



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

CA/2014/0016

MOHAMMED ANIQUE

Appellant

-and-

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

The Tribunal:

**Judge Damien J. McMahon
A'isha Khan, Lay Member
Stuart Reynolds, Lay Member**

Heard in public in Birmingham on 23 and 24 November 2015

The Appellant represented himself (assisted by Mr. A. Razzaq, his MacKenzie Friend)

Mr. C. Willis Pickup (Charity Commission Legal Department) appeared for the Respondent.

DECISION

The appeal is dismissed.

The Order made by the Respondent dated 9 September 2014 pursuant to section 69(1)(c) of the Charities Act 2011 is upheld vesting the title to the land and property situate at and known as 143-150 Malt Mill Lane, Halesowen, West Midlands, B62 8JA, registered at the Land Registry under title number WM810835 in the following holding trustees of Blackheath Jamia Mosque Trust, a charity (1025081):

Mansur Ahmed
Iftkhar Hussain
Mohammed Azam
Jahanzeb Idrees
Abdul Qayyum
Shahzad Mahmood
Javed Rehman

REASONS

Introduction

1. These proceedings concerned a charity known as Blackheath Jamia Mosque Trust (registered charity number 1025081) ('the Charity') and an Order made by the Respondent on 9 September 2014 pursuant to section 69(1)(c) of the Charities Act 2011 ('the Act') to vest the land and property of the Charity situate at and known as 143-150 Malt Mill Lane, Halesowen, West Midlands, B62 8JA, registered at the Land registry under title number WM810835 ('the Order') in seven new holding trustees ('the new trustees'), transferring the said land and property from the Charity's previous holding trustees.
2. The Charity is not a corporate body. It must act, therefore, through its trustees.
3. The Charity, pursuant to its constitution, adopted on 15 November 1988 (and amended on 2 August 1992 and 24 November 2013), has seven holding (or honorary) trustees and seven management trustees ('the Management Trustees'). The property of the Charity is held in the name of its holding trustees.
4. The Order was made by the Respondent upon the request of solicitors acting for the management trustees (persons who are distinct from those trustees referred to in this decision as 'the new trustees') in a letter to the Respondent dated 21 October 2013.
5. The new trustees were elected at a general meeting of the Charity in 2011.
6. The Appellant is a former holding trustee of the Charity.
7. The Appellant, through his solicitors, by letter dated 29 January 2014, challenged the intention of the Respondent to make the Order. This was appropriately treated by the Respondent as a request that it review its intended decision to make the Order. Significantly, the only issue raised by the Appellant's solicitors was that "*the names of the trustees in the draft transfer submitted did not correspond with the names of the trustees appointed*"
8. On 6 August 2014, the Respondent made a Review Decision upholding its initial decision to make the Order.
9. The Order was made on 9 September 2014.

The Appeal

10. The Appellant, in his appeal lodged on 23 October 2014, asserted that the new trustees had not been validly elected in 2011 (nor had one replacement new trustee been validly elected in 2013). Further, the Appellant asserted that the new trustees, if validly elected, had been removed from office at an extraordinary general meeting of the Charity on 18 May 2014. The import of the assertions of the Appellant in his appeal was that the Order could not effect that which it purported to effect, namely, to vest the said land and property

in the new trustees.

The Statutory Framework

11. Section 69(1)(c) of the Act enables the Respondent to make an Order vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment, subject, by virtue of section 71 and section 89 of the Act, to notice of its intention being given (in this case), to the new trustees and the former holding trustees. The power is qualified in section 70 of the Act to the extent that the Respondent has no jurisdiction to try or determine questions of title in law or equity to any property and the power may only be exercised, *inter alia*, on the application of the charity. Finally, the Respondent may, in its discretion, decline to exercise the power if it considers the case more fit to be adjudicated on by the court.
13. Pursuant to section 89 of the Act, the Order, once made, does not require to be sent to the former holding trustees.
14. The Respondent has a statutory objective under section 14 of the Act to, *inter alia*, promote the effective use of charitable resources.
15. Section 177 of the Act defines 'charity trustees' for the purposes of the Act as "the persons having the general control and management of the administration of a charity"

The Powers of the Tribunal

16. In determining this appeal, the Tribunal must, pursuant to section 319(4) of the Act, consider the Respondent's decision afresh and, in doing so, the Tribunal may take into account evidence that was not before the Respondent.
17. In determining the appeal the Tribunal's powers are set out in section 315(2) and Schedule 6 to the Act. Consequently, the Tribunal had power to dismiss the appeal, or, if it allowed the appeal, to quash the Order in whole or in part and (if appropriate), remit the matter to the Respondent; substitute for all or part of the Order any other Order which could have been made by the Respondent; or add to the Order anything which could have been contained in an Order made by the Respondent.
18. The appeal, therefore, was by way of substantive re-hearing and was not a mere procedural review of the Respondent's decision.
19. An Order made under section 69(1)(c) of the Act is appealable to the Tribunal by, *inter alia*, any person who is or may be affected by the Order. In Directions made by the Tribunal on 24 November 2014, the Tribunal accepted that the Appellant, in circumstances where his legal rights as a former holding trustee were altered by removing from him an interest in land vested in him and vesting that interest in others, was properly 'a person affected' and thus entitled to bring this appeal before the Tribunal.

Preliminary Issues

20.1 Alleged New Grounds of Appeal

The Respondent submitted that the Appellant's skeleton argument was not only late but contained new grounds of appeal not notified to the Respondent and should, therefore, be excluded. The Appellant denied that there were new grounds of appeal and submitted that sections 70, 71 and 80 of the Act determined whether the Respondent could make an Order under section 69(1)(c). The Tribunal, while it expressed concern that the Appellant had failed to comply with its directions concerning the submission of the skeleton argument

decided, on balance, having regard to its overriding objective to enable cases before it to be dealt with fairly and justly, that the Appellant could argue all submissions included in his skeleton argument and that no overarching prejudice would be caused to the Respondent by the Appellant doing so.

20.2 Application to Submit New Evidence

The Respondent made application to submit new evidence in the form of a further witness statement dated 6 November 2015 from Mr. I. Malik, General Secretary of the Charity, and CCTV footage referred to in the said witness statement. The Appellant and the Tribunal had been notified of this application in advance. The Respondent sought to have this late evidence submitted in the absence of agreement between the parties in that it showed that the alleged EGM that took place on 18 May 2014 (even if validly convened), that purported to remove the new trustees from office, was not quorate. The Respondent submitted that it undertook an examination of the CCTV footage in light of the Appellant submitting, on the last day for doing so, a list of alleged attendees at the said EGM, a list that disputed the attendance list already in the hearing bundle. The Appellant strongly objected to the application and submitted that to admit the new evidence would prejudice him. He submitted that the CCTV footage was edited and false. The Respondent pointed out that it did not have access to the CCTV footage until 21 October 2015, whereas the Appellant, through Mr. Razzaq, did have access to this footage since 26 January 2015 (albeit in another context). The Tribunal admitted the said second witness statement of Mr. Malik but not the CCTV footage itself. The said second witness statement addressed the contents of the CCTV footage and Mr. Malik had already been requested to make himself available for cross-examination and he was so present and did submit to cross-examination by the Appellant. In any event, there were no facilities available in the hearing room to play the CCTV footage. The Tribunal was satisfied that no prejudice would be caused to the Appellant in all the circumstances by admitting the said second witness statement of Mr. Malik and, in any event, concluded that, on balance, the overriding objective dictated that the said second witness statement should be admitted.

The Respondent's Submissions

21. Mr. Willis Pickup elaborated on the written submissions set out in the Respondent's skeleton argument, having regard to the evidence, both written and oral, placed before the Tribunal.

The Order

22. Mr. Willis Pickup submitted that the Order, once made, effected the transfer of the said land and property of the Charity into the names of the new trustees. There was no dispute as to the identity of the land. However, he submitted, the Respondent, in making the Order did not determine the title to the land (its ownership remained with the Charity) and so section 70(1) of the Act was not engaged to limit the Respondent's ability to make the Order. In accordance with section 70(2) of the Act, the Respondent received an application from the charity, through its solicitors, to make the Order. Mr. Willis Pickup agreed that while some decisions of the Management Trustees of the Charity do require to be confirmed by the members of the Charity, such as an amendment to the Charity's constitution, this did not apply to a decision to make application to the Respondent seeking the making of the Order. The members of the Charity elected the new trustees and the management trustees and a resolution of the members, at an EGM held on 3 November 2013, was passed in any event to seek the Order from the Respondent. He agreed that the test under section 70(8) of the Act did limit the jurisdiction of the Respondent to make an Order under section 69 of the Act, in situations where the Respondent (or the Tribunal on appeal), considered it is more fit that the making of a section 69 Order was adjudicated on by the court due to, *inter alia*, its contentious character. However the limitation was at the discretion of the Respondent or the Tribunal on appeal, and not invoked automatically because of it having a contentious

character per se. The Respondent felt it was appropriate to make the Order, having regard to the merit of avoiding unnecessary recourse to the court generally, the greater flexibility involved by the Respondent making the Order; the existence of an independent appeal to the Tribunal; the requirement for notification of the intention to make the Order to the new trustees and the former holding trustees and the Respondent's policy of having in place a review procedure. Finally, Mr. Willis Pickup submitted that all statutory conditions to enable the Respondent to exercise its powers to make the Order were satisfied.

The 2011 Election

23. Mr. Willis Pickup confirmed that the Respondent had serious concerns in respect of the governance of the Charity for some time. There were no validly elected trustees in office who could call an election to appoint new trustees. Two groups had emerged who were in dispute concerning control of the Charity and the identity of its trustees. The Appellant belonged to one group that styled itself the Founding Members' Group. To regularise the position, the Respondent had made an Order under section 26 of the Charities Act 1993 that authorised the calling and holding of elections for new holding trustees and management trustees. The making of this Order was not the subject of an appeal to the Tribunal. Both rival groups, including the Appellant, agreed with the proposal of the Respondent concerning the conduct of the election. A timetable for the election was agreed as was the process of compiling a list of the members of the Charity. The evidence, he submitted, showed that the membership list had been compiled and agreed by representatives of the two rival groups. Nominations for trustee positions were placed in a box in the mosque. There was a discrepancy in respect of two of the nominations. One of those concerned resigned in any event in 2012 (thus requiring the election of a replacement trustee in 2013), while the other, Mr. Abdul Qayyum remained one of the new trustees. These nominations were initially rejected but, at a subsequent meeting held on 14 November 2011 at which the Election commissioners and the two representatives of each of the two rival groups were present, including the Appellant himself, it was agreed that the nominations should go forward. While there was some lack of clarity in the process, the outcome was clear. Both rival groups had agreed on the form of the ballot paper but, in any event, Mr. Willis Pickup submitted, the Tribunal should take a broad view on any concerns in respect of the colour scheme employed. There was a good turnout at the election. The election took place on 20 November 2011. The successful candidates received a large number of votes. The election was supervised by an Election Commission comprising Caroline Webb of Dudley CVS, an independent election supervisor and a nominee of each of the two rival groups. Ms. Webb confirmed the elections were conducted properly and in accordance with the Charity's constitution. The result was accepted in writing by two representatives of each of the two rival groups, including the Appellant himself. While in oral evidence to the Tribunal, the Appellant maintained he was pressurised into signing his acceptance, he had consistently refused to sign the Land Registry Transfer form since the election. Mr. Willis Pickup submitted that this did not indicate someone who was susceptible to pressure. Mr. Willis Pickup stated that the Respondent accepted that there were minor discrepancies between the name of Mansur Ahmed appearing on the ballot paper (Mansoor A Munir) and the correct legal name (Mansur Ahmed) appearing on the Land Registry Transfer and in the Order. However, he submitted that the evidence showed that he was known as 'Mansoor' Ahmed Munir by the members. Accordingly, members knew who they were voting for and there was no evidence that Mansur Ahmed misrepresented himself. He submitted that issues of paperwork should not override issues of substance. He submitted, however, that the Transfer simply had to be in the name appearing on the passport, that is, Mansur Ahmed. Finally, he submitted, the Appellant had accepted that the person who appeared on the ballot paper as Mansoor Munir was the same person whose name appeared as Mansur Ahmed on his passport.

The 24 November 2013 AGM and Elections

24. Mr. Willis Pickup submitted that the crucial date is when the EGM was called (4 November

2013), not when it took place, in accordance with the 1992 Constitution of the Charity. Because the call was made within two calendar years of the election of the Management Committee then they were still duly elected and had authority to call elections and convene an AGM. The AGM was to consider, *inter alia*, an amendment to the Constitution of the Charity (deferred from an EGM on 3 November 2013); the election of the Management Trustees and the election of a replacement holding trustee. He denied, by way of alternative argument, that decisions made at this meeting were invalid. The elections were again supervised by the said Election Commissioners, including the said Mrs. Caroline Webb, an independent election supervisor, and one nominee of each of the two rival groups, at the request of the Charity.

The Purported 18 May 2014 EGM

25. Mr. Willis Pickup submitted that, at the time of the purported 18 May 2014 EGM, the 2013 Constitution of the Charity was in place. The purported meeting was at the request of one of the rival groups, namely, that styling itself, the 'Founding Members' Group' ('FMG'), of whom the Appellant was a member. Neither the FMG, nor anyone else, save a petition of at least 30 members of the Charity, under the 2013 Constitution, could call an EGM of the Charity (if one was not called by any other permissible method that was not applicable here). However, even on the written evidence of the Appellant, Mr. Willis Pickup submitted, the requisition was in the name of only 27 members (in two letters, both dated 11 April 2013). He submitted that even if only 20 members were required (under the 1992 Constitution), a number of requisitioners withdrew in advance of the meeting alleging they had been misled by Mr. Razzaq, the Appellant's McKenzie friend in these proceedings, leaving 16 requisitioners – an insufficient number even under the 1992 Constitution. In any event, Mr. Willis Pickup submitted, the purported EGM, even if validly called, was not quorate on the evidence of Mr. I. Malik, the General Secretary of the Charity, with particular reference to his evidence as to the content of the CCTV footage. The meeting, if valid, purported to remove the six of the seven new trustees from office.

The Appellant's Submissions

26. Mr. Razzaq elaborated on the written submissions set out in the Appellant's skeleton argument, having regard to the evidence, both written and oral, placed before the Tribunal.

The 2011 Order

27. Mr. Razzaq submitted that the making of the 2011 Order by the Respondent under section 26 of the Charities Act 1993 to authorise and hold elections for new trustees, both holding and management trustees, was invalid as a section 26 Order could only be used in connection with charity property; instead, the Respondent should have made an Order under section 18 of the 1993 Act to achieve what it sought in connection with the regulation of the Charity.

The Issue of the Name of one of the Trustees elected in the 2011 Election

28. Mr. Razzaq submitted that Mansur Ahmed misrepresented his name on the ballot paper and was not, therefore, validly elected as one of the new trustees. He entered into a contract with the Charity under a misrepresentation and did not seek to rectify that misrepresentation, contrary to the provisions of the Misrepresentation Act 1976. (A further submission that this was also a breach of the Identity Document Act 2010 was withdrawn).

The Validity of two Nominees

The Appellant had not agreed with the inclusion of two nominees with incomplete nomination forms in the 2011 Election and made his objections known.

The 24 November 2013 AGM

29. Mr. Razzaq submitted that the 24 November 2013 AGM was unconstitutional as the Constitution of the Charity only permitted one AGM per annum and there had been an AGM held on 18 August 2013. He submitted that the new trustees were elected in November 2011 and that an AGM should have been held by 19 November 2012 after the expiry of one year, with the next AGM due on 19 November 2013. However, since it was decided to hold an AGM on 18 August 2013, elections should have been held at that meeting. He submitted that there was no authority to hold an EGM on 3 November 2013 nor another AGM on 24 November 2013.

Appointment of Election Commissioners

30. Mr Razzaq submitted that only trustees could appoint Election Commissioners, not the members as suggested by Ms. Webb in her report to the Respondent dated 29 November 2013.

Amendment to Constitution

31. Mr. Razzaq submitted that the procedure set down in the 1992 Constitution of the Charity, requiring notice to be given to the members of the Charity, was not followed and, therefore, the purported amendments were invalid.

The Order

32. Mr. Razzaq submitted that the Respondent failed to follow its own published Guidance in making the Order. He submitted that it was not the case that the Appellant did not want to sign the Transfer form but that Mansur Ahmed was using the wrong name and, therefore the Transfer would be invalid. In this regard, Mr. Razzaq submitted that a Parliamentary Report on the Respondent showed that the Respondent did not listen to people and that it did not do what it was supposed to do and that this was evidenced in the conduct of the Respondent in this case.

The Tribunal's Conclusions

33. The Tribunal had regard to the entirety of the written and oral evidence placed before it in determining this appeal.
34. The issue in this appeal was whether it was appropriate and proportionate to make the Order, that is, an order vesting or transferring the said property of the Charity, the identity of which was not in dispute, into the names of the new trustees of the Charity in circumstances where the Appellant, as a former holding trustee, had declined to transfer the said property by signing the requisite Transfer document.
35. This, in turn, depended on whether the new trustees had been removed from office at the purported EGM held on 18 May 2014. This depended, on whether that meeting was valid by being a quorate meeting.
36. If the new trustees had not been removed from office, the question of whether the new trustees had been validly elected fell for determination. This raised a number of issues touching the validity and lawfulness of the election processes and procedures.
37. While the Appellant disputed that the Respondent had authority to make a section 26 Order under the Charities Act 1993 to authorise the calling and holding of elections for new holding and management trustees, it was significant that no appeal against the making of that Order was ever lodged with the Tribunal. Even more significant was the fact that the making of a section 26 Order was agreed by both rival groups within the Charity

membership of which the Appellant (and Mr. Razzaq) were significant figures. In those circumstances, the Tribunal declined to accept the Appellant's submission in that regard. In any event, the making of the section 26 Order was not the subject of the appeal before the Tribunal. For completeness, however, if it had been relevant to the outcome of the appeal before the Tribunal, the Tribunal noted, and agreed, that it was open to the Respondent to use either section 18 or section 26 of the 1993 Act and that the purpose for which the Respondent made the section 26 Order was clearly appropriate and proportionate in all the circumstances.

38. The Tribunal carefully observed the Appellant giving evidence. The stridency exhibited by him in giving evidence was also evident in various documents before the Tribunal (such as that demonstrated in the minutes of the 18 August 2013 AGM). The Tribunal did not find the Appellant to be someone who was easily pressurised. The significance of this finding is that the Tribunal declined to accept the Appellant's submission that he only agreed to accept the outcome of the 2011 elections of trustees (in particular the election of the new Trustees) because, as he maintained, he had been pressurised to do so. The evidence, indeed, demonstrated that the views of one of the two rival groups, of which the Appellant was a significant proponent, were meticulously put on record and considered and that, at all times, the Appellant accepted the outcome of various steps in that meticulous process, despite his subsequent protestations to the contrary.
39. The Tribunal found, on the evidence, both written and oral, the membership lists of the Charity to be in order and agreed by both rival groups, on the balance of probabilities. It also found the 2011 election timetable to have been agreed by both rival groups (including the Appellant) and to have been meticulously followed, as confirmed by the Election Commission chaired by Ms. Webb, an independent election supervisor, who had no conflict of interest as between the two rival groups. The Tribunal also found that both rival groups had agreed the membership of the Election Commission and that both groups were represented on the Commission by their respective nominees.
40. To the extent that Mr. I. Malik's motives may have been put in issue by the Appellant, the Tribunal declined to accept any such suggestion: Mr. Malik's role was merely that of administrator, as General Secretary to the Charity. The Tribunal found that he carried out his administrative duties meticulously in relation to the elections and the holding of various general meetings of the Charity. In particular, the Tribunal rejected the suggestion made by the Appellant in evidence that Mr. Malik must have edited the CCTV footage to which he referred in his evidence. The Tribunal accepted the evidence of Mr. Malik in that regard and found that the purported EGM held on 18 May 2014 was not, in fact, quorate. Accordingly, any resolution passed at that meeting, not least, the resolution purporting to remove the new trustees from office was invalid and of no effect.
41. In respect of the issue of whether there had been notice given to the members of the Charity concerning proposed changes to the 1992 Constitution of the Charity, the Tribunal found that sufficient notice had, indeed, been given. The General Secretary, Mr. I. Malik, was tasked with giving notice and did so. Further there had been sufficient discussion at a number of meetings to the extent that the members were fully aware of the issues. The Tribunal was satisfied that there had been a valid change to the Constitution of the Charity in 2013 with particular reference to the increase in the number of members required to requisition an AGM or EGM of the Charity.
42. The Appellant disputed the validity of the elections of the new trustees at the election held on 20 November 2011. The Tribunal declined to accept that there was any ultimate validity in respect of either of the two issues raised by the Appellant, namely, the presence of different coloured columns appearing on the ballot paper and the correctness of the name of Mansur Ahmed, one of the new trustees elected. The Tribunal concluded that it was far from ideal that the candidates should be listed on a ballot paper that contained two different colours, not least since all of the successful candidates were listed on the same side of the

ballot paper of one particular colour. However the Tribunal concluded, on balance, that the result was not influenced by this method of proceeding and attached much significance to the fact that both rival groups had agreed to this somewhat unusual practice. The Tribunal attached much significance in this regard to the coherent evidence of Mr. I. Malik. On the second issue concerning the difference between the name of one of the successful candidates as it appeared on the ballot paper and the form in which it appeared on his passport, the Tribunal was entirely satisfied that there was agreement, including the agreement of the Appellant, that this was the same person and that the use of the name on the ballot paper was attributable to that being a 'community name', that is, the name by which he was commonly known in the community. Clearly, his official name, as it appeared on his passport, was the name that had to be used on the Transfer form for the purposes of the Land Registry. The Tribunal also noted in this regard that the photographs of each candidate also appeared on the ballot paper. It was satisfied that there could have been no confusion as to the identity of the nominated trustees for whom members were voting.

43. The Tribunal accepted that the AGM of the Charity held on 18 August 2013 should have been held on an appropriate date, by reference to the amended Constitution of the Charity, in 2012. However, since nothing turned at this meeting on the central issue in this appeal concerning the vesting of the Charity property in the new trustees, this was not of any overarching significance for the purposes of the appeal.
44. Of greater import was the EGM of the Charity held on 3 November 2013 since this was to approve an amendment of the Constitution of the Charity. Nothing was decided at that meeting in this regard and, in effect, a decision on amending the Constitution was deferred to the AGM of the Charity held on 24 November 2013. This meeting was of significance, too, for the purposes of this appeal, since the election of a replacement trustee was to be decided (in addition to the election of the Management Trustees). The Tribunal accepted the submissions of the Respondent, and rejected the submissions of the Appellant, in relation to the validity of this AGM for the reasons stated by the Respondent both written and oral.
45. Accordingly, the Tribunal was satisfied, on the evidence, on the balance of probabilities, that the new trustees were validly appointed into office.
46. The Tribunal was entirely satisfied that the Order was appropriate and proportionate. The said property of the Charity was held in the names of persons who were not valid holding trustees. Attempts to have the property of the Charity transferred into the names of the new trustees, validly elected, proved unsuccessful. The making of the Order was necessary in all the circumstances to facilitate the better administration of the Charity and ensure effective use of charitable resources.
47. The making of the Order did not determine title within the meaning of section 70(1)(a) of the Act.
48. While these proceedings were by way of an appeal and were not a review of the Respondent's decision, the Respondent did, in fact, receive an application from the Charity to make the Order. This gave the Respondent (and the Tribunal on appeal), jurisdiction to make the Order, subject to considerations of all other statutory criteria being satisfied and the making of the Order being appropriate and proportionate, all of which were satisfied in this case.
49. There is no doubt that the making of the Order was contentious. The Appellant maintained that this fact meant that the Respondent (or the Tribunal on appeal) had no jurisdiction to make the Order and, instead, the matter should be adjudicated upon by the court. However, the test set out in section 70(8) of the Act, in fact, gives a wide discretion to the Respondent (and, necessarily, the Tribunal on appeal) in this regard and the fact that a matter is contentious is merely one factor to be taken into account but is not, in itself

determinative. The Tribunal was entirely satisfied that, in this appeal, it was entirely appropriate that the matter should not be referred to the court.

50. This appeal was unanimously dismissed.

Dated: 8 January 2016

Signed:

**Damien J. McMahon
Tribunal Judge**

**A'isha Khan
Member**

**Stuart Reynolds
Member**

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