



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

Appeal No. CA/2019/0004

MARTIN C PHELPS

Appellant

-and-

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Heard in Chambers on 20 August 2019

Before

**Judge Damien J. McMahon
Susan Elizabeth, Tribunal Member
Helen Carter-Shaw, Tribunal Member**

DECISION

The appeal is dismissed.

The varied Order made by the Respondent dated 11 January 2019 pursuant to section 181A and section 337(6) of the Charities Act 2011 disqualifying the Appellant from being a charity trustee or trustee for a charity, in relation to all charities, and from holding office or employment in a charity with senior management functions, for a period of 10 years, is upheld. The period of disqualification commences on the date of this Decision, being the date when it was finally determined by the Tribunal that the Order was properly made.

REASONS

Introduction

1. This appeal was determined without a hearing with the consent of both parties. The Tribunal was satisfied that it could properly determine the issues without a hearing.
2. The Appellant appealed against a varied Order of the Respondent dated 11 January 2019 ('the Order') made under s.181A and s. 337(6) of the Charities Act 2011 ('the Act') disqualifying the Appellant from being a charity trustee or trustee for a charity, in relation to all charities, and consequently, from holding office or employment, paid or unpaid, in a charity that involved the exercise of senior management functions, for a period of 10 years. The Tribunal noted that the Appellant, in his appeal lodged on 21 February 2019, disavowed any intention of taking 'a leadership or management role' – presumably in any charity. Nevertheless, the Tribunal was obliged to determine this appeal.
3. Power is vested in the Tribunal to determine the appeal pursuant to s.319 and Schedule 6 to the Act. The Tribunal, in determining the appeal, considered afresh the Respondent's decision to make the Order and took its own view on the issues raised on the evidence before it.
4. The appeal was determined in Chambers, on the papers, on 20 August 2019. An agreed bundle was provided, in accordance with Directions, that included written submissions of the Respondent, supporting documentary evidence originating with both parties and relevant extracts of the Act.

The Appeal

5. The Appellant, in his said appeal, sought to have the Order quashed on three grounds, namely, that since the Respondent's review decision, resulting in the original Order being varied, five of the nine grounds for making the original Order had been excluded; secondly, that the Respondent had misunderstood or misrepresented the remaining four grounds and, thirdly, that the Respondent's conclusion had simply been incorrect. He elaborated on these assertions to some degree in his appeal document. Further elaboration also emerged from other written documentation contained in the agreed bundle, particularly in the exchange of correspondence between the Appellant and the Respondent. This included written representations dated 28 June 2018 made by the Appellant to the Respondent and representations made on behalf of the Appellant by his representative, Mr. J. Morris, on 14 September 2018. These representations were considered by the Tribunal in making its Decision
6. The Tribunal determined the appeal by reference only to the four grounds referred to in the Order, namely, unauthorised use of the Charity's credit cards by the Appellant; the use of funds of the charity for overseas trips without authorisation; the Appellant influencing members of the Charity to attend a meeting on 19/07/2017 in breach of the terms of his employment suspension; and, lastly, not allowing inspectors to have access to all parts of the Charity's property at Rose Lawn, in defiance of a court injunction requiring him to do so. (The Tribunal was somewhat concerned that almost 50% of the grounds for the original Order were not upheld upon review by the Respondent. Nevertheless, the Tribunal was satisfied that, if those four grounds were substantiated by the evidence, the Order was properly made).

Factual Background

7. The factual background was, essentially, not in dispute between the parties.
8. The Appellant was not a trustee of the registered charity known as Rhema Church London ('the Charity'). He was employed as a Pastor and played a key role in the

Charity until he was suspended on 12 July 2017 by the Interim Manager ('IM') appointed by the Respondent, pending the investigation of alleged disciplinary breaches and serious misconduct. The Appellant was ultimately dismissed from his employment with the Charity on 28 November 2018 following an independent panel disciplinary finding of serious and gross misconduct. He appealed that decision to an independent disciplinary appeal body. The dismissal decision was upheld. The Appellant brought an unsuccessful application for unfair dismissal to the Employment Tribunal. He did not appeal that decision. While the instant appeal before the Charity Tribunal was not concerned with the validity of the Appellant's dismissal in employment law, the Tribunal was mindful that the IM, appointed to the Charity by the respondent, had dismissed the Appellant from his senior position with the Charity for misconduct and that a judicial authority (the Employment Tribunal) found that he was not unfairly dismissed.

9. The objects of the Charity are:

"For the advancement of the Christian religion and for such other purposes as are charitable in law including without prejudice to the foregoing generality the advancement of education and relief of the aged, infirm and poor people."

10. On 3 August 2015, the Respondent opened a statutory inquiry into the Charity pursuant to s.46 of the Act to examine a number of regulatory concerns. This appeal did not, and could not, involve a challenge to that action of the Respondent; indeed, there was no evidence that any person or body who may have had standing to challenge the opening of such inquiry before the Charity Tribunal brought any such proceedings. However, the fact of the opening of the said inquiry was strong evidence of the significant concerns held by the Respondent in respect of the governance of the Charity. In view of the senior role held by the Appellant as an employee of the Charity, this was a fact of some significance in the determination of this appeal.
11. On 30 November 2015, pursuant to the fact that an inquiry had been opened, the Respondent made an Order under s. 76(3)(g) of the Act appointing a joint IM to take over the management and administration of the Charity to the exclusion of the trustees.
12. Ultimately, the Appellant was suspended and subsequently dismissed from his employment with the Charity by the IM.
13. Having complied with necessary statutory procedural requirements, the Respondent, on 11 July 2018, made the original Order disqualifying the Appellant, in the terms set out in that Order, pursuant to s.181A of the Act.
14. The original Order was varied to the terms of the Order under appeal, made on 11 January 2019, it being accepted by the Respondent that the Appellant had properly requested a review of the decision to make the original Order. The original Order was, indeed, reviewed and varied, in favour of the Appellant, whereby the period of disqualification was reduced from 12 years to 10 years.

The Statutory Framework

15. By virtue of s.181A of the Act, the Respondent may make an Order disqualifying any person from being a charity trustee or a trustee for a charity, whether in relation to all charities or to specific charities or classes of charities as may be specified in the Order, if one or more of the statutory grounds set out in s.181A(6) are satisfied.
16. The said grounds are cumulative, namely, that one or more of the conditions set out in s.181A(7) are met. These conditions are: that the person against whom the disqualification order is made is unfit to be a charity trustee or a trustee for a charity and the making of the order is in the public interest in order to protect public trust and

confidence in charities generally or in charities or classes of charities specified in the Order.

17. The Respondent asserted that Condition D in s.181A(7) was satisfied in respect of the Appellant in this appeal, namely, that the Appellant was, inter alia, an employee of the Charity at a time when there was misconduct or mismanagement in the administration of the Charity, and was responsible for the misconduct or mismanagement or knew of the said misconduct or mismanagement and failed to take any reasonable steps to oppose it, or his conduct contributed to or facilitated the said misconduct or mismanagement.
18. Since the Appellant was not a trustee and had been suspended and ultimately dismissed from his employment with the Charity, an application by the Appellant to an Employment Tribunal alleging unfair dismissal having been dismissed and not appealed to the Employment Appeal Tribunal, the Tribunal found that it was not a necessary pre-requisite to the making of the Order to have suspended the Appellant pending the decision that led to the Order being made, a decision upheld upon review by the Respondent.
19. The terms 'misconduct' or 'mismanagement' are not defined in the Act. However, in Guidance issued by the Respondent, 'misconduct' is taken to include any act or failure to act in the administration of the Charity which the Appellant knew or ought to have known was criminal, unlawful or improper while 'mismanagement' is taken to include any act or failure to act in the administration of the Charity that may result in significant charitable resources being misused or the people who benefit from the Charity being put at risk.
20. Nevertheless, disqualification is a discretionary power. Accordingly, even if the statutory criteria to make the Order are satisfied, it does not necessarily follow that the Order should be made. It should only be made if, in addition, that it is appropriate in all the circumstances of the appeal, having regard to the provisions of s.181A(6) (with specific reference to the public interest test).

The Submissions of the Parties

21. The Respondent submitted that all of the relevant criteria for making the Order under s.181A(6) of the Act were satisfied in respect of the Appellant and that it was appropriate to make the Order by reference to the four grounds found to exist (set out in paragraph 5 of this Decision).
22. In his Notice of Appeal, the Appellant, through his representative, disputed that there had been any wrongdoing or misconduct or mismanagement on his part. The Appellant had set out his position in greater detail in his written representations, with enclosures, received out of time by the Respondent on 16 July 2018. (The 'out of time' issue that caused the Respondent to take no account of those representations when it made the original Order was not of any practical impact since those representations were accepted by the Respondent as an application to have the original Order reviewed and it was reviewed resulting in the period of disqualification being reduced from 12 years to 10 years. The Tribunal concluded that this was a proper and lawful approach).
23. The Appellant made no express submission on the issue of whether, even if there had been misconduct or mismanagement on his part, as envisaged in s.181A(6) of the Act, it was inappropriate to make the Order. Nevertheless, this issue was addressed by the Respondent in its written submissions and was considered by the Tribunal in making its determination.

Findings and Conclusions

Unauthorised Use of the Charity's Credit Cards

24. An abundance of correspondence passing between the parties over a lengthy period was presented to the Tribunal on this issue. The Respondent's IM initially sought clarification on this issue from the Appellant and went on to issue specific instructions to the Appellant that unauthorised use by the Appellant of the Charity's credit cards was prohibited. Ultimately, the Appellant continued to ignore those specific instructions. No representations made by or on behalf of the Appellant convinced the Tribunal otherwise and the Tribunal found accordingly.

Use of Charity funds to pay for Overseas Trips

25. The Tribunal found that there was considerable doubt, on the evidence, that a number of overseas trips led by the Appellant to Italy, Austria, France and Greece were for a charitable purpose. Further, there was a marked lack of documentation in connection with those trips, including a paucity of detailed itineraries and budgets. At best, a very inadequate attempt was made, subsequent to the trips having taken place, to document those trips at a meeting of trustees of the Charity. Again, there was no, or no adequate, evidence from the Appellant that authorisation for those trips and the consequent expenditure incurred had been obtained. The Tribunal found that there had been no proper, or any, authorisation. The Appellant purported, in an undated handwritten report, give some account of a trip '...to Italy July/Aug 2014...'. However, this was woefully inadequate to explain the alleged charitable purposes of the said trip and did not contain any budgetary information. The Appellant did not provide any account, in any form, of any other overseas trip. No evidence to the contrary was adduced by or on behalf of the Appellant. Accordingly, the Tribunal found that this issue of misconduct and mismanagement was proved against the Appellant and that no representations offered by the Appellant altered that finding.

Influencing Church Members to Attend a meeting in Breach of Suspension from Employment.

26. The Tribunal had evidence in the form of a notice signed by the Appellant and another person inviting members of the church (the Charity) to attend a meeting on 19 July 2017 purportedly to offer members information about recent changes they may have heard were happening in the church. This was exactly one week after the Appellant had been suspended from his employment with the Charity. The terms of that suspension included a prohibition on communicating with any employee, trustee, contractor, congregation or other stakeholder of the Charity without written authorisation from the IM. The Tribunal was satisfied, on the evidence, and accordingly found, that this meeting had taken place and that, on balance, the Appellant was both in attendance and had spoken at the meeting. The Tribunal was further satisfied, and duly found, that no authorisation, written or otherwise, was given to the Appellant in connection with this meeting by the IM in clear breach of the terms of the Appellant's suspension from employment with the Charity. The Tribunal was further satisfied, and found, that no representations offered by the Appellant altered these findings.

Not Allowing Inspectors to have Access to all parts of the Charity's Property at Rose Lawn.

27. This essentially related to unimpeded access by or on behalf of the Charity, through the IM, or on their behalf, to the whole of the property known as Rose Lawn. This property belonged to the Charity. In the interests of good governance of the Charity the IM was trying to have the property fully and adequately valued with a view to selling the property. The evidence from, or on behalf of, the Appellant was that he regarded allowing the necessary access for those purposes as an invasion of his personal

privacy (but did allow the inspectors certain access). The Tribunal found that the Appellant obstructed the IM in permitting access to the property of the Charity at Rose Lawn despite the need for access to the property being in the interests of the Charity to the extent that the IM required to obtain a court injunction to be afforded adequate and proper access. While the Appellant was residing in the property pursuant to his contract of employment, he did not have any responsibility for, or proprietary rights in, the property: this was vested in the Charity acting through the IM. He had only reluctantly granted any access and, initially, only partial access. Further, the Charity, through the IM, ultimately, had to get an eviction order against the Appellant to ensure vacant possession. The Tribunal was entirely satisfied on the evidence that these facts were proved against the appellant and no representations of the Appellant served to alter that finding.

Was it necessary or desirable to take action resulting in the making of the Order?

28. The Tribunal concluded, on the evidence, on the balance of probabilities, that the Respondent was correct and justified in taking action that resulted in the making of the Order against the Appellant.
29. The Tribunal further concluded, on the evidence, that the Appellant, for the reasons set out in the Tribunal's findings of fact, was the person primarily responsible for the proven misconduct or mismanagement in the administration of the Charity by reference to the guidance on the meaning of those terms set out in the Respondent's Operational Guidance document and the guidance set out in the Explanatory Statement on the discretionary nature of the power to make a disqualification order.
30. Having regard to the contents of the Respondent's document entitled 'The Essential Trustee', the Tribunal was also satisfied that the Appellant was not a fit person to be a charity trustee of any charity and unfit to hold a senior management position in respect of any charity.
31. The Tribunal concluded that the Appellant, by his conduct, placed the charity in significant financial and reputational risk; that in his role as a senior management employee of the Charity, the Appellant did not display the requisite honesty and integrity demanded of a person in his position in the management of the Charity's assets; that the Appellant was unfit to discharge the duties of a trustee of any charity or to hold a senior management position in any charity and that, by his conduct, the Appellant damaged public trust and confidence in charities generally. Consequently, the Tribunal was satisfied that it was desirable in the public interest to make the Order.
32. The Tribunal was satisfied that the mandatory criteria for making the Order were, and are, satisfied. The Tribunal was obliged, however, to also consider whether, as a matter of discretion, it was appropriate for the Order to be made in the circumstances of the case. The Tribunal concluded that it was appropriate to make the Order: the conduct of the Appellant was serious; harm was caused to the Charity for which he was primarily responsible and there was a risk of further harm arising from further misconduct or mismanagement if the Order were not made. Further, the evidence before the Tribunal established a specific link between the Appellant and the stated misconduct and mismanagement.
33. The Tribunal also considered whether it was proportionate to make the Order, including whether it was proportionate to make an Order for 10 years. For the reasons stated in the preceding paragraphs, the Tribunal was satisfied that to make the Order for a period of 10 years was proportionate; indeed, it was arguable whether a greater period might have been more appropriate. In considering the question of proportionality, the key issue is the need to increase public trust and confidence in charities and to promote compliance by charities with their legal obligations in the proper administration of

charities. The Tribunal considered that any lesser period of disqualification than 10 years would only serve to pose an unacceptable level of risk to the charity sector by the Appellant. Bearing in mind the seriousness of the Appellant's misconduct and mismanagement in relation to the Charity over a period of time, including his repeated failure to comply with lawful instructions of the IM, it is proportionate, and appropriate, that his disqualification should apply to charities generally.

34. This appeal was unanimously dismissed.

Dated 7 October 2019

Signed:

**Damien J. McMahon
Tribunal Judge**