charity, and

(ii) a person holding or claiming the property or an interest in it adversely to the charity,

(b) ...

32. It is plain from the wording of section 69(1) that a scheme may provide for the transfer or vesting of property. Section 70(1) limits the Commission's jurisdiction in this regard in that a scheme may not be used as a means of resolving a dispute about property ownership between a charity and a third party.

33. Mr Bartley is not "a person holding or claiming the property or an interest in it adversely to the charity". His contention is that members of the original congregation,

or their successors, retain beneficial interests in the trust property, but that the transfer to the Company has defeated those rights.

34. The view that individuals retain a beneficial interest in the trust property arises from a misconception as to the legal effect of the Chapel Trust Deed and the Manse Trust Deed. Mr Bartley appears to view the arrangements established by those deeds essentially as a matter of contract. In submissions Mr Bartley states “In law the members [of the congregation] remain the principals and the trustees their agents.” This, of course, is not an apt description of the settlement of property in trust. In any event, it is incorrect to characterise the effect of the two deeds as establishing trusts in favour of particular individuals or their successors – their actual effect was to create trusts for charitable purposes: in the case of the Chapel Trust Deed that purpose is the use of the Chapel land and buildings as a place of worship by Protestant Dissenters of the Independent Denomination; and, in the case of the Manse Trust Deed, that purpose is the provision of accommodation for the Chapel’s Minister(s).

35. Even if Mr Bartley is correct in his analysis of the beneficial ownership of the trust property, the transfer of legal title to that property to the Company does not “try or determine” the question of beneficial ownership. The property is transferred subject to the existing trusts which continue in full force and effect: the Scheme leaves beneficial interests in the trust property untouched.

Human rights

36. Mr Bartley has not articulated his challenge to the Scheme on human rights grounds beyond stating that if members of the congregation are in some way the “owners” of the trust property (albeit subject to trusts) then the transfer of ownership without consent implies a breach of human rights. We infer from this that Mr Bartley contends that the Scheme amounts to an illegitimate deprivation of possessions in breach of Article 1 of Protocol 1 to the European Convention on Human Rights. However, we note that the Scheme was approved by a general meeting of the congregation before it was made. In addition, for the reasons explained above, we do not consider that the Scheme deprives any individual or body of any rights to property to which they were entitled before the Scheme was made.

Was it inappropriate to make the Scheme because of the contentious character of its subject matter?

37. Mr Bartley considers that the objections he has raised to the making of the Scheme, in terms of the adherence of the current congregation to the original traditions and doctrines of the congregational denomination; the qualification of the trustees to act; and entitlement to the trust property, are such that, by virtue of section 70(8) of the Act, the Commission should have refrained from making the Scheme because of the contentious character of its subject matter.

38. Section 70(8) provides:

The Commission must not exercise its jurisdiction under section 69 in any case ... which–

(a) because of its contentious character, or any special question of law or of fact which it may involve, or

(b) for other reasons,

the Commission may consider more fit to be adjudicated on by the court.

39. The mere fact that a proposed scheme is opposed by some respondents to consultation is insufficient to oust the Commission's jurisdiction under section 69 of the Act. Section 70(8) requires the Commission to make a judgment as to whether the subject matter is such that it would still be appropriate for it to make a scheme, or whether it would be more appropriate to defer to the jurisdiction of the court. In the present case, the Commission clearly concluded that it was still appropriate for it to make the Scheme, notwithstanding the objections raised by Mr Bartley and others.

40. It is apparent that the primary concern which underlies Mr Bartley's challenge to the Scheme is that, by not practicing infant baptism, the present congregation of the Chapel does not adhere to the doctrines upon which the charitable trusts were established. However, this is a doctrinal question and not relevant in determining the appeal. It is in any event not within the jurisdiction of either the Commission or the Tribunal to determine whether Mr Bartley's concern is justified in this regard, and the decision of this Tribunal as regards the Scheme cannot address that question.

41. The Scheme made by the Commission has no bearing on Mr Bartley's underlying concern about matters of doctrine. This is because the Scheme is wholly administrative in nature and provides that the trust property continues to be held on trust for the original purposes. Had the Commission wished to proceed with a scheme in the form of the original consultation draft, then Mr Bartley's concerns about the reformulation of the objects in the Chapel Trust Deed may well have been such that the matter would have been more fit to be adjudicated on by the court. However, having listened to those concerns, the Commission decided not to proceed with that scheme, but instead to make a scheme simply to facilitate the administration of the charities. In our view, this was an appropriate response to Mr Bartley's concerns, and one which demonstrates the potential of the Commission's decision review process to safeguard the quality of its decisions.

Conclusion

42. Finally, having considered each of Mr Bartley's grounds of appeal, we turn to the overarching question of whether it is expedient to make the Scheme to regulate the administration of the charities. In our judgment it is indeed expedient to make the Scheme for this purpose: not only does the appointment of a corporate trustee facilitate the administration of the trust property, but it also brings the protection of limited liability and ensures transparency in governance arrangements.

JONATHAN HOLBROOK
TRIBUNAL JUDGE

DATE: 21 JULY 2014