



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL  
(CHARITY)  
GENERAL REGULATORY CHAMBER**

**Appeal No: CA/2011/0006**

**BETWEEN:**

**UTURN UK CIC (formerly Uturn UK Limited)**

**Appellant**

**and**

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**

**Respondent**

---

**DECISION AND REASONS**

---

**Heard in public in Birmingham on 19 January 2012  
by:**

**Jonathan Holbrook, Tribunal Judge  
Manu Duggal, Member  
A'isha Khan, Member**

**For the Appellant: Martin Graham, company secretary of Uturn UK**

**For the Respondent: Kenneth Dibble, Chief Legal Adviser and Head of  
Legal Services, Charity Commission**

**Date of Decision: 27 February 2012**

**Subject Matter: Appeal to Tribunal against refusal to enter Uturn UK  
Limited in the register of charities under section 3 of  
the Charities Act 1993.**

## **DECISION**

**The appeal is hereby dismissed**

## **REASONS**

1. Uturn UK CIC (formerly Uturn UK Limited) (“the Company”) appeals to the Tribunal against a decision of the Charity Commission (“the Commission”) dated 9 August 2011. The decision appealed against is the Commission’s refusal to enter the Company in the register of charities kept by the Commission in accordance with section 3 of the Charities Act 1993 (“the 1993 Act”).

### **The Decision appealed against**

2. The Commission has considered an application by Uturn UK to be entered in the register of charities. The application was initially refused on the basis that Uturn UK was not established as a charity in law (because it was not established for exclusively charitable purposes and public benefit was not demonstrated). The Company then asked the Commission to reconsider its decision under the Commission’s decision review process. The initial application had been made by the promoters of a trust which pre-dated the establishment of Uturn UK Limited as a company limited by guarantee. However, by the time of the decision review process, the Company had been established and had taken over the undertaking of the trust. It had also asked the Commission to focus the decision review process on the Company’s application to be entered in the register of charities. The prior involvement of the trust therefore has no significance in this appeal.
3. The Commission’s decision review process culminated in a final decision dated 9 August 2011 (“the Decision”). The Decision was made in the exercise of delegated authority by the Commission’s Head of

Legal Services, and concluded that the Company was not established for exclusively charitable purposes and so could not be entered in the register of charities. In summary, the stated reasons for the Decision were that:

- 3.1 the Commission was unable to determine on the evidence before it that the purposes of the Company were exclusively charitable. It was not satisfied that the Company was established for purposes that fell within the descriptions of charitable purposes in section 2(2) of the 2006 Act or that those purposes were directed towards benefiting the public in a way recognised as charitable;
- 3.2 the first object of the Company concerned the promotion of “street associations”, which is not a defined term and the evidence available to the Commission did not support the view that the work of the Company was of an exclusively charitable nature; and
- 3.3 having concluded that the first object was not charitable, the Commission did not need to consider whether the second object of the Company was an exclusively charitable object, nor whether it would be proper to see it as a separate object, but stated that it was unconvinced that it was on the evidence before it.

### **The Appeal**

4. The Company appealed against the Decision by Notice of Appeal dated 18 October 2011 (the Tribunal having previously granted the Company an extension of time for filing the Notice). The Company contended that the Decision was wrong in law because the Company’s purposes were exclusively charitable ones.

## The statutory framework

5. Section 3(1) of the 1993 Act requires the Commission to keep a register of charities. That register must contain, *inter alia*, the name of every charity registered in accordance with section 3A of the 1993 Act. Section 3A(1) requires every charity to be registered in the register of charities unless section 3A(2) applies to it. It was not suggested to us that section 3A(2) applied to the Company.

6. Section 1(1) of the Charities Act 2006 (“the 2006 Act”) provides that:

*... “charity” means an institution which—*

- (a) is established for charitable purposes only, and*
- (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.*

7. Section 2 of the 2006 Act then defines what is meant by “charitable purposes”. Subsection (1) provides that:

*... a charitable purpose is a purpose which—*

- (a) falls within subsection (2), and*
- (b) is for the public benefit (see section 3).*

8. Subsection (2) lists twelve specific heads of purpose which are potentially charitable. Insofar as is relevant to this appeal, those heads include: the advancement of religion;<sup>1</sup> and the advancement of citizenship or community development.<sup>2</sup> In addition to the twelve specific heads of purpose, however, the purposes listed in section 2(2) include “any other purposes within subsection (4)”.<sup>3</sup> Those purposes are:

---

<sup>1</sup> 2006 Act, section 2(2)(c).

<sup>2</sup> 2006 Act, section 2(2)(e). This head includes rural or urban regeneration, and the promotion of civic responsibility, volunteering, the voluntary sector, or the effectiveness or efficiency of charities (section 2(3)(c)).

<sup>3</sup> 2006 Act, section 2(2)(m).

- (a) *any purposes not within paragraphs (a) to (l) of subsection (2) but recognised as charitable purposes under existing charity law or by virtue of section 1 of the Recreational Charities Act 1958;*
- (b) *any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of those paragraphs or paragraph (a) above; and*
- (c) *any purpose that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under charity law as falling within paragraph (b) above of this paragraph.*<sup>4</sup>

### **The powers of the Tribunal**

9. In determining this appeal the Tribunal must consider the Commission's Decision afresh. In doing so, the Tribunal may take into account evidence which was not available to the Commission.<sup>5</sup>
10. As far as the disposal of the appeal is concerned, the Tribunal's powers derive from the relevant entry in the table in Schedule 1C to the 1993 Act. Consequently, the Tribunal has the power to dismiss the appeal, or if it allows the appeal, to quash the Decision. The relevant entry in the table provides that, if the Tribunal quashes the Decision, it may (if appropriate) remit the matter to the Commission for a fresh decision, or direct the Commission to rectify the register.
11. The Commission argued that, in this case, the fact that the Company has become a community interest company means that, even if the Tribunal allowed the appeal and quashed the Decision, it would not be open to the Tribunal to remit the matter or to direct the Commission to rectify the register. This is because, as a matter of law, a community interest company is incapable of being an English charity, even if it is established for charitable purposes.<sup>6</sup> Given that our decision is to dismiss the appeal, it is unnecessary to rule on this particular point.

---

<sup>4</sup> 2006 Act, section 2(4).

<sup>5</sup> 1993 Act, Schedule 1C, paragraph 1(4).

<sup>6</sup> Companies (Audit, Investigations and Community Enterprises) Act 2004, section 26(3).

However, it is worth noting that, as the primary question raised by the appeal is whether the Commission was right to refuse to enter the Company in the register of charities when it made its Decision on 9 August 2011, and as the Company was not a community interest company on that date, it is within the Tribunal's power to quash the Decision.

### **Issues to be determined**

12. As stated above, the central issue for the Tribunal to determine is whether the Commission was right to refuse to enter the Company in the register of charities as at the date of the Decision. In plain terms, if the Company was a charity on that date, the Commission should have entered it in the register. If the Company was not then a charity, however, the Decision was correct and this appeal must be dismissed.

13. In order to determine whether the Company was a charity at the time of the Decision, the following questions must be addressed:

13.1 On a proper construction of its governing document, what was the purpose (or, if more than one, what were the purposes) of the Company?

13.2 Was that purpose (or, if more than one, each of those purposes) exclusively charitable? That is:

13.2.1 Did each of those purposes fall within section 2 of the 2006 Act? and

13.2.2 Were each of those purposes for the public benefit?

14. Although the parties agreed that these were the critical issues for the Tribunal to determine, Mr Graham, on behalf of the Company, asked the Tribunal to determine the following additional issues:

- 14.1 Is it reasonable that a description of charitable purposes in section 2 of the 2006 Act should be offered to prospective charities, but then applications based on it rejected because “the precise scope of the description is yet to be settled” and “descriptions that are ambiguous or unclear cannot be charitable unless and until they have a settled legal meaning”?
- 14.2 Has the new description of charitable purposes truly been integrated into the Commission’s thinking?
15. We do not consider it necessary or appropriate for the Tribunal to attempt to answer these additional questions, and we declined to hear argument in relation to them during the hearing. The reason for this is that the proper function of the Tribunal in this appeal is to consider the Decision afresh. We are concerned to ascertain whether or not the Commission was right when it decided that the Company was not a charity. It is the validity of the Commission’s conclusion on that issue as a matter of law which concerns us: the nature of the process by which that conclusion was reached, or the ethos of the Commission in making such decisions, is not material to our task. The validity of the Decision can be ascertained simply by determining the issues set out in paragraph 13 above.

**What are the purposes of the Company?**

16. Mr Graham explained during the hearing that the Company was established in response to anxiety about the way society in the UK has been developing – in particular, about indicators of “brokenness” such as high levels of depression, addiction and social isolation. The founders of the Company believe that there are two things that can be done about this. First, the rebuilding of “true community”, street by street; and, second, the “re-establishment of values”.

17. In terms of its legal constitution, Article 3 of the Company's Articles of Association define the purposes of the Company in the following terms:

“3.1 The Objects of the Charity are:

- 3.1.1 to advance citizenship and community development by the promotion and activation of the Street Associations initiative, which will seek to bring the residents of streets together in local groupings with a framework that will engender civic responsibility and volunteering, and
- 3.1.2 to promote the Christian faith and Christian values, with particular emphasis on the Christian faith for its own sake and on the relevance of Christian values to the restoration of well-functioning community.”

18. The first issue for consideration in relation to the above statement of the Company's purposes is whether the Company has two separate purposes, or one single purpose. In other words, should the statements in Article 3.1.1 and 3.1.2 respectively be construed as stand-alone purposes, or should they be interpreted as separate facets of one purpose? The Commission has taken the former approach, and Mr Graham confirmed that he considers the Company to have two distinct, albeit related, purposes. Those purposes can be referred to as (i) the promotion and activation of the street associations initiative; and (ii) the promotion of the Christian faith and Christian values. We accept that this is the correct approach. It follows, of course, that both purposes must be exclusively charitable if the appeal is to succeed.

19. The Decision focused mainly on the first of these purposes – the promotion and activation of the street associations initiative – and, indeed, this was the principal focus of the parties before the Tribunal as well, reflecting the fact that the street associations initiative is clearly the Company's primary area of activity. Although we also heard evidence about the nature of the Company's second purpose, the Company cannot be a charity unless its first purpose is, of itself, exclusively charitable.



*What is the meaning of Article 3.1.1?*

20. The expression “street associations” is not one which has a settled meaning in law (it is not defined by statute and its meaning has not to our knowledge, nor that of the parties based on their evidence, previously been considered by the courts). This is not surprising because, as far as we know, the concept has only recently gained prominence in a charitable context. However, the framing of a purpose by reference to an expression, the meaning of which is uncertain, risks the meaning of the purpose itself being unclear or uncertain. It is this uncertainty about what a street association is, and consequently the impact this has on the meaning of Article 3.1.1, which goes to the heart of the Commission’s misgivings about the charitable status of the Company – both in terms of understanding what the first purpose of the Company actually is, and in determining whether that purpose is an exclusively charitable one.
21. The Commission contended that, because of the lack of certainty about the meaning of the expression “street associations” in the Company’s Articles, this is a case where it is appropriate to have regard to relevant factual background information, and the Company’s activities, in determining the purposes of the Company and whether those purposes are charitable. Mr Graham did not take issue with this approach and, having regard to the decision of the Upper Tribunal in *Helena Partnerships Limited v Revenue and Customs Commissioners*,<sup>7</sup> we agree that it is an appropriate one for the Tribunal to adopt. It is worth noting that, although the Tribunal benefited from evidence concerning the activities of the Company between the date of the Decision and the date of the hearing, there was no suggestion that the nature of those activities had changed during that period.

---

<sup>7</sup> [2011] UKUT 271 (TCC).

22. According to the Company's promotional literature, a street association is intended to bring together about 70 homes (perhaps 200 people) to create a "micro-community, in which everyone knows everyone, people belong, help others and have fun together".<sup>8</sup> The street association would be independent of the Company, and would be run by a committee of six people. Key roles on the committee would include that of welfare co-ordinator, whose job would be to visit each home in order to match up neighbours' needs with offers of help; and that of events co-ordinator, who would be tasked with the organisation of activities and social events. A street association would be a non-profit-making organisation.
23. The idea, according to the Company, is that the Company will work with church and other community leaders within a particular locality in an initiative to promote street associations across that locality. Mr Graham, and others involved with the Company's activities, would advise the initiator of a street association and attend its introductory meeting in a pastoral role. Further advice would be available on the Company's website. The first street association was set up in July 2011, and a total of five were in existence as at the date of the hearing, all in the Harborne area of Birmingham.
24. A street association could also be set up without the Company's involvement – there is no requirement for a street association to be licensed or accredited by the Company in any way. Nor is there any membership agreement, or other contractual arrangement, between the Company and a street association. The Company exercises little to no control over what a street association eventually does or over how it is run. It has no power to sanction a street association for engaging in activities, whether within or beyond its intended remit.

---

<sup>8</sup>

[www.uturnuk.org](http://www.uturnuk.org)

25. Although the Company's vision and aspirations for the street associations initiative are fairly clear, (and whilst the Commission readily acknowledges that the intended activities of street associations are worthwhile), the question is whether the means by which the Company has chosen to further these aspirations are charitable.

*What is the meaning of Article 3.1.2?*

26. As far as the second purpose of the Company is concerned, Mr Dibble explained to us that the Commission was unsure whether the wording of Article 3.1.2 should be construed simply as a purpose to promote the Christian faith and Christian values, or whether the reference to the relevance of Christian values to "the restoration of well-functioning community" requires this purpose to be construed more narrowly. Mr Graham argued that Article 3.1.2 should not be construed narrowly. Whilst the Company's website sets out four key Christian values which, in his view, meet society's most pressing needs, the reference in Article 3.1.2 to their relevance to the restoration of well-functioning community is merely intended to reflect the fact that the Bible says that such values are indeed essential in this regard. As such, the wording of that Article which follow "to promote the Christian faith and Christian values" are essentially parenthetical: they do not detract from the overall thrust of the purpose, which is to promote the Christian faith and Christian values. We accept Mr Graham's argument on this point.

### **Are the purposes of the Company exclusively charitable?**

*Promotion and activation of the street associations initiative*

27. Mr Graham made the point that the fact that a concept (or purpose) is new should not mean that it cannot be charitable. We agree – section 2(4) of the 2006 Act clearly requires an acknowledgment of the fact that the purposes which the law recognises as charitable may develop, albeit within certain parameters. However, for any purpose to be

charitable (whether it is new or well-established), it must be sufficiently clear, and sufficiently certain, to permit an assessment of whether it falls exclusively within the heads of purpose listed in section 2(2) of the 2006 Act.

28. The Company contends that its first purpose does indeed fall exclusively within those heads of purpose and, in particular, within section 2(2)(e), being the advancement of citizenship or community development. Indeed, Mr Graham pointed to the fact that Article 3.1.1 is expressed in terms which make it clear that the whole point of the Company's activities in connection with the street associations initiative is "to advance citizenship and community development". From the description of the Company's activities given by Mr Graham, the "community development" aspect of the description in section 2(2)(e) appears to us to be more relevant to the facts of the case than "citizenship" *per se*.
29. Mr Dibble, on the other hand, reminded us that labelling a purpose in a way which gives it the appearance of being charitable is insufficient unless it can also be demonstrated that the activities of the Company will in fact be undertaken for charitable purposes, and that the Company is incapable of undertaking non-charitable activities.
30. The Commission acknowledges that the meaning of "the advancement of citizenship or community development" in the 2006 Act has not been precisely defined either in statute or by the courts. However, Mr Dibble referred us to the Commission's own 1999 consultation document on the promotion of community development,<sup>9</sup> which cited the following explanation of community development as a helpful starting point:

"Community development is directed in particular at people who feel excluded from society. It consists of a set of methods which

---

<sup>9</sup> 'Review of the Register – The Promotion of Community Development, Discussion Document' Charity Commission, 1999.

can broaden vision and capacity for social change, and approaches, including consultation, advocacy and relationships with local groups. It is a way of working which is informed by certain principles which seek to encourage communities - people who live in the same areas or who have something else in common - to tackle for themselves the problems which they face and identify to be important, and which aim to empower them to change things by developing their own skills, knowledge and experience and, also by working in partnership with other groups and with statutory agencies. The way in which such change is achieved is crucial and so both the task and the process is important.”<sup>10</sup>

31. The conclusions which the Commission then formed in its consultation document were that community development involves the empowerment of communities, and that those communities will typically be socially and economically disadvantaged, or excluded. During the course of these proceedings, the Commission stated that, in its view, the advancement of community development may encompass the relief of loneliness, isolation and social exclusion; the development of community infrastructure, responsibility, volunteering and social inclusion. The Commission also expressed the view that charitable purposes that advance community development are capable of including the provision of social events.
  
32. On this basis the Commission agreed that at least some of the Company’s activities are charitable in nature. However, as there can be no guarantee that the activities of street associations will not be restricted to activities that are exclusively charitable – they might, for example, provide services to individuals which confer a private benefit – the Commission could not be satisfied that the Company’s purpose in promoting street associations is itself exclusively charitable.
  
33. We share the Commission’s concerns about the lack of certainty as to the nature of the possible activities of individual street associations,

---

<sup>10</sup> ‘Monitoring and Evaluation of Community Development in Northern Ireland’ (report commissioned by the Voluntary Activity Unit, Department of Health and Social Services (Northern Ireland), October 1996, page 9.

and therefore about the outcomes from the initiative which it is the Company's purpose to promote and activate. Although we acknowledge Mr Graham's point that it is the Company which seeks to be entered in the register of charities, rather than individual street associations, there is necessarily a link between the two: if it is a purpose of the Company to promote activities which are not necessarily charitable, then it is difficult to maintain that the purpose itself is exclusively charitable.

34. Our conclusions on this point arise from our findings (set out in paragraph 24 above) about the lack of control which the Company is able to exercise over a street association. Although the Company's vision for street associations may indeed provide "a framework that will engender civic responsibility and volunteering", there is no mechanism for the Company to ensure that the eventual activities of the street association measure up to the Company's initial expectations. This lack of control seems to us to be a fundamental feature of the street associations initiative, as presently conceived by the Company, and is one which makes it markedly different from more traditional membership organisations.
35. For these reasons we find that the purpose stated in Article 3.1.1 is not an exclusively charitable purpose.

*Promotion of the Christian faith and Christian values*

36. Our finding that the Company's first purpose is not an exclusively charitable one is sufficient to dispose of this appeal, and so it is unnecessary for the Tribunal to rule definitively on whether the second purpose (set out in Article 3.1.2) is an exclusively charitable purpose. However, we note that the Commission's concerns about the nature of this purpose arose from uncertainty about the correct interpretation of Article 3.1.2; and about how the purpose would be achieved in practice given the absence of any clear link with the street associations

initiative. We have clarified the former of these two points at paragraph 26 above. On the latter point, Mr Graham told us that the Company intended to further its purpose in promoting the Christian faith and Christian values by means of the publication of relevant articles on its website. In principle, we see no reason why the purpose cannot be achieved in this way, and therefore why it is not a purpose falling within section 2(2)(c) of the 2006 Act.

### **Are the purposes of the Company for the public benefit?**

37. For the reasons explained above, our finding that the Company is not established for exclusively charitable purposes leads to the inevitable conclusion that it is not a charity and cannot be entered in the register of charities. For the sake of completeness, however, our findings on the issue of public benefit are set out below.
38. In order to satisfy the public benefit test, a purpose must be beneficial to the public in a way that the law recognises as charitable. The benefit in question must be identifiable (and so must not be vague or remote), and must be capable of proof. The benefit must derive from the purpose in question, and it must benefit either the public as a whole, or a sufficient section of the public.
39. In making the Decision in August 2011, the Commission concluded that the Company had not then demonstrated to the Commission's satisfaction that its purposes were for the public benefit. Nevertheless, Mr Dibble acknowledged that, in the Commission's view, the anticipated activities of street associations are capable of resulting in public benefit: for example, by relieving the needs of elderly or disabled people, or of others who have a charitable need; providing respite for carers; relieving loneliness; teaching English to immigrants; and providing guidance, education and training to young people. The purpose of promoting the Christian faith and Christian values is clearly capable of being for the public benefit also and, in the case of each

purpose, the Commission accepted that any public benefit that did result from that purpose would be conferred on a sufficiently broad section of the public.

40. The question, therefore, is not whether the Company's purposes are capable of being for the public benefit, but whether there is sufficient evidence from which it can be concluded that they will result in such benefit. Mr Graham expressed the view that this poses a stiff test for a new organisation to meet. He queried whether this test was the correct one, and referred us to a summary of the responses to the Commission's 1999 consultation document on the promotion of community development,<sup>11</sup> in which the Commission had suggested that proposed charities established to advance community development would not be required to show precisely what benefit their activities would confer, but would instead:

“be required to demonstrate only that their activities were *capable* of conferring the public benefit for which they claimed to be established, by indicating the nature of the activities which they would carry out.”<sup>12</sup>

41. In response, Mr Dibble pointed out that this view pre-dated the enactment of the 2006 Act, and that section 2(1)(b) now imposes an absolute requirement that a charitable purpose must be for the public benefit. He argued that the Commission's earlier statement does not reflect the current law and must therefore be disregarded. We accept Mr Dibble's submission on this point.
42. When the Commission made its Decision in August 2011, its conclusion on the question of public benefit may have been influenced by the fact that the Company was newly established at that time, with little (if any) evidence being available of the practical benefits which street associations bring. However, a further five months had elapsed

---

<sup>11</sup> Referenced at paragraph 30 above.

<sup>12</sup> Paragraph A43 of the summary of responses.



by the date of the hearing before the Tribunal, and five street associations had by then been set up. Mr Graham told us that the benefits which are flowing from the work of the Company to date could be seen in terms of the new links which have been formed within participating communities, and from the volunteering that has been encouraged, with approximately 50 individuals taking a position in their street for the benefit of others. Nevertheless, the question of whether a particular purpose is for the public benefit is one to be decided on the basis of the evidence put before the Tribunal. It is therefore regrettable that Mr Graham's assertions about the emerging beneficial impact of street associations were not backed by witness evidence from any of the individuals actually participating in (or benefiting from) the activities of the street associations which have been set up. Although we do not doubt the sincerity of Mr Graham's aspirations for the street associations initiative, the public benefit of the Company's purposes was not adequately evidenced before the Tribunal.

Signed:

Dated: 27 February 2012

Jonathan Holbrook  
Tribunal Judge