



IN THE FIRST TIER TRIBUNAL (CHARITY)

GENERAL REGULATORY CHAMBER

**Appeal No. CA/2014/0011
CRR/2014/0007**

BETWEEN:

**THRIFT URBAN HOUSING
PETER ALMAN
(The Appellants)**

- and -

**THE CHARITY COMMISSION FOR ENGLAND AND WALES
(The Respondent)**

TRIBUNAL: Tribunal Judge Peter Hinchliffe
A'isha Khan
Carole Park

Heard at: Field House, London, EC4A 1DZ

Date of hearing: 12th and 13th January and 30th March 2015 (sitting in public)

Date of decision: 17 April 2015

Attendances:

For the Appellants: Mr Peter Alman (12th and 13th January) and Mr Martin Henley (30th March only)
For the Respondents: Mr Kenneth Dibble

Subject matter:

1. Review of the decision of the Respondent on 13th August 2014 to open an inquiry into Thrift Urban Housing (the "Charity") under section 46 of the Charities Act 2011.
2. Appeal against the decision of the Respondent on 13th August 2014 to issue an order under section 76 (3) (d) of the Charities Act 2011 requiring CAF Bank Limited not to part with any property which it holds on behalf of the Charity without the consent of the Respondent.

DECISION OF THE FIRST-TIER TRIBUNAL

The applications for the Review and the Appeal are dismissed.

REASONS FOR DECISION

BACKGROUND

1. On 12th August 2014 CAF Bank Ltd. informed the Respondent (the "Commission") that an amount of £160,000 was about to be paid out to a Peter Alman by way of a cheque drawn on the account of Thrift Urban Housing Ltd. ("The Charity"). The cheque had been signed by two signatories; one of these was Peter Alman. The Commission's records were based on information provided by the Charity and indicated at that time that Peter Alman was a trustee of the Charity.
2. The Charity is a charitable company incorporated on 10th August 1998. It was registered with the Commission on 23rd November 1998. The Charity's objects are:
"(a) To relieve poverty by the provision of housing and other amenities to persons who are in need".
"(b) To provide advice and help for impoverished elderly people, disabled people and homeless people".
3. The Commission took two decisions in the light of the information it had received from CAF Bank Ltd. The first was to open an inquiry into the Charity under Section 46 of the Charities Act 2011 (The "Act"). The second was to issue an order under Section 76 (3) (d) of the Act preventing the Charity from using its bank account at CAF Bank without the consent of the Commission. The Commission wrote to the Charity on 13th August 2014 to inform the Charity of these two decisions.

THE DECISIONS OF THE COMMISSION

4. The Commission has the power under Section 46 (1) of the Act to:

"from time to time institute enquiries with regard to charities ... either generally or for particular purposes".

In its letter of 13th August 2014 to the trustees of the Charity, the Commission informed them that it had opened a statutory inquiry under Section 46 of the Act and provided the following additional information:

"Nature of the concerns

It is important that you know the nature of the concerns that have been made against the Charity.

- *It has come to the Commission's attention as part of its Operations case that the Charity is attempting to withdraw the majority of its funds it holds in its CAF Bank Ltd account by way of cheque made payable to a trustee, Mr Peter Alman;*
- *It has been alleged that the Charity is effectively operating as the building firm of one of its trustees (Peter Alman): and*
- *It is alleged that the Charity has submitted documentation to the Commission that may contain the signature of a deceased person with the implication being that this may be a forgery.*

Consequently we consider that these issues raise regulatory concerns which require further examination by the Commission."

The letter went on to provide further details of the concerns that the Commission wished to investigate. The letter stated:

- *“That the Charity’s funds are at significant risk. It is not clear whether a payment of £160,000 to a trustee is in furtherance of the Charity’s objectives or it has been properly authorised by the trustee body.*
- *That the Charity is potentially being used for significant private advantage.*
- *That false and misleading information may have been provided to the Commission*

5. The Commission sent a second letter dated 13th August 2014 to the trustees of the Charity in which they enclosed a copy of the order made under Section 76 (3) (d) of the Act (the “Freezing Order”). The letter explained the effect of the Freezing Order in the following terms:

“I enclose a copy of an Order dated 13th August 2014 made under Section 76 (3) (d) of the Charities Act 2011, the effect of which is to freeze the account(s) of Thrift Urban Housing Ltd. with CAF Bank Ltd. The bank may not part with any money or securities which it holds on behalf of the Charity without the prior written approval of the Commission. The bank may, however, make such payments as shall be authorised in writing by or on behalf of the Commission. Payments into the account can be made as normal.

The reasons for making the Order are included in a Statement of Reasons attached to this letter.”

6. The Statement of Reasons stated the following:

“The Order has been made for the following reasons:

It is necessary or desirable to act for the purpose of protecting the property of the Charity or of securing a proper application for the purposes of the Charity for that property or property coming to the Charity Commission.

- 1) *That The Charity’s funds are at significant risk. The Commission’s enquiries as part of its operational casework suggest that nearly all of the Charity’s money held by CAF Bank Ltd. (that is, £160,000 out of a balance of c.£180,000) is about to be withdrawn by the Charity by way of a cheque payable to trustee Peter Alman.*
- 2) *There are concerns that the Charity is potentially being used for significant private advantage by Mr. Alman and the Commission is not satisfied that this payment is an authorised payment.*

It is for these reasons that The Commission considers that it is necessary to act for the purpose of protecting the property of the charity and / or securing a proper application of that property or properties coming to the charity”.

7. The letters of 13th August 2014 explained in greater detail the implications of the opening of the statutory inquiry and of the Freezing Order. Amongst other matters the Commission informed the Charity of the scope of the investigation and stated that:

“ the investigation will look at:

- *Possible significant private advantage from the Charity to Peter Alman and his companies;*
- *The financial controls and management of the Charity;*
- *The administration, governance and management of the Charity by the Trustees; and*
- *Whether or not the trustees have complied with and fulfilled their duties and responsibilities as trustees under charity law.”*

The letters also set out some of the considerations to which the Commission had had regard in making the Freezing Order; proportionality, human rights considerations and the Commission's equality duty.

NOTICE OF APPEAL / APPLICATION FOR REVIEW

8. A Notice of Appeal / Application for Review dated 22nd September 2014 was submitted by Thrift Urban Housing Ltd. and Mr. Peter Alman. The Notice of Appeal / Application for Review was signed by Mr. A. Shepherd on behalf of the Charity. The Notice confirmed that the Appellants were both the Charity and Mr. Alman. It explained that Mr. Alman was affected by the decision as he was:
" the chief executive and non-company director on a rolling contract with thrift urban housing ltd. and was involved in the initiation and implementation of the charity with the original trustees in 1998. He was himself a trustee for a short period between october 2013 and february 2014 in transitional arrangements assisting the new body of trustees take ownership."

The following results were sought from the Notice.

- " 1. Dr. Alman has his reputation vindicated.*
- 2. Thrift Urban Housing Ltd. have the Freezing Order removed.*
- 3. That no reasonable grounds existed for a statutory inquiry and their appeal against it to be upheld. "*

The Notice referred the Tribunal to a selection of emails and letters setting out the basis for appeal/application and to a loan agreement that the Appellants had included. (This loan agreement being the letter to Mr Alman referred to in paragraph 24 below). The Appellants were not legally represented at this point.

9. The Tribunal understood the Notice of Appeal / Application for Review to constitute an appeal against the Commission's decision to impose the Freezing Order and a review of the Commission's decision to open the statutory inquiry.
10. The decision by the Commission to open an inquiry under Section 46 of the Act can only be the subject of a review by the Tribunal. Section 322 of the Act sets out that a decision of the Commission *" to institute an inquiry under Section 46 with regard to a particular institution"* is a reviewable matter under the Act. Schedule 6 of the Act states that an application for such review can only be brought by *"persons who have control or management of the institution and the institution itself"* and by the institution itself. The Appellants appear to the Tribunal to satisfy these requirements. Schedule 6 to the Act further states that the Tribunal's power in these circumstances is simply to decide whether or not to direct the Commission to end the inquiry. The Tribunal therefore takes the view that the Notice of Appeal / Application for Review constituted an application for the review of the Decision by the Commission to open an inquiry under Section 46 of the Act into Thrift Urban Housing Ltd. This approach was accepted by Mr. Alman at the hearing on 12th and 13th January on his behalf and on behalf of the Charity and by Mr. Henley who represented the Appellants at the hearing of 30th March. Section 321 (4) of the Act sets out the role and power of the Tribunal in considering such review:

"In determining such an application the Tribunal must apply the principles which would be applied by the High Court on an application for judicial review."

11. The proper approach to the hearing of a review in to a decision to institute an inquiry is set out in *Regentford Ltd. v Commission* (CA/2013/0002, 21 August 2013)

"Although the Tribunal rules for the sake of brevity, treat applications for a review as appeals, the legal powers of the Tribunal are very different. The Tribunal does not hear the whole case afresh, as it would do if there were a right of appeal against the decision to open an inquiry. Instead it must apply the principles which would be applied by the High Court on an application for judicial review. It is important to also bear in mind that, at this stage, the Commission has not made any final findings. The question whether there is sufficient material on which to "look and see" is very different from the question of whether there is sufficient material on which to make a finding of fact."

12. The Notice of Appeal in respect of the decision of the Commission to impose the Freezing Order proceeds by way of an appeal. The Tribunal considers the original decision afresh, together with the decisions made at each review of the need to keep in place the Freezing Order that has been conducted under Section 76 (6) of the Act.
13. The Tribunal therefore needs to make two decisions in response to the Notice of Appeal/ Application for Review submitted by the Appellants. In this decision the Appellants' challenge to the Commission's decision to open the statutory inquiry will be referred to as the "Review" and the challenge to the imposition of the Freezing Order will be referred to as the "Appeal".

THE POWERS OF THE TRIBUNAL

14. The powers of the Tribunal in relation to the Review are derived from the entry in the table in Schedule 6 to the Act in respect of a decision made under s. 46 of the Act. The powers are either to reject the application or to direct the Commission to end the inquiry. In considering the Review, the Tribunal should take account of the information and evidence that was available to the Commission at the time that the original decision was taken.
15. The powers of the Tribunal in relation to the Appeal are derived from the entry in the table in Schedule 6 to the Act in respect of an order made by the Commission under Section 76 (3) or a decision not to discharge such an order following a review under section 76 (6). The powers in respect of the decisions under section 76 (3) are either to dismiss the Appeal or, if it allows the Appeal in this respect, to:
- a. *Quash the order in whole or in part (if appropriate) remit the matter to the Commissions;*
 - b. *substitute for all or part of the Order any other order which could have been made by the Commission;*
 - c. *add to the order anything which could have been contained in an order made by the Commission."*

The powers in respect of the decisions under section 76 (6) are either to dismiss the Appeal or, if it allows the Appeal in this respect, to quash the decision in whole or in part and (if appropriate) remit the matter to the Commission, to discharge the order, with or without any savings or transitional provisions, or to remove any savings or transitional provisions already in place. Under Section 319 (4) of the Act the Tribunal is required to consider afresh the decision to impose the Freezing Order and may take into account evidence which was not available to the Commission.

ISSUES FOR THE TRIBUNAL TO DETERMINE

16. In their submissions to the Tribunal the representatives of the Appellants and the Commission confirmed that the two issues to be resolved in this case are the following:
 - a. Was the Commission's decision to open a statutory inquiry lawful?
 - b. Should the Freezing Order continue?

17. The Act requires that the Tribunal in considering whether the decision to open a statutory inquiry was lawful should apply the principles which would be applied by the High Court on an application for judicial review. The Tribunal has done so. It is not necessary in this decision for the Tribunal to set out exactly what those principles are. The Tribunal is aware that it can be difficult for unrepresented parties and those unfamiliar with the distinction between an appeal and a review of a decision to appreciate the important distinction that exists in law. Mr. Alman who represented himself and the Charity in the first two days of the hearing on the 12th and 13th January expressed his concerns with regard to the Commission's decision to open a statutory inquiry and his objections to that decision in broad, but measured, terms. The Tribunal sought clarification from Mr. Alman as to the particular grounds for his challenge and sought to explain the basis upon which it would consider the Review. Mr. Alman responded thoughtfully and carefully and the Tribunal wishes to thank him for the constructive manner in which he sought to understand the legal issues in the case and to present his case. The Tribunal sought to identify from Mr. Alman's statement of concerns and objections those issues which are relevant to the Review. The Tribunal noted the strong concerns that Mr. Alman expressed about information that the Commission had taken into account in coming to its decision which Mr. Alman believes had not been properly established at that time. The Tribunal also noted Mr. Alman's submissions that the Commission had acted in a subjective manner in considering the information available to it at the time of the decision. Mr Alman sought to address the issues of substance that will be considered as part of the inquiry and to exonerate himself from the allegation of wrong doing. The Tribunal explained that this was not possible or necessary as part of the Review. On the third day of the hearing, 30th March 2015, the Appellants were represented by Mr. Henley. Mr. Henley in his skeleton argument and in his submissions at the hearing provided the Tribunal with a clear and focussed basis upon which he argued the Review should succeed on the basis of the principles which would be applied by the High Court on an application for judicial review. Mr Henley argued that the Commission had failed to take account of relevant information within its knowledge regarding the possibility that Mr Alman had made a loan to the Charity and had failed to seek information expeditiously and had not made relevant information that it held available to the decision maker. In determining the Review the Tribunal has sought primarily to address the arguments submitted by Mr. Henley, whilst also considering the concerns that Mr. Alman brought to the fore in his submissions, but which were not pursued by Mr Henley.

THE REVIEW – MATTERS OF FACT

18. Having considered the evidence and submissions of the parties the Tribunal has reached the following decision in relation to the facts that existed at the time that the decision was taken to open a statutory inquiry.

19. The Commission had opened an 'operational compliance' case into the Charity prior to the decision being taken. The origins of this decision lay in the report of complaints received from a member of the public and from the Trading Standards team at the London Borough of Lambeth in which allegations were made about the basis upon which the Charity operated when carrying out building works. In the course of pursuing the operational compliance case the Commission had contacted CAF Bank Ltd. and made enquiries about the Charity. CAF Bank Ltd. was therefore aware of the Commission's interest in the Charity and alert to the possibility that the Charity's bank account and the operation thereof might also be of interest to the Commission. The concerns of the Commission at the time of the Decision are set out in the decision log that the Commission drew up at the time that the decision was taken to

open the statutory inquiry and are set out in paragraph 4. above. The decision is dated the 13th August 2014. Chris Sladen of the Commission's Pre-investigation Assessment Unit made the decision. The decision log states the following at paragraph 11:

"The regulatory issue that is relevant to this decision to open a statutory inquiry is:

The Charity's bankers "CAF" have disclosed to the Commission – in response to the Commission's Section 52 order – information to suggest that nearly all of the charity's money held by them, (that is £160,000 out of a balance of c. £180K) is about to be withdrawn by the Charity by way of a cheque payable to trustee Peter Alman."

The decision log records that the Charity's Trustees (as listed on the Central Register of Charities are

*Peter Alman
Kathy Atherton
Tanith Grey
Shelley Thompson"*

The decision log goes on to record the following conclusion by Mr. Sladen

"It is hard to envisage a situation where a charity could legitimately make such a large payment to one of its trustees and where that trustee is also a signatory to the payment." Although it is not impossible – see beneath paragraph 25".

"The Operations case officer notes the cheque is dated one day after the Commission issued a letter to the Charity which stated that

"further to the Report of a Serious Issue (RSI) you sent us at the end of last year, we have received contact from other regulators raising concerns about your charity. As a consequence we recently carried a scrutiny of the charity's accounts. Having carried out this analysis there are a number of issues which we require the trustees to clarify. These relate to the charity's activities and the way the charity's finances have been managed and recorded. We intend to meet with the charity's trustees at their premise this month (August) to discuss these matters in further detail. We may also carry out a Books and Records check if we feel this is applicable."

20. Mr. Sladen reported that he perceived a clear risk that the trustees having been notified of the Commission's concerns in connection with the Charity's accounts and finances were taking steps to empty the Charity's bank account. He concluded that there was a clear risk that the Charity's funds may be being misappropriated and by not opening an inquiry and taking immediate action to safeguard these funds the Commission may lose an important opportunity to protect charitable funds.
21. In paragraph 25 of the decision log Mr. Sladen set out reasons why his concerns may have been misplaced. Paragraph 25 states

"I have considered that there may be an entirely legitimate reason for trustee Peter Alman withdrawing charitable funds in payment to himself (he may be owed money or he may be undertaking a transaction from his own account with the other Trustees full knowledge and consent) and that, without asking, one can only speculate upon the reason for the forthcoming transfer"

Mr Sladen expressly considered the possibility that the withdrawal of funds one day after the Commission had notified the trustees of their concerns may be entirely coincidental. Notwithstanding this possibility, he decided that it should not prevent the Commission opening an inquiry and taking action to prevent the funds leaving the Charity's bank account whilst it does so.

22. Mr. Alman acknowledged the contents of the decision log and the factors that were in the mind of the Commission at the time the decision was taken. Mr. Alman's strong contention is that the Commission had no basis in which to reach a conclusion that the Charity was involved in carrying out building works for his private advantage. He argued that the decision was made on the basis of a subjective view taken with limited information. Mr. Alman also sought to provide evidence to the Tribunal that he had not carried out such activities and that the Charity's activities were for charitable rather than private benefit. Mr. Alman also produced witnesses who were called upon to provide their views and evidence as to the activities of the Charity. The Tribunal must reach its findings on the Review on the basis of the facts and information available to the Commission at the time that it took its decision. Mr. Henley submitted that the principle reason for opening the inquiry on 13th August 2014 was to prevent the clearing of a cheque drawn on the Charity's bank account. He contended that other concerns that may have arisen later are not relevant to the decision. The Tribunal agrees with this view.
23. Mr. Henley argued that the decision of 13th August was unlawful because the decision maker, Mr. Sladen, had failed to consider important information that he should have considered. The Commission had access to information from which they should have deduced that a large deposit of £300,000 had been received by the Charity in July 2013. He concludes from the evidence that the order made under Section 52 from the Commission to CAF Bank dated 11th February 2014 and the second Section 52 order dated 28th July to CAF Bank provided information from which the Commission should have concluded that this large deposit had been made in July 2013. The Commission had failed to act on this information, which was potentially relevant to its consideration of the proposed payment out of the CAF Bank account. Mr. Henley argued that by declining to consider this information and by failing to disclose this to the decision maker, Mr Sladen, the Commission had fettered its discretion and its decision was one which no reasonable Commission having directed itself properly could have made. The decision maker would have been aware that the bank account contained £180,000 of cash at the time that the cheque was drawn and that in the accounts that the Commission held in relation to the Charity it only had cash in the bank of £9,276. Therefore the decision maker should have made enquiries or sought to clarify the basis upon which the Charity had significantly increased its cash resources before reaching a decision as to the risk surrounding the withdrawal of a significant amount of cash from the Charity's account. He submitted that the Commission had constructive notice of the deposit some six months before the decision and that they did not investigate the deposit until five months after the receipt of the information. Furthermore, the decision maker was not made aware of this information and together these facts constitute a failure to act expeditiously and a failure by the Commission to fulfil the duty of candour which is a requirement when exercising "*a draconian injunctive jurisdiction on an ex-parte basis*".
24. Mr. Alman told the Commission and Tribunal that a loan of £300,000 had been made by him to the Charity. He provided evidence of this loan in the form of a letter dated 15 July 2013 from Jeannette Cargin signed as Director and Trustee of Thrift Urban Housing Ltd. to Mr. Alman confirming a loan of £300,000 and setting out the terms of that loan. He also provided a letter dated 2nd May 2013 that he had sent to Tony Finn, Chairman of Thrift Urban Housing Ltd. recording his intention to make such a loan.
25. The decision maker recorded in paragraph 25 of the decision log that one possible reason for Mr. Alman withdrawing the funds by means of the cheque for £160,000 was that he may be owed money by the Charity. It is clear that Mr. Sladen anticipated that the repayment of a loan made to the Charity by Mr. Alman could be a legitimate basis for a cheque for a large amount to be paid by the Charity to Mr. Alman.

26. The Tribunal finds that Mr. Alman's position at any particular point in the last few years in relation to the Charity, whether as trustee, employee, or independent contractor, remains unclear. It's Mr. Alman's position that he was briefly a trustee for a short period between October 2013 and February 2014 and that he resumed the position in order to help bring these proceedings. He stated that he has not been an employee and that he has been an independent contractor, with the title of Chief Executive, during most of his time working for the Charity. The Tribunal is unable to make a definite finding as to Mr. Alman's status at the time of the decision and it is not necessary for it to do so. It is sufficient that it finds that there was uncertainty and inconsistency on this issue. The Tribunal notes that the Commission had good reason to believe that he was a trustee at the time of the decision given that this information was held on its Central Register of Charities and had not been corrected by Mr Alman or the Charity. It also notes that Mr. Alman was signing the cheque on behalf of the Charity and that he was therefore ostensibly in a position of authority in relation to the Charity at the time that he was seeking a large payment out of Charity funds. Article 49 of the Articles of Association of the Charity states that all cheques from the Charity's bank account must be signed by at least two trustees.
27. It is not necessary for the decision of the Commission to have been made on the basis of full and accurate information with regard to the circumstances of the Charity or of Mr. Alman for it to be valid and properly made. It is implicit in any valid decision to open an inquiry that additional information is required. The Tribunal noted Mr. Alman's concerns about the paucity of information regarding the allegations about him conducting building activities and the possibility of private benefit. The Tribunal also noted Mr. Alman's concerns regarding the subjective nature of the decision that he believes was made by Mr. Sladen. The Tribunal takes the view that some judgement is required to be exercised at the time that a decision is being taken regarding a statutory inquiry and that that judgement may have to be made on the basis of limited information. The Tribunal does not find that the lack of accurate information about the allegations against Mr. Alman and the Charity was in itself an unlawful or irrational basis for reaching the decision. The concerns about the possibility that Mr Alman was deriving a private benefit from the Charity arose out of information received from Trading Standards and a consumer complaint. It is reasonable for the Commission to regard information received from Trading Standards as a legitimate basis for concern. Whilst the information regarding the potential private benefit to Mr Alman from the activities of the Charity was limited and needed to be evaluated, it was relevant to the decision that was being contemplated. It was not improper for the Commission to have regard to it when considering if further investigation was required and it cannot be regarded as a purely subjective basis for the Commission to have concluded that some risk to the Charity's assets may exist.
28. The Commission argued that it reacted to the information regarding the cheque that was provided by CAF Bank Ltd. and that this information coupled with the timing of the proposed cash withdrawal, being just after the trustees had been notified of the Commission's concerns, was in itself a sufficient basis for the opening of an inquiry. The Tribunal accepts that a cheque signed by a trustee or someone in position of authority in the Charity that seeks to withdraw most of the Charity's funds in order to pay one of the signatories is in itself cause of significant concern and may form a basis on which the Commission could decide to take steps to stop payment of those funds until an explanation or reassurance had been obtained. The basis upon which such transfer of funds could be stopped would involve the opening of a statutory inquiry and the making of a Freezing Order. However, the Commission must take account of all information that is available to it and not have regard to information that is irrelevant and it must reach a conclusion on that information that is rational.
29. The Decisions of the Commission were exercised on an ex parte basis. Mr Henley argued that the Commission had a duty to act expediently and to ensure that the decision maker had access to all relevant material including all material that might undermine their proposed course of action or which the Charity would have relied upon in arguing against the opening of an inquiry and the issue of the

Freezing Order. The Tribunal accepts this position. In this case Mr. Henley's argued that the Commission was aware of a significant payment into the Charity and chose not to properly investigate this and failed to bring it to the attention of the decision maker when expressing concerns or considering the risks around a significant payment out of the Charity. The Tribunal considered this argument carefully. The Tribunal finds that the Commission could have done more to investigate whether there might be a legitimate reason for the payment to Mr. Alman and that the source of the Charity's increase in funds would have been an appropriate place for it to start its enquiries. However, in the particular circumstances of this case, the Tribunal does not find that it was essential for the Commission to have conducted these enquiries before reaching the decision on 13th August 2014. When the Commission became aware that the cheque for £160,000 had been presented it found itself in a position where it could either take immediate action to restrain the movement of funds or it could let the funds pass out of the Charity's accounts. It had to act in a limited timescale. It had not made as extensive enquiries as it might have done given the information that it had access to prior to that point. However, it was at an early stage of its enquiries into the Charity and had only just contacted the trustees. The trustees were, and remain, the obvious source of the information that the Commission required in order to address the concerns that had arisen and to clarify the Charity's accounts, operations and activities. The trustees were best placed to provide information about their own activities and about any alleged conflict or private gain. The Tribunal does not accept that the slow progress that the Commission had made in investigating the Charity means that it could not act on an ex parte basis in the event that a new and serious risk arose that made it desirable to act for the purposes of protecting the Charity's property. In this case the presentation of the cheque for £160,000 presented such a new and serious risk. The Commission did not have a duty to act expeditiously in the period before it became aware of circumstances that might lead it to act on an ex parte basis. The Tribunal accepts that a duty of candour arose in relation to the information that the Commission made available to the decision maker. However, having considered the evidence in this case the Tribunal does not find that the Commission had information at the time of the decision that should have led it to inform the decision maker that there was a real possibility that Mr Alman had made a loan to the Charity and that the cheque may have been an attempt to repay part of that loan.

REVIEW – MATTERS OF LAW

30. The Tribunal is unwilling to find that the Commission is unable to act to address a serious risk to charitable assets merely because it has been slow in exercising its own judgement or in conducting an analysis of limited information. In this case an analysis was required of the risk to the Charity based upon the limited amount of information and evidence to which the Commission had access and in a timescale that would permit them to stop payment of cheque that had already been presented to a bank for payment. In exercising that judgement the Tribunal takes a view that the Commission should have been aware that by taking the decision to open the inquiry and to issue the Freezing Order it would be causing significant inconvenience to the Charity and to the beneficiary of the cheque and that it was exercising a significant power on an ex-parte basis. It therefore needed to take care to ensure that it considered all of the information within its knowledge in making the decision and that any measures that it took were a proportionate response to the risk that it perceived. In this instance, the Tribunal finds it relevant that, in considering the proportionality of the decision to institute an inquiry, the information required to assess the risks in relation to the payment of the cheque for £160,000 might have been expected to be readily available from the Charity. Had it emerged from the Charity's response to the decision to open an inquiry that the risk was either not as serious as the Commission feared or did not exist at all, the position could have been remedied swiftly and the damage to the Charity's operation and reputation might have been expected to be very limited. However, had the Commission failed to act at this point on the basis that it needed more information before it would decide whether to open an inquiry it may have irrevocably lost the chance to protect the bulk of the assets of the Charity.

31. The Tribunal concludes that the decision to open a statutory inquiry was not irrational and that, whilst it was made on the basis of limited information and that information did not include all of the information available to it about the source of the increase in the Charity's cash assets, it had not failed to take account of information that it needed to take account of in the course of the decision. The Commission had not failed in its duty to make its decision maker aware of information that might have undermined its case. It had merely failed to conduct the analysis, obtain more information and form the required judgement as quickly as it might have done. Even if it had identified and focused upon the fact that a significant payment had been made into the Charity's account in the preceding year this would not, in itself, have been sufficient to remove all serious concerns about and risks in respect of the proposed payment of £160,000 to someone that the Commission was entitled to believe was a trustee of the Charity and about whose activities Trading Standards had reported some concerns. If the Commission had been fully aware of the payment of £300,000 from Mr Alman to the Charity, which it was not at the time of the decision, it could still have been appropriate to take the view that the movement of large sums of cash between Mr. Alman and the Charity may pose a risk and needed to be investigated. The timing of the cheque for £160,000, coming the day after the Commission had first approached the trustees with its concerns, was also a legitimate factor for the Commission to take into account in deciding whether or not to institute an inquiry.
32. The decision log considered issues in relation to the proportionality of the exercise of its powers, the human rights issues they give rise to and the quality and diversity issues that might arise in respect of its acts. The Tribunal notes this consideration and finds nothing in relation to these issues that is relevant to the outcome of this hearing and notes that Mr. Hartley considered the human rights issues arising this case and had not raised concerns in respect of the opening of the statutory inquiry.
33. The Tribunal considered the policy and practice of the Commission in opening statutory enquiries and the Commission's "Risk Framework", "Application of the Commission Risk Framework" and "Operational Guidance 117: How the Commission deals with regulatory compliance work." It found no reason to conclude that there had been a material failure by the Commission to follow its own policy and practice when making the decision.
34. In all the circumstance that Tribunal has formed the view that, on the limited facts known to the Commission and in the limited time available to it after it became aware of the presentation of the cheque in favour of Mr Alman, the decision to open an inquiry was a rational, proportionate and lawful response to a new and serious risk.

THE APPEAL

35. The Appeal relates to the decision of the Commission to impose the Freezing Order and to maintain that Freezing Order in operation up until now. For the Freezing Order to be valid the Act requires that a number of conditions must be satisfied. Section 76 of the Act provides

"(1). Sub-section (3) applies where, at any time after it has instituted an inquiry under Section 46 with respect to any charity, the Commission is satisfied

(a) that there is or has been any misconduct or mismanagement in the administration of the Charity, or

(b) that it is necessary or desirable to act for the purposes of –
(i) Protecting the property of the Charity, or

(ii) *Securing a proper application for the purposes of the Charity of that property or of property coming to the Charity...*

(3) *the Commission may of its own motion do one or more of the following –*

...

...

(c) *order any person who holds any property on behalf of the Charity, or of any Trustee for it, not to part with the property without the approval of the Commission."*

It therefore follows that for the Commission to have properly imposed the Freezing Order it must have instituted an inquiry under section 46 of the Act and the Commission must have been satisfied that there was or had been either misconduct or mismanagement in the administration of the Charity, or that the Freezing Order was necessary or desirable in order to protect the property of the Charity, or to secure the proper application of the funds held in or coming into the Charity's CAF Bank account.

36. Section 86 (3) of the Act also requires the Commission to give a copy of the Freezing Order and a statement of the Commission's reasons for making it to a charity where it makes an order under Section 76. The Commission issued a Statement of Reasons dated 13th August 2014 upon first making the Freezing Order and provided this and a copy of the Order to the Charity. A revised Statement of Reasons was produced on 5th December 2014 and provided to the Charity. The Commission has relied upon this revised Statement of Reasons in the course of these proceedings.
37. The Act requires at Section 76 (6) of the Act that the Commission must, at such intervals as it thinks fit, review the Freezing Order and "*if on any such review it appears to the Commission that it would be appropriate to discharge the order in whole or in part must so discharge it.*" The Commission reviewed the Freezing Order on 21st August 2014, 2nd September 2014, 5th September 2014, 19th September 2014, 5th December 2014 and 5th February 2014 and 19th March 2015. The outcome of the reviews conducted in August and September 2014 were included in individual decision logs. The outcome of the 5th December 2014 review was, according to the witness statement of Angela Ascroft of the Commission, recorded in the revised Statement of Reasons of the same date. The reviews of 5th February 2015 and 19th March 2015 were carried out in the light of evidence received by the Commission after the first hearing in these proceedings. Mr. Henley, represented the Appellants at the second hearing and objected to the production of evidence to the Tribunal that had only been disclosed to him immediately prior to the second hearing. This evidence included information that was relevant to the reviews carried out on the 5th February and 19th March 2015. The Commission agreed that it would not rely on such evidence in these proceedings and the Tribunal agreed that, in all of the circumstances of this case, it was fair and just to proceed on this basis. The Tribunal took particular account of the submission by Mr Henley that it would be unfair to consider evidence that he had not had time to review in circumstances where a part of that delay had arisen from the Commission's refusal to authorise the use of the Charity's funds to pay his fees. The Tribunal does not criticise the Commission for the delay as genuine concerns needed to be addressed before the authorisation could be given. Nevertheless in the interest of ensuring that these proceedings are determined fairly and justly it is appropriate to exercise considerable care in order to ensure that the Appellants are not disadvantaged by the exercise by the Commission of the power that it has been given over the conduct of their case.
38. The order instituting the Freezing Order was accompanied by a Statement of Reasons. The reasons set out the basis on which the Freezing Order had been made and the principles and issues that the Commission had taken into account and these are set out in paragraph 6 above. The Statement of Reasons confirmed that the Commission had had regard to the possibility that disabled, elderly or serious ill people who were accessing the service of the Charity will be dependent on the funds raised

by the Charity. The Commission considered the proportionality of the Freezing Order, the relevant human rights considerations and its duty of equality. It also stated that it would consider requests for the funds in the Charity's account to be released for appropriate purposes.

39. Mr. Alman and the Charity responded with additional information and, in particular, stated that the cheque for £160,000 had been produced in order to repay in part a loan made by Mr. Alman to the Charity in 2013. In the decision log following the review on 21st August 2014 the Commission confirmed that it had been provided with an email confirming that the Charity had received a credit of £300,000 on 10th July 2013 and a letter dated 15th July 2013 signed by Jeannette Cargin as a Director and Trustee of the Charity thanking Mr. Alman for a loan of £300,000. The Commission decided that the Freezing Order should remain in place as it had a number of issues with the information provided by the Charity including that the email from CAF Bank Ltd. did not confirm who had made the credit of £300,000 and that it did not have evidence that the trustees had made a decision collectively to borrow or to repay such a loan. The Commission noted that Mr. Alman claimed that he was no longer a trustee but that he had signed the cheque for £160,000 himself despite the Articles of the Charity requiring two trustees to sign such cheques. The Commission also noted that it was very unclear who the trustees of the Charity were at that time.
40. Mr. Alman provided further evidence to the Commission in response to this review by the Commission. This information included clarification of the fact that the £300,000 credit had been made out of funds drawn on Mr Alman's account. This information was misconstrued in the temporary order review of 2nd September 2014 and in the decision log reporting this review.
41. When Mr. Alman pointed out the Commission's mistake a further review was conducted on 5th September 2014. This acknowledged that Mr. Alman did make a payment of £300,000 to the Charity in July 2013 but concluded that the Commission still did not have sufficient information for it to conclude that there were grounds for it to discharge the order on the basis that the risk to the Charity assets had been mitigated. In reaching this conclusion the Commission noted that the Charity had not provided it with the bulk of the information it had requested and that the Commission did not have a clear understanding about who was authorised to act on behalf of the Charity to agree the terms of the loan or to authorise the repayment of £160,000. The Commission sought more information or documentation from the Charity and, amongst other matters, wanted to understand what benefit, if any, Mr. Alman may have derived from the payments.
42. In the temporary order review of 19th September 2014 the Commission responded to further information provided by Mr. Alman and again acknowledged that he was the source of the £300,000 received by the Charity. The Commission was concerned that the trustees had yet to provide the Commission with a set of minutes which approved the payment as a legitimate expenditure of the Charity. It acknowledged that the Chairman of the trustees, Mr. Anthony Shepherd, had written to them explaining that such minutes were not required either in law or in fact. The decision log did however confirm that upon receipt of such minutes from the trustees "*on balance we would not have sufficient evidence to continue to withhold the payment*". However until that time the Commission was satisfied that there was potential risk to the Charity's funds which necessitated the Freezing Order remaining in place.
43. Following this decision review the Appellants submitted this appeal. The Commission issued orders under Section 52 of the Act to the then trustees of the Charity and to former trustees, requiring information to be provided to it. It subsequently issued orders under Section 47 of the Act requiring the trustees to attend meetings with the Commission. The Commission conducted a further review on 5th December 2014, according to the evidence of Angela Ascroft on behalf of the Commission. In the undated Statement of Reasons that were attached to Ms. Ascroft's witness statement the outcome of

this review was recorded. The Commission noted that in response to the Section 52 order issued to Mrs Jeannette Cargin, a former trustee, she had contacted the Commission and stated that:

- *"She had not seen the loan letter which purports to have been signed by her before. It was on 22nd October 2014 that she saw the loan letter for the first time.*
- *The signature on the letter does not contain an E on the end and she would not sign her name without an E.*
- *She was not aware of the Charity accepting a loan from Peter Alman."*

The Commission noted that it had been unable to contact Prof. Finn who had received a letter from Mr. Alman confirming his intention to make the loan and the Charity had been unable to provide any contact details for Prof. Finn. Mr Alman had explained that Prof. Finn is an ex-chairman of the Charity. The Commission also noted that the trustees that it regarded as non-conflicted (Miss Atherton and Mr. Shepherd and Mr Shakespeare) and Mrs. Grey had failed to accept the Commission's request for a meeting. Miss Atherton, Mrs. Grey and Mr. Shepherd had all failed to attend the meetings that had been ordered under Section 47 (2) (c) of the Act and properly served on them. As a consequence of these events the Commission recorded that it now believed it appropriate for the Freezing Order to continue and that it found at this time that the grounds set out in Sections 76 (1) (a) had been satisfied in that there had been misconduct or mismanagement in the administration of the Charity as the trustees had refused to attend the meetings that had been ordered under Section 47 (2) (c) of the Act and that the grounds set out in 76 (1) (b) of the Act were also satisfied as it remained necessary or desirable to act for the purposes of protecting the property of the Charity.

44. At the first hearing witness statements were provided from Mr. Alman, Mr. Shepherd, Mr. Shakespeare, and Ms Atherton. Mr. Shepherd, Mr. Shakespeare, and Ms Atherton confirmed that they are trustees of the charity and each of them was cross-examined. In their evidence and in the submissions of Mr. Alman, the Tribunal heard that the Charity had received a loan from Mr. Alman and that it had every right to make a repayment of funds to him. The trustees Mr. Alman submitted that the Charity was doing good and useful work in the community and was pursuing its objects and that Mr. Alman's role in this was crucial. The trustees and Mr. Alman felt very strongly that the Commission had behaved unreasonably and irrationally in pursuing this matter despite the simple explanation of the circumstances that were available to them. The Charity was small and the trustees did their best in all circumstances to run the Charity and support its good work. The Tribunal considered these submissions and the supporting evidence and found that none of the trustees were in a position to provide any direct evidence that confirmed that Mr. Alman had made a loan to the Charity. None of the trustees had been present at a meeting, or were aware of a meeting, where the loan had been agreed. The trustees relied on Mr. Alman as the source of the information about the funds that had moved from his account to the account of the Charity and the cheque that had been drawn on the Charity's account in his favour. They also relied upon the accounts of the Charity which had been provided by the accountants to the Charity and which showed that a loan had been received. The trustees were able to confirm that they had approved the repayment of £160,000 of the loan made by Mr Alman and this decision was recorded in the minutes of a meeting of the trustees on 11 July 2014. Mr. Alman stated that he had been a trustee for a limited period only in order to assist with continuity and that this period was between the loan of the £300,000 to the Charity and the time at which the cheque for £160,000 was presented to CAF Bank Ltd. At all other times Mr. Alman stated that he was an independent contractor carrying on the role of Chief Executive of the Charity. This submission was not backed up by documentary evidence or other records.
45. In reviewing the initial decision to impose a Freezing Order, the subsequent reviews of that decision and the information available to the Tribunal during the course of the hearings, the Tribunal noted both the lack of clarity and uncertainty about the conduct of the affairs of the Charity and the lack of

cooperation and the hostility that the trustees had shown to the Commission. The Tribunal also noted that the Commission had utilised serious and onerous powers and had done so without warning to the Charity and had acted on the basis of limited information and that this had caused the trustees to mistrust the Commission. The Tribunal also recognised that the response that the Commission had received to the Freezing Order had immediately suggested that the payment was the repayment of a loan, which is precisely the possibility that it had considered would be a reasonable explanation for the payment of the cheque for £160,000.

46. After considering all of the evidence and submissions of the parties, the Tribunal takes the view that at the time of the original decision to issue the Freezing Order there was good reason to believe that it was necessary to act for the purposes of protecting the property of the Charity. These reasons include those that it has considered in relation to the Review in paragraphs 28 and 31 above: The Tribunal finds that a cheque signed by a trustee or someone in position of authority in the Charity that seeks to withdraw most of the Charity's funds in order to pay one of the signatories is in itself a cause of significant concern and may form a basis on which a decision to stop payment of those funds might reasonably be made. The timing of the withdrawal coming the day after the trustees had been notified of the Commission's interest in the conduct of the Charity added to the suspicion that the assets of the Charity may have been at risk. In considering the proportionality of the decision to impose the Freezing Order, the Tribunal finds that the information required to assess the risks in relation to the payment of the cheque for £160,000 might have been expected to be readily available from the Charity and the Freezing Order could therefore be swiftly discharged if that information allayed all serious concerns. In these circumstances the damage to the Charity's operation and reputation might be expected to be very limited. Whereas a failure to act on the risks that the Commission perceived at that time may have resulted in the loss of most of the assets of the Charity. On 13th August 2014 it was a rational and appropriate decision to form the view that there appeared to be a serious risk to the property of the Charity and that it was desirable to act for the purpose of protecting that property.
47. During the course of September 2014 the basis for assuming that the risk remained and that it was of sufficient gravity to justify the continuation of the Freezing Order became less straightforward given the information that the Commission had received about Mr. Alman's payment to the Charity. However, it became clear during this time that Mr Alman had not had the authority to sign the cheque if, as he argued, he was not a trustee of the Charity at that time. It also became apparent that the terms of the loan as set out in the letter signed by Jeanette Cargin on behalf of the Charity contravened the requirements of the Articles of the Charity as the interest rate on the loan exceeded that permitted by the Memorandum of Association of the Charity in respect of loans by trustees. By 19th September it was only the lack of minutes evidencing the trustees agreements to the loan and the repayment of the loan that the Commission was relying upon to justify the continuation of the Freezing Order. The Tribunal takes the view that on balance this was a legitimate and sufficient basis for the Commission to justify the continuation of the Freezing Order and that it had acted appropriately at that time. The Commission was seeking information regarding significant financial transactions between a charity and a trustee and/or Chief Executive that should have been readily available in a properly run charity. The Commission made clear precisely what information it required and this was not produced.
48. The information subsequently received from Jeannette Cargin referred to at paragraph 44 above was clearly relevant to the risk that the Commission had identified. The Tribunal can only give limited weight to the statement by Ms Cargin. Ms Cargin did not provide a witness statement and the Commission did not make her available for cross-examination at the hearing. Nevertheless in the absence of new information or useful co-operation from the trustees the evidence from Ms Cargin raised concerns that there was a continuing risk to the property of the Charity that the Commission was entitled to expect Mr Alman and the trustees to respond to and dispel. The allegation that the

letter upon which the Appellants relied in order to provide evidence of the existence of a loan by Mr Alman had been fabricated is clearly relevant to the decision on whether the Freezing Order should continue, particularly when it came from the signatory of such letter. The Tribunal takes the view that Ms Cargin's statement is, in the absence of any other evidence about the loan arrangements, material to the decision as to whether or not the Freezing Order should remain in place. Mr Alman disagrees with Ms Cargin's statement and has asserted that she signed the letter and was aware of the loan that he had made to the Charity. The precise truth of the position on this issue need not be determined by the Tribunal in order to decide the outcome of the Appeal. The Tribunal needs to decide if there are sufficient grounds for the Freezing Order to remain in place. It is for the inquiry being conducted by the Commission to seek to determine the true facts in relation to the payment made by Mr Alman to the Charity and the letter signed in Ms Cargin's name.

49. During the course of the hearing evidence emerged that indicated that one of the trustees, Ms Atherton, was receiving modest payments from the Charity in apparent breach of the prohibition on such payments in the Articles of the Charity. The Tribunal also noted the evidence regarding the use of significant funds from the Charity's account to acquire a car for Mr. Alman's use. Mr. Alman acknowledges that £55,000 of the Charity's funds had been spent in order to provide him with a car. He explained that this happened in a period in 2014 when he was not a trustee but was an independent contractor acting as Chief Executive. He had since become a trustee again in order to help with these proceedings. He did not accept that the expenditure on the car was a concern and sought to justify it on the basis that large charities and many non-charitable organisations provided cars for the benefit of their senior management. The Tribunal also became aware during the hearing that the second signatory to the £160,000 cheque, Ms Atherton, was Mr Alman's sister.
50. In deciding the Appeal the Tribunal has taken a view of all of the circumstances in relation to the Charity and its dealings with Mr. Alman and to the lack of clarity that persists despite the statutory inquiry being in place for many months. The Tribunal has considered whether the Commission or the Charity or Mr. Alman are responsible for this lack of clarity and finds on balance that the Commission has acted promptly to seek relevant information over the period of the inquiry and has had to seek to use its statutory powers in order to obtain such information, whilst the trustees and Mr. Alman have not co-operated with the Commission and have failed to respond in a manner that is to be expected of a responsible, albeit inexperienced, charity trustees. The Tribunal takes the view that there has been misconduct or mismanagement in the administration of the Charity by reason of;
- the lack of cooperation by the trustees;
 - the inability or unwillingness to provide proper documentary records to the Commission;
 - the signature of the cheque for £160,000 by Mr. Alman when he should not have done so because he was not a trustee and because he was the beneficiary of the cheque and his co-signatory, Ms Atherton, is his sister;
 - the payments to a trustee; and
 - the significant benefits accruing to Mr Alman and the uncertainty over when the periods in which he was a trustee.

The Tribunal finds that it was desirable at the time of each review and it remains desirable for the Freezing Order to remain in place in order to protect the property of the Charity whilst the precise status of the funds advanced by Mr. Alman to the Charity and the use to which the Charity's funds have been put is clarified by the Commission.

APPEAL – PROPERTY OF THE CHARITY?

51. In the third day of the hearing, Mr. Henley submitted that the Freezing Order should not or could not remain in place on the basis that the property in the Charity's bank account was not the property of the Charity. He argued and the Tribunal accepted that the Commission's powers under Section 76 of

the Act could only be exercised so as to protect the property of the Charity and that the Freezing Order could only apply to the property of the Charity. Furthermore, there would not be a valid basis for the Commission's actions in instituting an inquiry under Section 46 (1) of the Act unless the property of the Charity had been at risk.

52. Mr. Henley's argued that there were only three possible bases upon which the payment of £300,000 by Mr. Alman to the Charity could have been made. It could have been a loan as Mr. Alman asserted, it could have been a gift or, it was neither a loan nor a gift and there was no contractual basis for the payment and no evidence of any consideration for it. The Commission had ruled out the possibility of the payment being a loan. Mr Alman denied that the payment was a gift and the Commission had no evidence that the payment had been intended as a gift or had been received as such. The Commission did point to the inference that a payment to a charity may in the absence of any other evidence as to intention, be regarded as a gift. However, given that Mr. Alman had made the payment and his evidence was clear that he had not intended that a gift be effected, the Tribunal did not find it could act on the basis of inference only. Mr. Henley therefore pointed to the third possibility that would apply if the payment was neither a loan nor a gift and there was no valid contractual or other legal basis for the payment; that is that a resulting trust would arise in respect of the funds. Mr. Henley relied upon general principles of equity law and in particular upon Snell's Equity 25-003 in arguing that a resulting trust had arisen. Mr. Henley submitted that even if a loan agreement had been intended and there was an irregularity in it, this would void the loan contract. In these circumstances equity would then step into the breach and impose a resulting trust. Mr. Henley further submitted that as set out in Snell's Equity 25-015 in the event that the resulting trust has arisen then any property acquired with the money is also subject to the trust. Mr Alman would be the beneficiary of the resulting trust.
53. Mr Henley also referred the Tribunal to R.v Golechha (1989 3 All ER) in which the Court of Appeal held in a criminal law case that "*a debtor did not possess any proprietary rights in a debt, since he did not have money and the chose in action represented by the debt was owned by the creditor.*" He argued that the Charity had no proprietary interest in the contents of or rights arising in respect of its bank account. The Tribunal considered Mr. Henley's arguments, which are only summarised here, carefully.
54. The Tribunal takes the view that the uncertainty over the basis upon which the sum of £300,000 was transferred from Mr. Alman's account to the account of the Charity is such that the possible legal basis for that payment extends beyond the three possibilities identified by the arguments for the Appellants. It is possible that some or all of the moneys were a loan as Mr. Alman contends. There is no reason to believe that they were a gift. It is possible that the payment was made on a basis that would, in itself, create a trust in favour of Mr. Alman or that a purported loan arrangement had failed and that therefore a resulting trust may have arisen by operation of law in the manner envisaged by Mr. Henley. However, the Tribunal finds that it is also possible that some or all of the funds that Mr. Alman transferred properly belonged to the Charity in the first place. The Tribunal makes no finding that this is the case. However it notes the confusion that was apparent from Mr. Alman's submissions regarding the basis upon which he could have received funds from the Charity whilst he was a trustee or could have received benefits from the Charity other than under a contract properly approved on behalf of the Charity and properly administered by the Charity. The Tribunal finds that it is no less plausible to believe on the evidence available to it that some part of the funds transferred from Mr Alman's account to the account of the Charity may, upon proper investigation of the facts, be in the beneficial ownership of the Charity in law, than to believe that it is held on a resulting trust for Mr Alman. The existence of this fourth possibility leads the Tribunal to conclude, on the balance of probabilities, that it need not conclude that the funds in the bank account are held on resulting trust for the benefit of Mr Alman. This is one possibility and the uncertainty that exists over the rights to these funds is best resolved by the Commission's inquiry into the Charity.

55. The Tribunal considered Mr Henley's submission that the Charity could have no proprietary interest in relation to its bank account. The Tribunal considered the judgement of Lord Lane CJ in *R v Golechha* that Mr Henley had referred them to and did not find that it could be interpreted so as to conclude that the holder of a bank account that was in credit did not have proprietary interest in the debt owed by the bank to the account holder. In the case of a credit balance a chose in action existed that belonged to the creditor. In this case, the Tribunal concludes that the debt from CAF Bank to the Charity was in law the property of the Charity at the time that the Freezing Order was imposed and has remained so since then.
56. The Tribunal also considered the extent to which any payment of funds into the Charity's account could be kept distinct from the general funds of the Charity. The evidence relating to the Charity's account with CAF Bank indicated that the £300,000 payment was not the only payment into the account and that significant funds have been disbursed from the account. The Charity notes that only £180,000 was left in the account at the time that the cheque was drawn. It is reasonable to conclude from the evidence that the bank account was used for the general purposes of the Charity. In these circumstances, the £300,000 payment into the account was not kept as a distinct and identifiable sum in the account such that Mr Alman could not only retain a proprietary interest those funds, but could also claim rights over any goods bought with those funds. The Tribunal finds that the £300,000 became part of the general funds of the Charity.
57. For these reasons, in addition to the reasons set out above, the Tribunal concludes that the Charity had a proprietary interest in the bank account and that the Freezing Order is not invalid because it has been applied to funds that are not the property of the Charity. The Tribunal finds that the requirements of Sections 76 and 43 of the Act are satisfied and it was desirable to institute the inquiry and implement the Freezing Order for the purpose of protecting the property of the Charity.

CONCLUSION

58. In all the circumstances of this case, the Tribunal finds that it is not necessary for it to reach definite conclusions on all of the factual and legal issues that are in contention between the Appellants and the Commission in order to determine the Appeal and the Review. The Tribunal notes that the decision to open the statutory inquiry is justified on the basis that further enquiries are necessary in order to ascertain the relevant facts and to permit the Commission to reach the appropriate legal and regulatory conclusions. This is clearly a case in which an inquiry was required and should continue and the Tribunal hopes that the trustees of the Charity will cooperate with the Commission and bring this inquiry to a swift conclusion. The Tribunal also finds that although the imposition of the Freezing Order on an ex-parte basis is a significant exercise of power by the Commission and one which only should be reserved for serious concerns over the protection of Charity assets, in this case it was justified by the lack of clarity and continuing uncertainty over the serious risk that would otherwise have arisen to the proper use of the assets of the Charity. It should have been possible for the Charity to have addressed the concerns of the Commission within a few days of the issue of the Freezing Order. Had it done so, the Commission could have swiftly remedied the position, withdrawn the Freezing Order and removed any adverse implications over the conduct of the Charity or the trustees. Had it done so that would not, however, have meant that the Freezing Order should not have been put in place in the first place. The launch of the inquiry and the imposition of the Freezing order was a legitimate and proportionate response to the risk that appeared to exist on the basis of the facts that were known to the Commission at the time of the decisions. In this case the facts pointed to misconduct in the administration of the Charity and to serious concerns over the proper use of the Charity's assets. These issues remain unresolved and the Freezing Order remains an appropriate means of protecting the property of the Charity whilst the uncertainty is resolved.

59. The Tribunal finds that the Commission's decision to open a statutory inquiry was lawful and that the decision to issue the Freezing Order and to leave it in place was appropriate and that the Freezing Order should continue. The applications for the Review and the Appeal are dismissed.

Tribunal Judge

Peter Hinchliffe

Dated 15 May 2015