Appeal number: CA/2017/0014

FIRST-TIER TRIBUNAL
(CHARITY)
GENERAL REGULATORY CHAMBER

GRAHAM HIPKISS **Appellant**

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES **Respondent**

TRIBUNAL: JUDGE ALISON MCKENNA
CAROLE PARK
MANU DUGGAL

The Tribunal sat in public at Nottingham Civil Justice Centre on 23 and 24 July 2018

The Appellant was represented by David Farlow, its non-legally qualified representative.
The Respondent was represented by John Maton, a Charity Commission in-house lawyer.

DECISION

1. The appeal is allowed.

2. The Respondent's decision dated 10 November 2017 is hereby quashed.

3. The Respondent is directed to rectify the Register, by restoring HOPRT to it.

4. The Tribunal remits to the Respondent generally (a) the consideration of any regulatory advice or action required in relation to HOPRT's activities; and (b) the question of whether it would be permissible for HOPRT to adopt different objects.

REASONS

A: Background

5. The Appellant is the sole remaining trustee of an institution called the Human Organ Preservation Research Trust ("HOPRT"). It was established by a deed of trust dated 7 December 1990[1] and entered onto the Register of Charities ("the Register") on 31 January 1991 (registered charity number 1001750).

6. The Objects of HOPRT are:

> *"1) Principally to conduct promote develop and co-ordinate for the benefit of the public research with a view to enabling the preservation of human organs after death for transplant purposes; 2) secondarily to conduct promote develop and co-ordinate for the benefit of the public research into the ageing process".*

7. HOPRT operates within the field of cryonics, which involves the storage of the brains and/or bodies of legally dead humans at low temperatures, in the hope that it will become possible in the future to reverse the ageing process and cause of death and transplant that person's brain and/or other organs in a way that preserves their individual characteristics. HOPRT is involved in providing cryopreservation services to members of the public who request their assistance, and in facilitating the transportation of the preserved brain and/or body to storage facilities in America and elsewhere. Cryopreservation is a lawful activity and it is un-regulated by any statutory authority.[2]

8. HOPRT conducts field-research into cryopreservation techniques in the course of carrying out the cryopreservation of those who have requested it. It hosts a web-site providing information about cryonics and cryopreservation and provides advice and assistance to those who wish to make such arrangements, including to people who

---

[1] Hearing bundle p.100

[2] See Mr Justice Peter Jackson's judgment in *Re JS* (footnote 3 below).

have recently received a terminal diagnosis. HOPRT also provides training for those willing to assist in cryopreservations, who may nor may not have medical qualifications or experience.

9. HOPRT came to public attention in 2016, after a much-publicised legal case in which a High Court Judge ruled that a terminally-ill girl of fourteen was entitled to make arrangements for her body to be cryopreserved by HOPRT.[3] There followed considerable press interest in the charity and a member of the public made a complaint about it to the Charity Commission.

10. In November 2016, the Charity Commission wrote to HOPRT, requesting documents and information. There ensued a long correspondence between the parties about HOPRT's objects and activities.

11. On 10 November 2017, the Charity Commission wrote to the Appellant to notify him that it had decided to remove HOPRT from the Register under s. 34(1)(a) of the Charities Act 2011 ("the Act"). The letter stated that, in the Commission's opinion, there was insufficient evidence to show that HOPRT was established for exclusively charitable purposes and that its entry onto the Register had been a mistake. Having considered evidence about HOPRT's post-formation activities, the Commission had concluded that *"the purposes of HOPRT are and have always been simply the promotion and facilitation of cryopreservation which does not fall within the purposes set out in the Trust Deed"*.

B: Appeal to the Tribunal

(i) The Pleadings

12. The Appellant's Notice of Appeal, dated 21 December 2017, relied on grounds of appeal that HOPRT had been established by a solicitor acting for the founding trustees, who had corresponded with the Charity Commission on their behalf. It was asserted that the Commission had, at the time of registration, been made aware of HOPRT's proposed activities and that guidance on the appropriate wording for the objects clause had in fact been offered by the Commission's staff. It was asserted that HOPRT's activities, following entry on the Register, were consistent with its objects, which promoted charitable purposes, and were for the public benefit. The outcome requested in the grounds of appeal is HOPRT's restoration to the Register, and in the alternative the provision of assistance with modifying the governing document, or the opportunity to apply for a cy-près scheme if HOPRT cannot continue its own activities as a charity, so that its assets can be used by another charity. Alternatively, if the Tribunal's conclusion was that it must be removed from the Register, a direction was requested that this take effect from the date of removal and not retrospectively, so as to avoid the adverse financial consequences which

[3] https://www.judiciary.uk/wp-content/uploads/2016/11/js-judgment-20161118.pdf

might flow from the Charity Commission's decision that HOPRT had never been a charity[4].

13. The Respondent's Amended Response, dated 1 May 2018, asserted that HOPRT had been established for purposes which included the promotion and facilitation of cryopreservation, that this was not reflected by the purposes as stated in the governing document, and was not otherwise charitable.

14. In a preliminary ruling, the Tribunal decided that it was not open to the Commission additionally to rely on s. 34 (1) (b) of the Act in its Response, as that section had not been invoked in making the original decision communicated to HOPRT. The Commission amended its Response accordingly.[5]

15. The Appellant had filed a Reply to the original Response, dated 30 March 2018, which took issue with the Charity Commission's legal analysis. It referred to the decision of the High Court of New Zealand that the Charities Registration Board had been wrong to refuse to register as charities two cryonics research institutions[6]. The principal argument in the Reply was that the purposes for which HOPRT was established were not in doubt and were charitable. In the alternative it was submitted that, if the Tribunal was satisfied that HOPRT had been established for un-stated purposes, then these should be regarded as purposes falling under one or more other descriptions of purposes in s. 3 of the Act, which include the advancement of education, the advancement of health or saving of lives, and the advancement of science. It was submitted that cryopreservation could also be viewed as a new charitable purpose under s. 3(1)(m) (iii) of the Act, by analogy with trusts for cremation and burial, and that it satisfied the public benefit requirement.

(ii) The Hearing

16. The Tribunal held an oral hearing over two days at which it received written witness evidence and heard oral witness evidence called on behalf of both parties. It received detailed written skeleton arguments from both representatives and also heard oral submissions after the evidence. We would like to thank all the witnesses for their assistance, whether they attended in person or provided written evidence. We also express our thanks to both representatives for their clear oral and written submissions.

---

[4] As a "purpose" trust, the deed would be regarded as void *ab initio* if it did not declare valid charitable purposes. The Charity Commission's decision that HOPRT had never been a charity might therefore be seen to have invalidated the deed but, if it is restored to the Register, it would presumably regain its legal validity as a deed.

[5] http://charity.decisions.tribunals.gov.uk/documents/decisions/Ruling%2017%20April%202018.pdf

[6] *Re The Foundation for Anti-Ageing Research and The Foundation for Reversal of Solid State Hypothermia* [2016] NZHC2328.

See:https://forms.justice.govt.nz/search/Documents/pdf/jdo/7c/alfresco/service/api/node/content/workspace/SpacesStore/98acb1b3-4acd-4cbe-ade2-67ccc6c7d579/98acb1b3-4acd-4cbe-ade2-67ccc6c7d579.pdf

17. The Tribunal received a hearing bundle of over 1500 pages, consisting of the witness statements, documentary evidence and copy correspondence. We also received a three-volume "Authorities Bundle". We have referred to the legislation and case law there included where appropriate but regret that it contained rather a lot of material that was not relevant to our Decision.

18. The Tribunal was asked to decide an unusually high number of preliminary applications in this case, which were listed for ruling on the first morning of the hearing. In the event, most of the issues were agreed between the parties on the eve of the hearing. The two issues still requiring formal adjudication were dealt with shortly in an oral ruling. These were, firstly, whether certain of the Appellant's witnesses could be treated as expert witnesses. The short answer to that question was no, because they did not meet the necessary criterion of independence from the parties, as established by the *Ikarian Reefer* case[7]. The Tribunal may admit evidence which would not be admissible in a civil trial[8], so the opinion evidence of those witnesses was admitted, but the Tribunal would attach such weight to it as it considered appropriate. The second issue was whether Mr Farlow was permitted to be both a representative and a witness. The Tribunal regarded that situation as undesirable but not insurmountable, especially as Mr Farlow had not been required to attend for cross examination. His written witness statement was admitted into evidence and he was permitted to continue to act as the Appellant's representative, with the proviso that the Tribunal would not hesitate to bring this arrangement to an end if it interfered with the smooth running of the proceedings (which we are pleased to say it did not).

19. This is our reserved Decision.

C: The Law

(i) The Law Determining the Nature of this Appeal

20. The nature of the Tribunal's jurisdiction[9] in this matter is *de novo*, i.e. we stand in the shoes of the Charity Commission and take a fresh decision on the evidence before us, giving appropriate weight to the Commission's decision[10] as the body tasked by Parliament with making such decisions. The nature of an appeal by rehearing is

---

[7] [1993]2 Lloyds Rep 68. See: https://www.i-law.com/ilaw/browse_lawreports.htm?year=1993&volume=2&name=Lloyd's%20Law%20Reports

[8] Rule 15 (2) (a) (i) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/367600/tribunal-procedure-rules-general-regulatory-chamber.pdf

[9] Section 319 (4) (a) Charities Act 2011 http://www.legislation.gov.uk/ukpga/2011/25/contents

[10] See *R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31. http://www.bailii.org/ew/cases/EWCA/Civ/2011/31.html. Approved by the Supreme Court *in Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60 at paragraph 45 – see https://www.supremecourt.uk/cases/docs/uksc-2015-0126-judgment.pdf.

described in *El Dupont v Nemours & Co v ST Dupont* [2003] EWCA Civ 1368 by May LJ at [96] [11].

21. In taking a fresh decision, the Tribunal is not required to undertake a reasonableness review of the Charity Commission's decision-making. Any public law criticisms of the Commission's conduct or conclusions is thus avoided by the Tribunal taking a fresh decision. The Tribunal also has no supervisory jurisdiction – see *HMRC v Abdul Noor* [2013] UKUT 071 (TCC)[12].

22. Pursuant to s. 319 (4) (b) of the Act and rule 15 (2) (a) (ii) of the Tribunal's Rules, the Tribunal may when hearing an appeal admit evidence whether or not it was available to the previous decision maker. The burden of proof in a *de novo* appeal rests with the Appellant as the party seeking to disturb the status quo. The standard of proof to be applied by the Tribunal in making findings of fact is the balance of probabilities.

(ii) The Law Relevant to the Challenged Decision

23. The Charity Commission's decision was not that HOPRT had ceased to be a charity since entered onto the Register, but that it had never been a charity in law. This decision involved a "rectification" of the Register under s. 37 of the Act.

24. S. 37 (1) of the Act provides that:

> *"An institution is, for all purposes other than rectification of the register, conclusively presumed to be or to have been a charity at any time when it is or was on the register."*

25. The effect of the Charity Commission's decision was therefore to disapply that statutory presumption and bring about a situation whereby HOPRT had not been entitled to the fiscal and other advantages of charitable status for the twenty-seven years during which it had been on the Register. It was therefore rendered potentially liable to pay back taxes as a non-charitable institution from which it had been exempted during that period.

26. The statutory framework for registration as a charity may be summarised as follows. The Charity Commission must enter certain charitable institutions onto the Register and it may keep the Register in such manner as it thinks fit. It has a duty to remove from the Register institutions which it no longer considers to be charities and those which have ceased to exist or do not operate.

27. Section 1 (1) of the Act defines *charity* as an institution which is (a) established for charitable purposes only and is (b) subject to the control of the High Court in the exercise of its jurisdiction with respect to charities. Section 2 (1) of the Act defines a

---

[11] http://www.bailii.org/ew/cases/EWCA/Civ/2003/1368.html

[12] http://taxandchancery_ut.decisions.tribunals.gov.uk/Documents/decisions/HMRC_v_Abdul_Noor.pdf

charitable purpose as one which falls within section 3 (1) of the Act and is for the public benefit. Section 3(1) of the Act sets out a list at (a) to (l) of 12 descriptions of charitable purposes and at (m) allows for the recognition of new charitable purposes through a process of analogy. A charitable purpose must be for the public benefit. Section 4 of the Act provides that there is to be no presumption that a purpose of any particular description is for the public benefit and that any reference to public benefit is a reference to that term as it is understood for the purposes of the law relating to charities in England and Wales.

28. In the Upper Tribunal's decision in *ISC v Charity Commission* [2011] UKUT 421 (TCC)[13], it was held at [82] that, when applying the statutory test, the starting point is to identify the *particular purpose(s)* of the institution. The *particular purpose* is charitable if it falls within any of the categories listed in s. 3(1) of the Act and is for the public benefit. The Upper Tribunal also decided in *ISC* at [188] that the meaning of "*established"* in the Act is "*what the institution was set up to do, not... how it would achieve its objects or whether its subsequent activities are in accordance with what it was set up to do"*. This aspect of the *ISC* decision has particular relevance to this appeal.

29. The *ISC* decision described at [41] the public benefit requirement in the Act as comprising two facets, both of which must be considered in every case. Public benefit in the first sense involves consideration of whether the nature of the purpose itself benefits the community. In the second sense, it involves consideration of whether those who may benefit from the carrying out of the purpose are sufficiently numerous and identified in such manner as to constitute 'a section of the public'.

30. In *AG v Ross* [1986] 1 WLR 252, Scott J ruled (at page 263) that:

> *"The question whether under its constitution the [institution] is or is not charitable must, in my view, be answered by reference to the content of its constitution, construed and assessed in the context of the factual background to its formation. This background may serve to elucidate the purpose for which the [institution] was formed. But if the [institution] was of a charitable nature when formed in 1971 it cannot have been deprived of that nature by the activities carried on subsequently in its name".*

31. Scott J went on to find that evidence of post-formation activities was relevant to the question of whether an institution had been formed for charitable purposes subject to two requirements. Firstly, the activities considered must be *intra vires* and secondly, the activities to be considered must be of a nature and take place at a time which gives them probative value for the purposes of construction. He considered circumstances in which evidence of post-formation activities was probative of a

---

[13] https://www.gov.uk/tax-and-chancery-tribunal-decisions/the-independent-schools-council-v-the-charity-commission-for-england-and-wales-the-national-council-for-voluntary-organisations-hm-attorney-general-and-others-2011-ukut-421-tcc

breach of trust rather than for the purpose of construing the original purposes of the institution.

32. In *McGovern v AG* [1982] Ch 321, Slade J summarised (at page 352) the principles applicable to the interpretation of trusts for research by a charity as follows:

> *" (1) A trust for research will ordinarily qualify…if, but only if, (a) the subject matter of the proposed research is a useful subject of study; and (b) it is contemplated that knowledge acquired as a result of the research will be disseminated to others; and (c) the trust is for the benefit of the public, or a sufficiently important section of the public. (2) In the absence of a contrary context, however the court will be readily inclined to construe a trust for research as importing subsequent dissemination of the results thereof. (3) Furthermore, if a trust for research is to constitute a valid trust for the advancement of education, it is not necessary either (a) that a teacher/pupil relationship should be in contemplation or (b) that the persons to benefit from the knowledge to be acquired should be persons who are already in the course of receiving 'education' in the conventional sense. (4) In any case where the court has to determine whether a bequest for the purposes of research is or is not of a charitable nature, it must pay due regard to any admissible extrinsic evidence which is available to explain the wording of the will in question or the circumstances in which it was made."*

33. Slade J went on to consider whether the subject matter of the proposed research in that case was *"a subject of study which is capable of adding usefully to the store of human knowledge."* The threshold for finding such educational value in a trust for charitable purposes had been accepted to be a low one of "*widening the mind*" by Farwell J in *Re Lopes* [1931] 2 Ch 130, in which a trust for the introduction of new and curious subjects of the animal kingdom to London Zoo was held to be charitable. In *Re Hopkins' Will Trusts* [1965] Ch 669, it was held that a bequest to the Francis Bacon Society for the purpose of searching for the manuscripts of plays ascribed to Shakespeare, but believed by the testatrix to have been written by Bacon, was charitable. Whilst the evidence that the likelihood that any such manuscripts would be discovered was low, Wiberforce J held that the research was not devoid of the possibility of any result.

34. In *Southwood v AG* [2000] EWCA Civ 204, the Court of Appeal considered that a declaration of trust should be construed with proper regard to the circumstances in which it came to be executed, and in so doing took into account material produced by the promoters of the trust in advance of the execution of the deed.

(iii) The Law Governing the Tribunal's Decision

35. The first issue for the Tribunal in this appeal is whether it would, on the basis of the evidence now before it, itself exercise the statutory power under s. 34 (1) (a) of the Act to remove HOPRT from the Register of Charities. If not, then it must allow the appeal. The second issue is whether, if it allows the appeal, it should exercise its discretion to make any or all of the orders available to it.

36. Section 34 of the Act provides that

> *"(1) The Commission must remove from the register –*
>
> *(a) any institution which it no longer considers is a charity, and*
>
> *(b) any charity which has ceased to exist or does not operate".*

37. The powers available to the Tribunal if it allows this appeal are those in column 3 of Schedule 6 to the Act, corresponding to s. 34 of the Act. These are: to quash the decision and (if appropriate) (a) remit the matter to the Charity Commission; (b) direct the Charity Commission to rectify the Register.

38. Where the Tribunal has the power to remit a matter to the Charity Commission, this is a power either (a) to remit the matter generally or (b) to remit it for determination in accordance with a finding made or direction given by the Tribunal.[14]

D: Evidence

(i) Documentary Evidence

39. We have considered the Commission's decision letter of 10 November 2017[15] carefully. The passage headed "*Decision"* states that HOPRT

> *"…is not and never has been a charity. It was mistakenly registered in reliance upon information presented by HOPRT to the Commission at the time of registration. At the time of applying for registration as a charity HOPRT stated its purposes to be for medical research. Based on the information we have received following registration, the evidence does not support that HOPRT was established for the promotion of medical research or for any other charitable purpose…"*

40. In the passage headed *"Reasons"*, the letter states that:

> *"Based on [the solicitor's] representations the Commission understood the purposes of HOPRT to be for the promotion of research into the ageing process and to enable the preservation of human organs after death for transplant purposes….We have questioned the extent to which HOPRT is in fact engaged in the promotion of research…We consider that the purposes of HOPRT are and always have been simply the promotion and facilitation of cryopreservation which does not fall within the purposes set out in the trust deed …and is not otherwise charitable".*

41. It is important to note here that the Tribunal has received a great deal more evidence than the Charity Commission had available when it made its decision. In particular, we had evidence to support a greater understanding of cryonics and

[14] Section 323 Charities Act 2011

[15] Hearing bundle 93

cryopreservation, including the affidavits and exhibits placed before the High Court of New Zealand in the litigation referred to at paragraph 15 above.

42. We refer here to the affidavit filed by Chana Shvonne de Wolf**,** a research scientist at Advanced Neural Biosciences Inc. which explained in considerable detail "*ideal cryonics procedures*"[16], and which HOPRT was content for us to adopt as an accurate description of cryopreservation in general. Although her own work is laboratory-based, she describes at paragraph 71 of her affidavit her interest in developing field research protocols. We also note that she gives at paragraph 125 of her affidavit a figure of 2,000 people who have arranged for their cryopreservation at death and states that some 420 bodies are already cryopreserved world-wide. She describes at paragraph 114 of her affidavit a very significant development in cryopreservation techniques in the 1990's and early 2000's, which she describes as "*the vitrification breakthrough*" (a process which limits tissue damage caused by freezing).

43. We also had before us a "*Scientists' Open Letter on Cryonics*"[17] to which there are 68 signatories and an appendix setting out a list of relevant journal articles. The signatories, speaking for themselves, include leading scientists from academic institutions world-wide, including the Universities of Oxford and Cambridge in this country. The statement to which they offered their endorsement reads as follows:

> *"Cryonics is a legitimate science-based endeavour that seeks to preserve human beings, especially the human brain, by the best technology available. Future technologies for resuscitation can be envisioned that involve molecular repair by nano-medicine, highly-advanced computation, detailed control of cell growth and tissue regeneration.*
>
> *With a view toward these developments, there is a credible possibility that cryonics performed under the best conditions achievable today can preserve sufficient neurological information to permit eventual restoration of a person to full health.*
>
> *The rights of people who choose cryonics are important and should be respected."*

44. In one key area of dispute between the parties, there was very little evidence available either to the Commission or to the Tribunal. This concerned the correspondence exchanged in 1990/1991 between HOPRT's solicitor and the Charity Commission, which, assuming it existed, would have provided the basis for the Charity Commission's understanding at that time of HOPRT's purposes, and its decision to enter HOPRT onto the Register. The Charity Commission's file has since been destroyed so it has no contemporaneous records. HOPRT had been able to obtain copies of some correspondence from May 1990 between its founders Mr and Mrs Sinclair and their solicitor, but not the solicitor's own correspondence with the Commission or the registration application itself. We have considered these letters

[16] Hearing bundle 400

[17] Hearing bundle 939

very carefully, as they are the only contemporaneous evidence about the creation of the charity. We note that the letters[18] contain the solicitor's advice to his clients as follows:

> *"…objects of a charity are supposed to reflect accurately and succinctly the activities which are to be pursued by the trustees – however it is wise to draw these objects widely enough to ensure that it will cover all conceivable work to be undertaken by the charity in years to come. Thus if you might anticipate the work of the charity in thirty years' time moving into areas other than pure research into the preservation of human organs this needs to be thought about now so that the objects can reflect this possible extension of the work".*

45. We also note here that the solicitor refers in both of his letters to "*sending a draft of the Deed to the Charity Commissioners for their approval"* rather than sending the executed deed. This, in and of itself, is indicative of a process involving consultation between the founders of HOPRT (via the solicitor) and the Commission prior to execution of the deed containing the objects.

46. In his first letter, the solicitor refers to having been asked by his clients to carry out research into "*the legality of 'freezing' a body at the point of death, whether it is possible to store such bodies indefinitely without falling foul of the burial and cremation laws…"* In his second letter, that issue is not re-visited, but the solicitor refers to sending the Charity Commission an explanation of exactly what is envisaged and details of the activities contemplated by the proposed charity. He says in his letter that he wants to make sure that he has his facts correct, as follows:

> *"My understanding is that you have now been involved for some time in this relatively new form of medical research which would enable the preservation of human organs for longer periods of time after death for transplant purposes. I also understand that this research has grown out of your association with a firm in America called "Alcor" which is also looking into matters relating to the whole ageing process in order to see whether problems such as Alzheimers can be effectively treated. Since the American company has charitable status over there you wanted to look into the possibility of forming a charity here which would encourage people to provide funds for research".*

47. He goes on to discuss the gifting to the charity by the founders of a lease of premises and £20,000 worth of medical equipment. He concludes "*Any other information you could give me would be welcome and if any of the above is incorrect please let me know*".

48. We note that, following the reference to submitting a draft trust deed to the Commission in late May 1990, the deed was not finally executed until December 1990. The copy of the executed deed in our bundle bears a Charity Commission stamp dated 25 January 1991. It was then entered into the Register on 31 January 1991. The Charity Commission had seen the letters from the solicitor to Mr and Mrs

[18] Hearing bundle 238

Sinclair when it made its November 2017 decision and referred to them in its letter as supporting its interpretation of the deed.

49. We have reviewed the executed trust deed itself and note that, in addition to the objects clause recited at paragraph 6 above, the deed contains only standard administrative and investment powers and does not describe the activities to be undertaken in furtherance of the objects. By modern standards, it is rather sparse as to the machinery of governance for the charity.

50. We have read HOPRT's Annual Reports for the years between 2010 and 2016. We note that its income is consistently around £5,000 and that it describes its activities as *"training and giving support for the collection and preservation of human organs"*. The 2016 trustees' report gives a flavour of the range of HOPRT's activities as follows[19]:

> *"Training and Development:*
>
> *January/April, July and October – hosted public training weekends to teach and practice stabilisation, perfusion and transportation protocols for cryonics, with emphasis on minimising cellular degeneration, particularly to retain brain integrity and information retention.*
>
> *May – met with Australian cryonics rep…*
>
> *June - consulted with Spanish cryonics groups…*
>
> *November – invited to international Cryonics conference in …Switzerland…HOPRT emergency protocols were presented followed by a Q and A session.*
>
> *Large scale overhaul of procedures manual initiated to ensure it 100% reflects the latest protocols…*
>
> *Public Awareness:*
>
> *136 e mail enquiries from members of the public….*
>
> *170 e mail enquiries from the media…*
>
> *September – HORPT provides technical advice [to BBC]*
>
> *October…[JS ruling] HOPRT acted in an advisory capacity to the patient, her family, her legal team and the hospital during the court case.*
>
> *December – contact with Human Tissue Authority*
>
> *Research:*

[19] Hearing bundle 139

April – perfusion pressure monitoring upgraded to digital unit with data logging improved record keeping and analysis

October – following on from court ruling, provided emergency assistance consisting of 2 days standby, stabilisation, perfusion, cool down and shipping

October – first field test of HOPRT-designed pressurised perfusion system. Performed as expected, no complications.

November – following critical breakdown of ambulance, replacement purchased and put into service to improve emergency readiness."

51. HOPRT also produced data on the number of cryopreservations it had carried out each year since establishment[20]. There were:

"*2000 – 1*

2008 – 1

2013 – 2

2014 – 3

2015 – 2

2016 – 1

2017 -1".

52. The Tribunal has viewed extracts from HOPRT's website[21] and examples of its publications,[22] including the technical specifications for a perfusion circuit, notes on a completed cryopreservation, a training update and its "*Emergency Services Protocol"* dated April 2017[23].

(ii) The Commission's Witnesses

53. The Charity Commission filed witness statements from David Holdsworth and Neil Robertson. Mr Holdsworth is the Registrar of Charities. Mr Robertson is its Head of Technical Casework and Quality Assurance and had management responsibility for staff who made the decision about HOPRT. He has worked for the Commission for 42 years. Mr Robertson attended the hearing and gave oral evidence.

---

[20] Hearing bundle 149

[21] Hearing bundle 150 - 165

[22] Hearing bundle 1318 – 1405

[23] Hearing bundle 1339

54. Mr Robertson confirms in his witness statement that Alcor, the organisation referred to in HOPRT's solicitor's letter, is a not-for-profit cryonics storage provider in America. He describes his understanding that HOPRT *"supplies"* bodies to Alcor for storage. Mr Robertson expresses in the witness statement his opinion that the work undertaken by HOPRT to develop cryopreservation operating protocols and procedures is inconsistent with the characteristics of research in charity law and his view that HOPRT was established to promote cryonics and cryopreservation so was not a charity.

55. In cross-examination, it was put to Mr Robertson by Mr Farlow that the Commission's decision letter referred only to those parts of the solicitor's letters which could be interpreted as supporting the view that the Commission had already formed about the registration of HOPRT. For example, asked about the Commission's understanding of HOPRT's objects clause, Mr Robertson said that its understanding of the reference to organ transplants was that these would take place shortly after the death of the donor, although he accepted that the trust deed did not specify a time limit. He accepted that the solicitor's letter to the founders refers to the preservation of organs for *"longer periods of time after death for transplant purposes"*.

56. In answer to questions from the Tribunal, Mr Robertson said that the Commission's procedures in 1990/1991 had required novel registration applications to be referred up to the Board. As this procedure had not been followed in this case, he had concluded that the true purposes of the putative charity had not been disclosed during the registration process. He accepted that this inference relied on facts about the Commission's internal operating procedure at the relevant time which were within his own knowledge, but which had not been put into evidence. He also accepted that an alternative explanation for the failure to refer the case upwards was that the member of the Commission's staff who had processed the application had not properly understood it.

57. Turning to the activities of HOPRT, Mr Robertson explained that in his view the information about cryopreservation provided by HOPRT on its website was not neutral and that it did not state the possible negatives associated with cryopreservation. Asked by Mr Farlow what these might be, Mr Robertson said that there were moral and ethical considerations to be worked through, for example the impact of cryopreservation on population control.

58. Mr Robertson did not accept that there was evidence that HOPRT disseminated the results of its research, although he did accept that publishing information on the website was a form of dissemination. He was referred to evidence which he said had not been available to the Commission when it made its decision. He said he had not seen the Tribunal's bundle so could not comment on it.

59. The Tribunal asked Mr Robertson about the fact that the decision letter (the terms of which he had approved) says that HOPRT was not charitable at the time of its registration, but relied on the evidence of what it had done since registration to

support that conclusion. Mr Robertson said he thought it would have been better if the letter had distinguished more clearly between the two issues.

(iii) HOPRT's Witnesses

60. HOPRT filed witness statements and called witnesses to give evidence about HOPRT's establishment, its purposes and activities, its charity registration process, the experience of those who acted as volunteers, those who had attended training events and/or had arranged cryopreservation through HOPRT. It also filed evidence from medical researchers and people with relevant professional qualifications. We refer to only some of that evidence here, but we have taken it all into account.

61. Mr Hipkiss, the Appellant, filed a witness statement and gave oral evidence. He stated that he had joined a trustee body of three but that one trustee had died and the other resigned, so he was now the sole trustee. He had been unable to recruit new trustees in HOPRT's present circumstances and relied heavily on the support of volunteers. Cross examined by Mr Maton, he accepted that HOPRT's objects could be clearer but said that the term "cryonics" had not even been in the dictionary when the trust was created. In answer to questions from the Tribunal, Mr Hipkiss explained that HOPRT was run from his own home by volunteers.

62. The Tribunal also asked Mr Hipkiss about the Judge's concluding comments in the *JS* case (see paragraph 9 above) indicating that there had been some problems with HOPRT's attendance at the patient's deathbed and that the hospital had been unhappy with the arrangements. Mr Hipkiss explained that HOPRT's ambulance had broken down (and has since been replaced) so the volunteers and equipment had arrived in a van. He said that HOPRT had not been given an opportunity to explain things to the judge before he made his comments.

63. Volunteer and committee member Tim Gibson described in his witness statement how he had been involved with HOPRT for twenty years. He said he has acted as the team leader in all fourteen cryopreservations carried out by HOPRT since 2000 and has hosted approximately 35 public training events. He has undertaken Cryotransport Technicial Training at Alcor in America. Mr Gibson described how the operating protocols for cryopreservation in other countries are different (taking account of local laws) and that HOPRT's *Protocol* is the only document of its kind in the UK. He has also provided briefings on cryonics to hospitals, GPs and nursing services, palliative care facilities, funeral directors, legal practices and the Human Tissue Authority. Mr Gibson's view is that the field of cryonics cannot be advanced only by work in the laboratory but is also required to be practiced in real-life situations and that field development is crucial to improving the equipment and procedure involved in cryopreservation.

64. Mr Gibson described his conversations with Mr Sinclair, one of HOPRT's founders, which had taken place over the period of his involvement with HOPRT and before Mr Sinclair had begun to suffer from his current memory problems. He said that the consistent story was as set out in the Notice of Appeal, namely that it was the Charity Commission which suggested the objects for the charity. He suggested that

Mr Sinclair had become confused in terms of recall of his correspondence with the Charity Commission over recent months.

65. Mr Gibson explained that the majority of HOPRT's resources were expended on research, training, development and the dissemination of its research and that it had been established to have a broad remit but that lack of funding had served to limit the scope of its work. He exhibited a photograph of the premises used by HOPRT at the time of its establishment, which had contained an operating theatre, ambulance bay, crew room, board room, meeting area, laboratory and patient storage area. He described HOPRT's field of research as "*mechanical equipment research*". He describes HOPRT as having trained 40 or 50 volunteers over the years but said that 15 or 20 people are generally available to attend a deathbed.

66. Mr Gibson told the Tribunal that HOPRT's purposes were as set out in the trust deed. He said that cryopreservation preserves a patient's organs by freezing them. He explained that in the early days of the trust, the idea was to freeze the brain alone but now a whole-body concept was employed.

67. Asked about the costs of cryopreservation, Mr Gibson said that there is an HOPRT membership system which allows the member to have an expenses-only cryopreservation after three years of membership. The membership costs are £240 a year or £120 for students. If the person seeking to be cryopreserved is not an HOPRT member, the cost is £5,000. He said that HOPRT had conducted cryopreservations for free and had reduced the costs to assist those who could not afford the £5,000. He also produced a quotation from a life assurance company which would upon death cover the estimated total cost, including shipping, at £27,000. If arrangements for storage are made directly with Alcor or other providers, these costs can stretch to over two hundred thousand dollars, but this includes the establishment of a trust fund for when the patient is re-animated. He explained that, if HOPRT does not carry out the deathbed cryopreservation, people can arrange with a funeral director to be packed in dry ice and shipped to America for storage, but that was not an ideal arrangement. He explained that there are some cryopreservation groups in other European countries but none were as advanced as HOPRT.

68. Volunteer and committee member Victoria Stevens' witness statement describes her own wish to be cryopreserved and her ability to fund this through HOPRT's membership scheme. She describes attending an international cryonics conference in Switzerland with other HOPRT volunteers in 2016 and providing a demonstration of cryopreservation technique and equipment. She provides advice and information to members of the public interested in finding out about cryopreservation.

69. Ms Stevens describes how, when cryopreserved bodies are shipped to Alcor in America, it conducts a CT brain scan to check on the efficiency of the cryopreservation. HOPRT also takes detailed notes of the process, including any variables, and the results of these technical evaluations are exchanged between the two organisations in order to inform future work.

70. The Tribunal received a witness statement from Michael Carter, a retired geotechnical engineer, who also gave oral evidence. He has been attending HOPRT's training events for twelve years and volunteers as a member of the emergency call-out team. He states that he has also researched and developed cryopreservation equipment and protocols. He describes HOPRT's *Protocol* (see paragraph 53 above) as providing information on the best techniques available for initial treatment of a patient to minimise tissue damage, based on the opinions of scientists and the practical limitations imposed by real-world conditions. He describes the *Protocol* as having originally been written on the basis of technical papers and meetings with cryonics specialists and then developed by volunteers with experience of conducting actual cryopreservations. He says it is regularly up-dated to take account of research findings and improvements to procedures. He describes the development by HOPRT of a perfusion circuit which can accurately control pressure, and of a collapsible ice bath for ease of transportation. He exhibits a short discussion paper he has written on whole body perfusion.

71. Mr Carter described cryonics as being a practical subject, "*like engineering*" so that its research and development has to involve practical considerations. He intends to be cryopreserved himself and says that he finds it comforting to think of the possibility of re-animation in the future. He describes having met representatives of the embalming profession who have attended HOPRT's training events and says he was invited to address a meeting of the British Institute of Embalmers. He told the Tribunal that he does not want to die and that cryopreservation is the only way to avoid it. He said that he accepted that it is speculative, but that there is a sufficient chance of it working for him to want to try.

72. HOPRT volunteer David Farlow is a post-graduate law student who has written a dissertation on the legal issues in cryonics. His witness statement described how he has drafted power of attorney documents for HORPT to make available to members of the public via its website.

73. Witness Dr Joao Pedro de Magalhaes is a Reader at the Institute of Ageing and Chronic Disease at the University of Liverpool. His witness statement describes the establishment in 2015 of the UK Cryonics and Cryopreservation Research Network. He describes the fields of cryonics and cryopreservation as linked to the fields of life extension and anti-ageing as they involve research into extending life. He regards research into cryonics and cryopreservation as useful to fields of research such as organ banking. He concludes:

> *"I think the potential benefits of cryonics and the application of cryopreservation procedures are huge. It is an unproven technology at the moment. It is not widely accepted and its effectiveness is unknown. However, if we can advance and improve the protocols sufficiently then it would be a completely revolutionary technology. Instead of dying from cancer or heart disease, people would be cryopreserved for future generations. These potential benefits are very significant and I do not believe it is correct to describe them as vague or intangible".*

74. Witness Dr Ville Salmensuu was until recently a Clinical Research Fellow in Emergency Medicine at a London Hospital but is shortly returning to his native Finland to continue his work there. He filed a witness statement and gave oral evidence to the Tribunal.

75. He has attended HOPRT's training events which he said had been useful in developing a cryonics association in Finland. He described HOPRT as "*one of the most advanced and professional organisations in this field in Europe"*. He said that HOPRT's training events include training on first aid, CPR, detection of vital life signs, and liaison with healthcare professionals. He described HOPRT's presentation to an international conference in Utrecht in 2018. He said that HOPRT is a member of an International Cryonics Collaboration which hosts an on-line discussion forum and up-dates members through its mailing list.

76. Dr Salmensuu states at paragraph 15 of his witness statement that:

> *"Cryonics and cryopreservation have strong links to life extension and organ transplantation and the latter two are core elements of the former. The aim of cryopreservation is to preserve a life with the goal of restoring it by transplanting the preserved brain into a new body, among other options. The brain would also need to be rejuvenated and the damaging effects of ageing would need to be repaired. Any other organs in a preserved body would also have aged and would need either rejuvenation or transplantation of replacement organs."*

77. In his oral evidence, Dr Salmensuu said that cryopreservation can be seen as a form of organ transplant of the brain as the intention is to transfer the brain to another body. He said that, as age-related disease causes most deaths, a re-animated body would still need to have its age-related problems cured.

78. Witness Derek Watkinson is a retired nurse who has arranged to be cryopreserved when he dies. He has attended HOPRT's training events and volunteered at cryopreservations. He describes in his witness statement the hope that terminally ill patients have expressed about the possibility of being revived in the future. He says they are made aware that there is no guarantee of this happening. He also describes a positive impact on the patient's loved-ones from their being able to support the patient in fulfilling their last wishes.

79. Witness David Gifford is a Perfusion Specialist at Addenbrooke's Hospital, Cambridge. His witness statement describes attending a HOPRT training event. He describes HOPRT's work as making a helpful contribution to the field of cryonics by developing their own protocols and procedures and innovating new systems.

80. Witness Ben Stapleton filed a witness statement describing the making of cryopreservation arrangements for himself and his parents. He states that he is fully aware that cryonics is a speculative process but that it is the best available option for life extension beyond the limitations of current medicine. He does not volunteer for HOPRT but has attended training sessions so that he has as much information as

possible. He describes the training as educational and says that he has never felt under any pressure to do anything or to donate.

81. Witness Frederick Peake filed a witness statement describing how his mother's decision to have cryopreservation eased her suffering as she faced her death, and consequently made it easier for him to bear. He says the small possibility that he might see her again one day makes him happy.

82. The Tribunal also received evidence about the formation of a company called *Cryonics UK Ltd,* about which the Charity Commission had asked HOPRT questions. By the time of the hearing it was accepted that this company had been established by Mr Sinclair some ten years after the creation of the trust and was dormant, having been kept on the Companies House register only in order to preserve ownership of the name. The working name used on HOPRT's website is *"Cryonics UK"*.

E: Submissions

(i) The Commission

83. The Commission had raised in its correspondence with the Appellant a suggestion that the trust deed was a "*sham*", in the sense in which that term was used in *Snook v London and West Riding Investments* [1967] 2 QB 786, namely that there had been a common intention amongst the signatories to that document not to establish the legal rights and obligations which it gave the appearance of creating. At the hearing, Mr Maton submitted that the Commission was content not to rely on that argument and that it did not seek to suggest that any dishonesty had been intended by the founders of HOPRT in executing the trust deed.

84. Mr Maton also wished to make clear that the Commission was not suggesting that cryonics and cryopreservation could not ever be the subject of charitable research, or that nothing HOPRT did could be charitable, or that those involved with HORPT were not well-intentioned, or that they sought financial gain, or that they had mislead anyone about the chances of success of cryopreservation, or that re-animation after cryopreservation was impossible.

85. Mr Maton's principal submission on behalf of the Commission was that the Tribunal must decide what were the purposes for which HOPRT was established and whether they were exclusively charitable. He reminded the Tribunal that, if the true purposes of HORPT were the promotion and facilitation of cryopreservation, or if it had wider purposes than simply those stated but which included those aims, then it had not been established for exclusively charitable purposes.

86. Mr Maton submitted that the reference in the trust deed to "*the preservation of human organs after death for transplant purposes"* does not have the same meaning as cryopreservation, because key aspects of cryopreservation such as the use of extreme cold with a view to re-animation, are not referred to. He did accept that the Commission has no evidential basis for forming a conclusion as to who had proposed the wording used in the trust deed or the nature of any discussion between the founder's solicitor and the Commission staff which had led to this wording being

adopted. However, he submitted that, having regard to the factual background, the wording adopted was not a true reflection of the purposes for which HOPRT was established. Referring to the founders' solicitor's letters, Mr Maton's written skeleton argues that the Charity Commission *"may properly have understood the purpose to be the promotion of medical/scientific research…[but] evidence subsequent to registration shows that the purpose of HOPRT is not simply research in charity law terms, but is at least in part the cryopreservation purpose"*.

87. Mr Maton sought to distinguish the approach of Scott J in *AG v Ross* [1986] 1 WLR 252 from the present case, on the basis that the Court had in that case been required to interpret the true purposes of an institution in circumstances where there had been no dispute regarding the accuracy of the terms used terms in its governing document. In this case, he submitted, because the terms used were unclear it was necessary to look at extrinsic evidence, including the factual background, to interpret them. He relied on the Appellant's assertion in an e-mail to the Commission, that HOPRT had always intended to work in the field of cryo-preservation so that its pre- and post-formation activities were the same.

88. Mr Maton's submission on the evidence provided to the Tribunal by the Appellant was that some of HOPRT's activities may constitute research which a charity could properly undertake in furtherance of its purposes. However, in the Commission's submission, the research undertaken was shown by the evidence to be mainly in furtherance of a cryopreservation purpose. If the Tribunal were minded to take the view that HOPRT's true purposes are those stated in its governing document, then his submission was that the term "*research"* used in the trust deed did not meet the criteria for being charitable. HOPRT would have to show that the subject -matter of the research is a useful subject to study, that it is contemplated that the knowledge acquired through the research would be disseminated to others, and that the trust operated for the benefit of the public or a sufficient section of the public. Mr Maton accepted that on the evidence, HOPRT did not seek to persuade anyone to be cryopreserved, however his submission was that the promotion of a non-charitable purpose, even by raising awareness of it, was not charitable. He accepted that an educational charitable purpose can start from a point of view (such as in *Re Hopkins' Will Trusts* [1965] Ch 669*)* but submitted that it also had to operate for the public benefit.

89. As to the public benefit requirement, Mr Maton submitted that it was not clear that providing cryopreservation services operated for the public benefit in the first or second sense in which that term is used in the *ISC* case. The Tribunal pointed out that the public benefit test applied to purposes not activities, and Mr Maton duly clarified that this argument relied upon the Tribunal initially finding that HOPRT had a covert collateral purpose. That being the case he submitted that there were ethical concerns, as referred to by the Judge in the *JS* case. Also, that HOPRT's website gave advice about how to avoid an autopsy which may be contrary to the public benefit, and that the costs of cryopreservation were beyond the reach of most people.

90. Mr Maton concluded his submissions by urging the Tribunal, if it were minded to allow the appeal, to remit these questions to the Commission to make a further decision having examined all the available evidence.

(ii) HOPRT

91. Mr Farlow's principal submission was that the purposes of HOPRT should not be regarded as in doubt, because the evidence before the Tribunal supported the conclusion that its true purposes are the original purposes as stated in the trust deed. He submitted that the Tribunal can be satisfied on the balance of probabilities that the Appellant's case on this point is correct because it has evidence before it, including from medical professionals, that the objects stated included cryopreservation. He submitted that Mr Robertson's insertion of a time limit on transfer/transplant of preserved organs was unsupported by the evidence. Mr Farlow submitted that a further definition of the terms used in the trust deed would have narrowed the objects whereas it was clear from the solicitor's letters that they were intended to be wide and as permissive as possible.

92. If the purposes are as stated in the trust deed, then Mr Farlow's submission was that they are charitable under the Act as advancing education through research. He invited the Tribunal to remit the matter of whether HOPRT's purposes were charitable under any heads other than education to the Commission, especially in respect of the advancement of science, for which there is as yet no precedent following the inclusion of that term in the Act.

93. If the purposes are not in doubt, then *per* Scott J in *AG v Ross,* Mr Farlow's submission was that HOPRT's post-formation activities do not fall to be examined when considering its charitable status. His alternative submission was that, if HOPRT's purposes are in doubt, then (again *per* Scott J) it is only such activities as are *intra vires* which fall to be considered in deciding whether it was formed for a charitable purpose. In this respect, he submitted that HOPRT's activities are all *intra vires* and that they are the means by which the stated purposes are achieved. He described the Commission's decision letter (see paragraphs 40 and 41above) as failing to follow the line of reasoning required by the law in this regard, because it appeared to rely on post-formation activities, which it had said were *ultra vires,* as a basis for construing the purposes of the trust.

94. Mr Farlow's submission was that, on the evidence, HOPRT's current activities had been envisaged by the founders, but had only became possible some years after formation. He said the evidence supported the view that the original intention had been to establish a cryonics research facility, but that it was only in 2000 that it had become possible to conduct an actual cryo-preservation in the field. This was nevertheless a minority activity for HOPRT, with only fourteen cryopreservations conducted in eighteen years.

95. Mr Farlow submitted that HOPRT's research activities legitimately included research into the conduct of actual cryopreservations. He referred to the evidence of HOPRT's website and submitted that there was no evidence of HOPRT seeking to persuade anyone to be cryopreserved. On the contrary, the witness evidence (mostly unchallenged by the Commission) was that HOPRT took steps to present information in a balanced way and enable people to make up their own minds.

96. It was submitted on behalf of HOPRT that its research purposes fall under the head of the advancement of education, in view of the evidence about its training events, website, research and publication of research into cryopreservation techniques, and its participation in international debate on the issue. Mr Farlow submitted that the act of cryopreservation does not exist in isolation from overall research into cryonics but is an essential part of it so that it is a useful subject of research, the results of which the evidence shows to have been disseminated. As he put it, cryonics cannot exist without carrying out cryopreservations, and cryopreservations cannot take place unless someone has designed and specified relevant protocols, configured and assembled the equipment and addressed legal issues. These are the areas of HOPRT's research. He submitted that the threshold for finding research useful was low, following *Re Hopkins.* Mr Farlow also submitted that HOPRT's stated purposes could also be viewed as charitable under the heads of the advancement of health and saving of lives, the advancement of science, and/or by analogy to charitable trusts for burial and cremation.

97. On the question of public benefit, Mr Farlow did not accept that the Charity Commission had identified any disbenefit arising from HOPRT's purposes. He asked the Tribunal to distinguish between the costs of HOPRT's own activities and the costs of Alcor's services, which are much higher but deliver more comprehensive and longer-term cryopreservation services than the early stage procedure offered by HOPRT.

98. As to outcome, Mr Farlow had originally asked the Tribunal to make some comments *obiter dicta* about the likelihood of HOPRT's activities being capable of registration as a charity under these alternative descriptions of heads of charity. At the hearing, he accepted that the Tribunal has a statutorily limited jurisdiction.

F: Conclusions

99. We have some preliminary comments to make about this case before setting out our formal conclusions.

100. Firstly, we note that research into cryonics was accepted as charitable in the New Zealand case and that Alcor (an organisation about which we heard much) has charitable status in America. The judgement of a foreign jurisdiction about such matters does not bind us. It seems to us that the significance to this case of the existence of charitable cryonics research institutions in other parts of the world is that they denote the growing scientific and public interest in cryonics and cryopreservation.

101. Secondly, we note that HOPRT's operating *Protocol* has been described as playing an important role in relation to the technical aspects of cryopreservation. In our view, the non-technical aspects of cryopreservation would also benefit from the development of regulation and/or good practice guidance, for example in respect of the safeguarding issues which could arise when dealing with vulnerable patients.

102. Thirdly, we heard evidence about people who had recently received a terminal diagnosis contacting HOPRT for help and advice. We note that, for the twenty-seven years that HOPRT was on the Register, it might have been regarded as having a vulnerable beneficiary class for this reason. We expressed to Mr Maton our concern that the Charity Commission's process for removing HOPRT from the Register had not apparently considered the potential impact of that decision on such people, whether existing members of HOPRT or those seeking to explore the benefits of cryopreservation anticipating an imminent death. The *JS* case (referred to at paragraph 9 above) illustrates well the level of sensitivity and skill required of a charity operating in this arena. We respectfully suggested to Mr Maton that, when the Commission is considering removing an institution from the Register, it should consider how best any vulnerable persons affected by that decision might be assisted, for example by referring them to another charity for advice, possibly in conjunction with the charity being reviewed. We also suggested to Mr Farlow that HOPRT should engage in some continuity planning, so that anyone who was already relying on it to carry out their last wishes might be reassured that that would happen even if HOPRT did not regain its registered charity status. Mr Farlow explained that this work was already being undertaken.

103. We turn now to our formal conclusions. Having had the benefit of far more extensive evidence and submissions than the Charity Commission had available to it, we have concluded that we would not exercise the power under s. 34 of the Act to remove HOPRT from the Register. Our reasons for this are as follows.

104. Our starting point was to consider the evidential basis relied on by the Charity Commission to conclude that the purposes of HOPRT as set out in the trust deed were not the true purposes of the proposed charity. We found absolutely no evidence to support the view that the trust deed was a "*sham*". We thought it appropriate that Mr Maton withdrew the Commission's earlier reliance on this analysis at the hearing.

105. In the absence of the argument as to the trust deed being a "*sham"*, the Commission's case as to registration by mistake might rest on there having been a mis-communication or misunderstanding about the purposes of the putative charity at the time of registration. As noted above, the only contemporaneous documentary evidence relevant to the formation of HOPRT is the two letters from the founders' solicitor to his clients. These, in our view, make clear that the solicitor understood his professional duties and wished not only himself to understand the purposes and proposed activities of the trust which he was instructed to create, but also to use that knowledge to ensure that he passed onto the Charity Commission all the relevant information. He describes his own understanding as being that the charity will be involved in a new form of medical research involving the preservation of human organs for longer periods of time after death, and he advises his client that the objects

should be worded widely enough to cover "*all conceivable work…in years to come*". He does not refer specifically to cryonics or cryopreservation, but as we heard, those terms were not in use at that time. He also does not refer to conducting what later became known as cryopreservation in the field, but the evidence shows that that was not possible in advance of the vitrification breakthrough which took place some ten years after the establishment of the charity.

106. It is agreed that there is an absence of contemporaneous evidence about the nature of the conversation that took place between the founders' solicitor and the Charity Commission staff during the process of registration. However, it is permissible for the Tribunal to draw inferences from the evidence we do have available. This shows, in our view, that the founder's solicitor went about his task professionally and we infer from that that he passed on to the Commission his own understanding of the proposed activities of the proposed charity, as described in the correspondence with his clients. We have asked ourselves whether that understanding was a true reflection of the founders' intentions and concluded on the basis of the available evidence that it was.

107. We have also considered carefully the evidence that it was the Charity Commission itself which suggested the final wording of the objects clause. We do not have direct evidence of this from anyone involved at the time, but we do have circumstantial evidence which in our view tends to support the hearsay evidence given by Mr Gibson about Mr Sinclair's recollection of events. This is, firstly, that the terms "*cryonics*" and "*cryopreservation*" were little known nearly thirty years ago so that the objects clause in the executed deed was expressed in simple terms more easily understood by the public. Secondly, we note the significant time lag of some six months between the solicitor's initial letters and the execution of the deed, together with the solicitor's reference to his intention to submit a draft deed for the Commission's consideration. Having weighed these factors, we conclude that it is more likely than not that it was the Commission who suggested the final wording of the objects clause or, at the very least, provided input on the words used. Based on his understanding of the purposes of the proposed charity, and considering his written advice regarding ensuring that the purposes were wide enough to encompass future scientific developments, we infer that the solicitor used the agreed wording and that the deed was then executed in those terms.

108. In conclusion on this point, we find that the evidence does not support the Commission's statement in its letter of 10 November 2017 that HOPRT was mistakenly registered in reliance upon the information presented to the Commission by HOPRT's solicitor at the time of registration. We turn now to the question of whether the Commission's additional reliance in the letter on evidence about post-formation activities is material and whether we should properly take that into account in deciding whether HOPRT was established for a charitable purpose.

109. There are two bases on which extraneous evidence might be admissible to construe the purposes of the trust deed. The first is where the deed is expressed in terms which are ambiguous so that the factual background may be taken into account to remove the ambiguity and ensure that the terms used are properly understood. The

second is where it is necessary to consider whether the *particular purpose* for which the institution was established, properly understood, is charitable. In the second situation, the case law is clear that only evidence of *intra vires* post-formation activities is admissible in order to better understand the purpose for which the institution was established.

110. Considering the first basis, and adopting a plain reading of the objects clause in this case, we discern no ambiguity. The objects as drafted are, by design, generous and permissive of a wide range of research activities, including those which were not then feasible but which might become so in the future. They must be read as containing an implicit limitation that the nature of any future research must be such as to be charitable, but we do not find them to be unclear. In those circumstances, we consider that extrinsic evidence is inadmissible on the first basis on which the Charity Commission relies on it in the decision letter.

111. As to the second basis, we are not persuaded by Mr Maton's submission that the principles of interpretation as set out in *AG v Ross* can be distinguished in the circumstances of this case so as to admit evidence of post-formation activities which were said to be *ultra vires*. If the evidence shows that HOPRT's activities since entry on the Register are outside the confines of charitable objects, then we follow Scott J in considering that that evidence should be considered by the Commission as requiring regulatory intervention rather than undermining HOPRT's charitable status. It is an important principle of charity law that charitable trusts endure in perpetuity, even if the trustees who administer the trusts misdirect themselves. We consider that to distinguish *AG v Ross* lightly would endanger this principle. We find that an insufficient case for doing so has been made here.

112. We conclude that the purposes set out in the trust deed are indeed the true purposes for which HOPRT was established. We are not persuaded that there was an additional, un-expressed purpose of promoting and facilitating cryopreservation, (which activity was not in any event possible at the time the trust was executed) but consider that research (including field-research) into cryopreservation was within the contemplation of the founding trustees in expressing the objects so widely. We must now go on to consider whether these purposes are charitable in order to decide whether we would ourselves make a decision under s. 34 (1) (a) of the Act to remove HOPRT from the Register. In undertaking this task, we find that we may legitimately consider HOPRT's *intra vires* post-formation activities, the evidence of its pre-formation activities, and the factual context in which it was established.

113. We remind ourselves here of the approach of the Upper Tribunal in *ISC* (see paragraph 28 above) that, when applying the statutory test for charitability, the starting point is to identify the *particular purpose* of the institution. The *particular purpose* is charitable if it falls within any of the categories listed in s. 3(1) of the Act and is for the public benefit. The Upper Tribunal also decided that the meaning of "*established"* in the Act is "*what the institution was set up to do, not... how it would achieve its objects or whether its subsequent activities are in accordance with what it was set up to do"*.

114. Applying this test, we consider that HOPRT was *established* to carry out a wide range of research activities, including those which were not yet feasible but which it was anticipated might become so in the future. It is clear from the evidence of the solicitor's letters (see paragraphs 45 to 47 above) that the first object included proposed research into the preservation of human organs for longer periods of time after death for transplant purposes. We agree with Dr Salmensuu (see paragraph 77 above) that such a purpose encompasses what we now understand by the terms cryonics and cryopreservation, especially given the solicitor's explicit reference to Alcor's activities. We agree with Dr Salmensuu that the second object, namely research into the ageing process, can also encompass research into cryonics and cryopreservation, as the damaging effects of ageing must be addressed to make reanimation possible. It follows that in our view, HORPT's activities in respect of cryopreservation are *intra vires* and so need to be considered in understanding the *particular purpose* of HOPRT.

115. As we have noted, the evidence shows that HOPRT's current cryopreservation activities were simply not possible when it was established. However, as we have pointed out above, it was always intended that the purposes should encompass future scientific developments in the charity's targeted fields of research. The evidence shows that HOPRT started out with premises which included a laboratory. Mr Gibson's evidence was that the initial proposal had been to freeze only the brain. HOPRT's financial situation meant it had to let the building go and by 2000 the vitrification breakthrough meant that it was possible to employ a whole-body concept and thus to conduct full cryopreservation in the field. This was the point at which HOPRT started to conduct cryopreservations in addition to its other activities. The question arises whether the "field research" conducted in the course of this process meets the criteria for research by charitable organisations so as to fall within the description of the charitable purpose of the advancement of education for the public benefit.

116. As noted at paragraph 33 above, the judgment in *Re Hopkins* establishes that there is a low threshold for educational value in charitable research. Whilst research into cryonics and cryopreservation, in common with research in very many areas of human endeavour, is speculative, we are satisfied that it comfortably passes this test.

117. Considering Slade J's formulation for charitable research (at paragraph 32 above), we have considered whether research into cryonics and cryopreservation is a useful subject of study, whether HOPRT disseminates the knowledge acquired as a result of its research to others, and whether the trust is for the benefit of the public, or a sufficiently important section of the public.

118. It is important to remember here the evidence that conducting cryopreservations is an important but relatively small aspect (in terms of resources deployed) of HOPRT's overall day-to-day activities. We accept the evidence before us (see paragraph 51 above) that HOPRT's broad range of educational activities include the running of training courses, collaboration with international organisations, publication of its *Protocol*, the dissemination of information and advice to the public via publications on its website, and the testing and development of medical equipment,

the results of which are disseminated. It is these activities where HOPRT expends most of its resources. This evidence was amply supported by the witness evidence from Mr Gibson, Ms Stevens and Mr Carter about their own activities on behalf of HOPRT. The educational content and value of HOPRT's training courses were attested to by medical professionals, Dr de Magalhaes, Dr Salmensuu, Derek Watkinson and David Gifford. We note that HOPRT is repeatedly invited to speak to academic institutions and professional bodies worldwide and to medical and other professionals in this country and infer from this that its expertise in its field of operation is useful.

119. We are satisfied on the basis of this evidence that HOPRT's broad research purposes, including research into cryonics and cryopreservation, meet the first two criteria set by the case law for charitable research. However, we do have concerns about the "field-research" into cryopreservations. We are concerned that in practice no boundary is drawn between an activity that has become the delivery of cryopreservation services to the public, and the rigorous conduct of research into that activity. It is difficult to determine where the dividing line between those two activities does or should rest, as we note that there is no written agreement between HOPRT and the patient which sets out what the patient is expecting by way of a service and what the patient agrees to by way of research. We are concerned that the trust deed does not expressly provide for the provision of services to the public as a means of achieving the objects and in this respect, as in others, we find the trust deed to have become stale and in need of updating. Without wishing to be prescriptive, we would suggest investigating whether the provision of cryopreservation services might properly be carried out by a non-charitable organisation which enters into a research protocol with HOPRT. However, we regard the desirability of updating HOPRT's governing document and consideration of the adequacy of its operating procedures as a regulatory issue for the two parties to work on together and not one relevant to HOPRT's charitable status.

120. We turn finally to consider whether HOPRT's purposes, in the broad sense in which we have interpreted them, operate for the public benefit. We must consider the public benefit requirement in the two senses described by the Upper Tribunal in *ISC*. Firstly, is the research conducted by HOPRT in its broadest sense, a *good thing*. We note that it is generally accepted that the chances of being re-animated following cryopreservation are remote. The Scientists' Open Letter (see paragraph 44 above) describes it as a *"credible possibility"* but other evidence suggests that it is even more speculative than that. The remote chances of eventual success do not, in our view, negate the value of the research itself. Unchallenged witness evidence from Dr de Magalhaes, to whose opinions we give weight as an academic medical researcher, described there being significant potential benefits from such research. David Gifford, the Perfusion Specialist, supported this view. Retired nurse Derek Watkinson spoke of the comfort given to patients by the possibility of reanimation and witness Frederick Peake described it as making his mother's death easier to bear. We remind ourselves that cryopreservation is a lawful activity and one for which there is clearly some level of demand. In these circumstances, we regard it as being for the public benefit in the first sense that charitable research into cryonics and cryopreservation,

including the development of principles of good practice in the conduct of cryopreservation, is undertaken, and that it is a *good thing*.

121. We have considered whether there is evidence of disbenefit arising from HOPRT's purposes which should be brought into this equation. We note that the Judge in the *JS* case referred to ethical dilemmas, but these were not evidenced before us. Mr Robertson's concern about population control ran contrary to the evidence about the extremely low chance of reanimation being successful in the near future and also the small number of cryopreserved persons worldwide. While some people may find cryopreservation distasteful, Parliament has not seen fit to make it unlawful or to regulate it in any way. The Tribunal asked Dr Salmensuu about the risks of something going wrong during a cryopreservation. He explained that there was a possibility of brain damage, which would be revealed by a subsequent CT scan, but that the effect of this could not be quantified without reanimation. Mr Maton referred us to HOPRT's published guidance about how to avoid the need for an autopsy. We did not understand this to be advice about how to break the law, but rather how to maximise the chances of an autopsy not being required through legitimate medical practice. We see no disbenefit in that approach. We consider that there would be a discernible disbenefit if HOPRT had been shown to operate in a way that gave people false hope about the chances of reanimation or that it pressured people into agreeing to cryopreservation, but the evidence did not show either of these to be the case.

122. As to public benefit in the second sense of whether the benefit is available to a sufficient section of the public, the evidence is that HOPRT normally charges around £5,000 for a cryopreservation, which we consider to be a sum within most people's reach, especially when compared to the cost of, say, a burial or cremation. We heard evidence of funding arrangements which allowed the cost to be spread and of HOPRT subsidising persons who could not afford that sum. We do not consider that the costs of long-term storage by institutions such as Alcor fall to be considered when assessing the public benefit attributable to HOPRT. It is true that only a few cryopreservations have been conducted by HOPRT, but we received no evidence that this was due to unaffordability for members of the public. We are satisfied on the evidence before us that the public benefit test in the second sense is met.

123. We have been asked to consider whether HOPRT might meet the test for charity registration under alternative heads of charity. We do not consider that it is the role of the Tribunal in considering an appeal against removal from the Register, to conduct a review of all the possible ways in which a charity might satisfy the statutory test for registration. It seems to us that this is a question for HOPRT and the Charity Commission to consider in reviewing HOPRT's governing document going forward and we formally remit that matter to the Commission.

G: Outcome

124. For all the above reasons, we now allow this appeal.

125. We quash the Charity Commission's decision of 10 November 2017.

126. We direct that HOPRT is restored to the Register forthwith.

127. We remit to the Charity Commission generally (a) the consideration of any regulatory advice or action required in relation to HOPRT's activities; and (b) the question of whether it would be permissible for HOPRT to adopt different objects.

(Signed) 23 August 2018
ALISON MCKENNA
Chamber President