



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

Appeal No. CA\2015\0002

BETWEEN:

CAMBRIDGESHIRE TARGET SHOOTING ASSOCIATION Appellant

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES Respondent

**TRIBUNAL: Judge Peter Lane
Manu Duggal
Carole Park**

Heard at: Fleetbank House

Date of hearing: 28 September 2015

Date of decision:

Attendances:

For the Appellants: Mr Chris Knight, Solicitor, Hewitsons LLP

For the Respondent: Mr Mark Mullen, Counsel, instructed by the Director of Legal Services for the Charity Commission.

DECISION

Introduction

1. The appellant appeals against the decision of the respondent on 2 February 2015 to refuse the appellant's application for registration as a charity. The hearing of the appeal took place on 28 September 2015, when the appellant was represented by Mr Knight and the respondent by Mr Mullen.

2. The Tribunal heard oral evidence from Mr William Cowell, an elected member of the committee of the appellant since 2008. In addition, the appellant relied upon written reports of four expert witnesses; namely Jean Coleman, Jo Hipkiss, Dr Katya Mileva and Dr Tom Trinick. The respondent's expert witness is Professor Gareth Stratton, whose report is also before the Tribunal. Besides this evidence, the Tribunal has also taken into account the written evidence and photographs, produced by the parties, along with the submissions and authorities contained in the agreed bundle.

3. The appellant's constitution contains the following:-

"3. The objects of the Charity are for the public benefit:

- 3.1 to promote community participation in healthy recreation, in particular by the provision of facilities for participation in target shooting ("facilities" means land, buildings, equipment, organisation of sporting activities);
- 3.2 the advancement of education, particularly, without limitation, children and young people whether or not undergoing formal education;
- 3.3 the relief of the disabled by the promotion and encouragement of inclusive participation in the sport of target shooting;
- 3.4 to encourage skill in target shooting by providing instruction and practice in the use of firearms amongst members of the cadet forces and to any of Her Majesty's subjects so that they will be better fitted to serve their country in the armed forces, territorial army or any other organisation in which their services may be required in defence of the realm in times of peril."

4. The appellant has proposed that the first of its objects should be reframed as "the advancement of amateur sport by the provision of facilities, coaching and instruction in target shooting"; but, for the purposes of the appeal, it is common ground that the issues in dispute between the parties may be determined by reference to the object described at paragraph 3.1 above. It is also accepted by the appellant that paragraph 3.4 – "defence of the realm" – is not appropriate in relation to the appellant's activities and should be removed.

Legislation

5. Section 1(1) of the Charities Act 2011 provides:-

(1) For the purposes of the law of England and Wales, "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."

6. Section 2 gives the meaning of "charitable purpose":-

(1) For the purposes of the law of England and Wales, a charitable purpose is a purpose which—

(a) falls within section 3(1), and

(b) is for the public benefit (see section 4).

(2) Any reference in any enactment or document (in whatever terms)—

(a) to charitable purposes, or

...

is to be read in accordance with subsection (1)."

...

7. Amongst the purposes described in section 3(1) is:-

"(g) the advancement of amateur sport;"

8. Section 3(2)(d) states that:-

" in paragraph (g), "sport" means sports or games which promote health by involving physical or mental skill or exertion,"

9. Finally, there is section 4:-

"4 The public benefit requirement

(1) In this Act "the public benefit requirement" means the requirement in section 2(1)(b) that a purpose falling within section 3(1) must be for the public benefit if it is to be a charitable purpose.

(2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 3(1), it is not to be presumed that a purpose of a particular description is for the public benefit.

- (3) In this Chapter any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales.
- (4) Subsection (3) is subject to subsection (2)."

Case law

10. In ISC v Charity Commission [2012] CH.214, the Upper Tribunal held that the "public benefit" has two elements. In order to qualify as charitable, a purpose must be for the public benefit, both in the sense that the nature of the purpose has to be such as to be a benefit to the community; and also in the sense that those who might benefit from the carrying out of the purpose have to be sufficiently numerous and identified in such a manner as to constitute a section of the public.

11. In the present case, the burden is on the appellant to prove, on the balance of probabilities, that the sport of target shooting promotes health by involving physical or mental skill or exertion and that its advancement is for the public benefit. All the objects of the claimed charity must be charitable, in order for the claim to registration to succeed. A status of the appellant is to be judged by what it is established to do, rather than what it in practice does (if and insofar as this may be different). As section 4(2) makes plain, there is to be no presumption that a purpose of a particular description is for the public benefit. That is to be determined on the evidence (Re Hunneltenberg [1923] No. 1 Ch 237).

12. In Re Pinion [1965] Ch 85, Russel LJ held:-

"Now the crucial question is whether the evidence did sufficiently establish that the gift would tend to advance or promote education in the relevant field. (If it did, then public benefit would follow, since there was from the nature of the suggested education no counterbalance of detriment.) But I would not agree that the evidence did sufficiently establish a tendency to promote or advance education." [110]

Issues

13. The parties produced the following agreed list of issues:-

- (1) What is the physical or mental skill or exertion involved in target shooting?
- (2) What is the meaning of "promote health" in section 3(2)(d)?
- (3) What is the extent to which the physical or mental skill or exertion involved in target shooting promotes health, taking account of the expert evidence available."

14. In the course of moving an amendment to the Charities Bill in the House of Lords, to insert what is now section 3(2)(g), the Minister said:-

“Charity is based on the requirement to show public benefit. To qualify as a charity, a sports club would have to be able to show that the facilities and opportunities that it provided for participants led to a public benefit. The most obvious form of benefit from public participation in sport ... is the health benefit. It is true that there are many sports in which you can suffer an injury so of course it is possible to have a disbenefit, although you are pursuing a healthy lifestyle, but there is overall a benefit from public participation in sport. I think that we would all acknowledge that – which is why we have thought it right to define sport in terms of its potential to improve health.

However, a sports organisation that could show that its activities resulted in another form of public benefit could also qualify as a charity under one of the other charitable charities, rather than the amateur sport category. There are, for example, charities that use sports, such as riding or target shooting, to help those with a disability. There are others that use sports or games, such as chess – perhaps even Sudoku for all I know – to achieve an educational objective. However a real alternative exists for clubs that cannot show an identifiable public benefit in the charitable sense, or do not want to be charities: the community amateur sports club, or CASC scheme. That scheme is for clubs which are open to the whole community; are organised on an amateur basis; and have as their main purpose providing facilities for, and promoting participation in, one or more eligible sports.

....

The inclusion of an express health requirement is in our view the most transparent way in which to proceed. Let us consider the effect of leaving out a reference to health. A sports club applying to register with the commission under the advancement of amateur sport heading would have to do two things. First, it would have to show that the activities it promoted qualified as a sport under the definition of sport. With the noble lord, Lord Hodgson’s amendment, a range of activities that made no contribution to health would be able to do that. On the physical side, the noble lord would admit pie-throwing, for example, or perhaps even dangerous sports such as tobogganing down Ben Nevis on a piano, or being launched from a catapult as a human projectile. On the mental side he would admit, for example, games, poker, pub quizzes and so on.

What is unsatisfactory about that is not that we disapprove of those activities per se, it is simply that some activities, of which those I have mentioned might be examples, have little or no chance of demonstrating the required public benefit or, consequently, of acquiring charitable status. In considering the public aspect of a sports club applying to register as a charity for the advancement of sport, the Charity Commission would look for a health benefit, since that is the legal basis on which sports clubs can already be accepted as charitable. We do not think there is any point – indeed we think it would be positively misleading – to give sports and games which do not contribute to health, or which might even have the opposite effect, the impression that they might succeed in gaining charitable status.”

Witnesses

(1) William Cowell

15. Mr Cowell has been a target shooter for some 46 years, including at university and in the armed services. He states that, although he had no ability with a ball and was no athlete, shooting “offered me a chance to excel at something purely by dint of application, focus and hard work. The self-confidence that has given me should not be underestimated”. The appellant is an organisation which Mr Cowell says provides facilities to clubs and individuals within the region, including a dedicated outdoor shooting range near Peterborough. It runs coaching and training courses as well as organising regular competitions for shooters at all ability levels. Shooting was one of the original sports in the modern Olympiad, when it was established in 1982. Shooting “is demanding on both the body and mind and involves a range of physical and mental activity”.

16. Mr Cowell confirms the accuracy of the “document regarding the activity of target shooting” produced by the appellant. This document describes various kinds of shooting undertaken by the appellant, including “prone rifle” in which the participant lies down on a shooting mat on the range; standing rifle, in which the participant stands sideways on to the target supporting the rifle in both hands; and kneeling rifle, in which the participant has one knee on the floor pointing at an angle away from the target, with the other leg being bent with the foot flat on the floor and the lower leg upright, providing a platform for the elbow of the support arm, which holds the rifle.

17. In prone rifle, a “rest” will be placed on the firing point for the target. Skills include holding the firearm; loading the firearm; aiming; firing; reloading; and walking the range (beginners will walk the range 15, 20 or 25 yards indoors to place targets on the target holders, two or three times during a shooting session); dismantling the rifle and maintaining it.

18. Beginners can practise at home, adopting the position they use, in order to develop “muscle memory”. Concentrating on breathing, finding a neutral position in the lungs and maintaining the routine also help the various elements to become “second nature when live firing. Time can be spent concentrating on the process used for going shooting, thinking about the position and how it feels and going through the process of sighting, aiming and trigger control”.

19. The document lists the following as being involved in target shooting:-

“Physical Skill:

- Correct posture
- Coordination of parts of the body
- Muscle strength
- Muscle use
- Balance

Controlling heart rate
Relaxation and removing tension
Endurance
Flexibility
Awareness, observation and alertness
Hand eye coordination and fine motor skills

Physical Exertion:

Stretching in preparation and during shooting
Hand pumping up air cylinders for air pistols/rifles
Carrying the shooting equipment needed for each discipline
Setting up firearm and other equipment
Specific diaphragm breathing and control when firing
Cardiovascular exercise
Transition from gross to fine motor skills
Sustained supporting of firearm
Sustained maintenance of correct posture
Walking the range to check and to change targets
Tidying and maintaining the ranges

Mental Skill:

Awareness, observation and alertness
Learning and applying relevant safety procedures
Concentration and focus
Visualisation and imaging
Discipline of fine motor control
Self control ensuring relaxation is maintained
Memory to bring all experience and elements to each shoot
Perception
Reasoning
Problem solving
Decision making
Anxiety control
Emotional control
Maintaining attention span
Control of negative thinking re poor performance
Overcoming distractions

Mental Exertion:

Focussing on correct breathing
Ensuring muscle control
Deliberate (non-instinctive) use of eye muscles when sighting
Seeing the correct site picture to inform the brain to release the shot
Visualisation
Sustained awareness
Focus
Positivity"

20. Mr Cowell's evidence confirms that, in outdoor shooting, participants "must constantly assess the effects of wind and light on the aim and the path of the bullet on

its way to the target. Because these can change from moment to moment, total concentration is required, above and beyond the already formidable concentration needed to govern one's body so as to achieve the necessary degree of stillness and control to aim accurately and to release the shot cleanly. This crucial requirement applies to indoor and outdoor shooting alike". Mr Cowell also refers to the need to transport heavy equipment to and from the range, and returning it home afterwards. The true fascination of shooting, according to Mr Cowell, lies in trying to do something extremely difficult, consistently. Very few people simply shoot for pleasure. They wish to compete against each other.

21. Mr Cowell states that "shooting is truly open to able-bodied and disabled, male and female, young and old alike and is a genuine "level playing field" sport". The appellant encourages the inclusion of disabled shooters in all of its competitions. Disabled shooters are able to use necessary adaptations and compete alongside able-bodied users. Mr Cowell considers it puzzling that archery enjoys charitable status, since it and shooting have much in common.

22. In oral evidence, Mr Cowell stated that he recently stepped down as a competitor in the sport, for various reasons, including that, as he got older, he decided he would rather step back than perform at a lower level. Most of his shooting experience involved small bore and air pistols. An air pistol would weigh 2-5lb and holding it required significant effort. Muscle stamina was important. There was a natural tendency in the body to tremble, after a certain point. He considered that standing to shoot was physically demanding. Prone shooting was less demanding but the accuracy requirements were the same, if not greater. At the end of a shooting session, Mr Cowell said that one felt "drained physically and mentally".

23. Cross-examined by Mr Mullen, Mr Cowell was asked to look at a number of photographs submitted by the respondent. These included shooting from a bench rest, which Mr Cowell said was the latest addition to the sport of shooting. The weight of the rifle in bench- rest shooting was taken by the rest. This form of shooting was helpful for elderly or infirm participants. Blind shooters could make use of specialised equipment, based on sound.

24. Mr Cowell said that the "supported positions" forms of target shooting were new forms of the sport. He thought it unlikely that a social shooter would use a bench rest. Mr Cowell said that slings could be used in certain forms of shooting but he did not consider that the sling carried the weight of the rifle. The Germans had introduced a tripod rest for standing rifle shooting, which the participant would use to hold the weight of the rifle between shots. It was intended, Mr Cowell said, to minimise physical effort and he had made one recently for his own purposes.

25. Mr Cowell was referred to page 182 of the bundle where "slide show" materials produced by the appellant described a sling as needing to be "tight enough only to support the weight of the rifle". Mr Cowell said that he disagreed with this view of the purpose of the sling.

26. Mr Cowell agreed with Mr Mullen that target shooting, as presently constituted, covered a large range of activities.

27. Mr Cowell was referred to the document entitled "Benefits of shooting sports" at page 98 of the bundle. This contains the following passage:-

"It is sad to think that the lingering public perception of the competitive target shooter may well be of the chain-smoking, overweight and grossly unfit members of the sport in the sixties and seventies, who shot lying down, in the prone position.

It was not generally believed, in those days, even in the training squads for international competition, that fitness was an issue.

But this was all changed in the middle to late seventies when national coaches Derek Robinson, David Parish and Don Maiden brought about a revolution in squad training programmes that eventually led to the situation where Britain held gold medals in the Olympics, the World Championship, and Commonwealth Games Championship all within the same period

It is now recognised that physical training and mental training have an essential role within the sport and at all levels, ambitious sportsmen will incorporate these techniques into their regime.

The decision to take part in a sport is often nothing to do with keeping fit, it is something else. The fitness benefits which come as a result are a bonus, sometimes unexpected.

This is particularly true of shooting which, on the face of it, does not seem too likely to result in an increase in physical health. Nonetheless, the benefits are there and some shooters might well be surprised to know they are inadvertently causing themselves to get fitter.

Small-bore target shooting is made up of a number of different sports all of which make different demands of physical fitness and strength on the athlete."

28. Mr Cowell said that the description of the unfit competitive target shooter was a caricature. He did not see overweight or chain-smoking individuals carrying on the activities; but he did see a lot of elderly people enjoying shooting. If one wished to be a really good shooter, then one would go and get supremely fit, including cardiovascular improvements.

29. It was put to Mr Cowell that, in the document at pages 99-100, it was accepted that the physical benefits of shooting were "less obvious and at first sight, more difficult to define ... nonetheless there are physical benefits to be had, and to perform well at higher levels in the shooting sports, you need to attain a good level of physical fitness". Mr Mullen suggested that such physical fitness was only required at the

higher levels of the sport. Mr Cowell said that it was not required even then, since a 66 year old disabled person had been able to gain a gold medal in the sport. However, he considered that physical fitness helped one to get better. He repeated that an unfit person could become a proficient shooter:-

“You don’t need to be physically fit but if you take part it involves activities that cannot help but be beneficial to health.”

Mr Cowell agreed that shooting was not a “cardio-vascular sport”.

30. Mr Cowell was referred to the document entitled “benefits from target shooting for all those taking part” written by Ms Sandra Haskett, a county coach. Ms Haskett says:-

“Although the act of shooting in itself doesn’t enhance physical fitness, a good level of fitness is essential for shooting success and the desire to shoot well provides the necessary incentive to be able to take up exercise.”

31. Mr Cowell said that it was a moot point whether shooting did enhance physical fitness. He took a contrary view to Ms Haskett. When asked about the lack of physical activity involved in long-range bench-rest shooting, Mr Cowell said that this ignored the setting up of kit, and so forth. It was put to Mr Cowell that he had earlier indicated that there was not a large amount of activity in setting up. He agreed, saying that in bench-rest shooting not a lot of such activity was involved.

32. Mr Cowell said that some participants would bring their equipment in bags on wheels. He agreed with Mr Mullen that a participant could, accordingly, bring their equipment to the ground in this manner and then participate in a bench-rest competition. There was no real physical exertion involved in that form. However, Mr Cowell said that this ignored the mental element.

33. Mr Mullen asked Mr Cowell about the mental element. He inquired where the mental skill lay in pulling a trigger, with the gun resting on something. Mr Cowell said that the human body was a “seething mass of movements” and that shooting involved quietening this, so as to focus on perfecting the shot. If one had engaged at all with the process, one emerged mentally tired, owing to the amount of concentration required. The difference between ordinary participants and champions lay in this mental element. Mr Cowell considered that the reason that target shooting was not televised was because it was “all going on between people’s ears”.

34. Mr Cowell was asked about passages in Professor Stratton’s report, in which he describes activities such as “Short Siberia”, in which participants combine shooting, running and jogging, with some 75 metres of movement between each round of ten shots. Mr Cowell said that these variants did not relate to the type of shooting he knew. He thought that this sort of shooting might be attempts to make shooting more spectator-friendly. Running while changing magazines was risky and did not happen in target shooting. Mr Cowell agreed that there were many variants in target shooting

and that it was possible to engage in shooting without any discernable physical activity. The core element, he agreed, was mental, stating that "if you haven't tried it, it is very difficult to explain".

35. Re-examined, Mr Cowell considered that all but one of the photographs put forward by the respondent probably related to shooting taking place in the USA. Mr Cowell agreed with the statement on page 98 in the document "Benefits of shooting sports" that fitness benefits could arise. He had no reason to dispute the table on page 99 describing "lowered blood pressure" in respect of all the described shooting techniques as well as "slow heart rate" and "increased fitness". Mr Cowell thought that about 5-10% of the shooting activities at the appellant's ranges involved a bench rest. However, since activities might be taking place when he was not present, he could not be sure of his estimated percentage. Mr Cowell referred to a shooter who had been confined to a wheelchair at the age of 23 following a road accident but who had taken up shooting and succeeded in winning gold medals at the Paralympics.

36. The Tribunal asked Mr Cowell whether anyone who shot had ever told him about health benefits arising from taking part in target shooting. Mr Cowell referred to a boy whom he had taught shooting as a scout. The boy had come from a difficult background but shooting gave him something to focus on, following the death of his mother. The boy had won a national championship in 1998. Mr Cowell said that being able to focus on shooting had given the boy a reason to live.

(2) Jean Coleman

37. Ms Coleman is a retired clinical psychologist who used autogenic training, meditation and mindfulness techniques with anxious, depressed and distressed patients. She has had an interest in target shooting "on and off for most of my adult life". She states that in all target shooting events there is a mixture of dynamic and static activity, with the exception of prone rifle shooting, which has minimal dynamic exercise but "arguably, considerable static exercise".

38. Static exercise she describes as being "less well known or discussed". Static exercise "raises the heart rate more slowly and so is more suitable in rehabilitating patients suffering from heart disease". During prone shooting, Ms Coleman considers that the shooter "is exerting his muscles in a continuous static form of exercise". She says that it is "claimed that intensive static contraction training for 10 weeks can gain up to 50% static strength, 9lb of new muscle, 1" around the chest and ½" in the biceps". She accepts that this could be "an exaggerated claim for our shooters, perhaps". Other physical skills include the shooting position; trigger control; trigger placement; follow through; breathing control; coping with the effects of wind; coping with the effects of mirage.

39. Ms Coleman says that during the aiming and firing cycle "heart rate drops, galvanic skin response ... decreases, the brain wave pattern changes from mainly

active striving beta to alpha and theta waves indicating a calm state of mind". Ms Coleman says that without being aware of it, shooters learn to acquire this state of mind as they progress and improve their shooting performance. It is known as "quiet eye period" and "there is now considerable interest and research into it". She then describes the extensive research that has been undertaken in respect of meditation and mindfulness techniques which shows physical and positive changes in the brain structure. Ms Coleman states that "the majority of shooters will spend sufficient time in the meditation state to achieve these benefits".

40. At page 364, there is reference to a study by Janelle and others, which is said to show a "progressive quietening of the left hemisphere of the brain of elite marksmen before the trigger release". Theta wave quiet periods in shooters "are the longest recorded in any athletes ... and appear to be essential to enable the exceptionally high levels of accuracy found in our sport". All shooters show a decrease in heart rate, particularly the more experienced. Ms Coleman concludes that the identified benefits of mindfulness and meditation are present in shooters, prior to firing a shot. Ms Coleman also considers that the studies which conclude that meditation can have a protective effect in slowing the aging process in the brain will also apply to shooting. The same is true of cardiovascular disease.

(3) Joanne Hipkiss

41. Ms Hipkiss is a specialist sports physiotherapist. She identifies "concentric (shortening) and eccentric (lengthening) muscle activity of the wrist, elbow, shoulder, neck, abdomen and back muscles in order to load and lift the gun into hold. Once the gun is in the hold position, there is isometric (static) muscle contraction of the wrist, elbow, shoulders, ankle, knees, hips and neck, abdomen and back muscles in order to stabilise the gun on aim to allow for the optimum moment to pull the trigger and fire the shot at the target. In her opinion, lifting a gun to take aim, fire, and then reload, involves using all major muscle groups between 40-120 repetitions per match. This means that target shooting "is an example of an activity that can be undertaken to contribute to muscle strengthening as recommended by the DoH guidelines 2011". She concludes that "target shooting is a type of strength trained activity, and an activity that challenges co-ordination and balance and also cognitive function. Target shooting is therefore an activity which meets the DoH physical activity guidelines (2011)".

(4) Katya Mileva

42. Dr Mileva is Reader in Human Neuropsychology and Director of the Sport and Exercise Science Research Centre at the School of Applied Sciences, London Southbank University. She describes shooting as "a sport activity of light intensity". Shooting centres "offer free of charge coaching and peer-mentoring" in order to help individuals who are interested in the sport to set a training plan covering body

conditioning exercises, as well as technical, physical, mental and tactical aspects of shooting. Dr Mileva considers that physical activity can improve human physiological function. "Before engaging in shooting practices all club members are encouraged to engage in a range of stretching and breathing exercises". She states that low intensity physical activity "sustained over a longer period is found especially beneficial for older adults and individuals with chronic cardiovascular and neurodegenerative conditions". Using electromyography, she observed "significant muscle fatigue in multiple arm and hand muscles during our recent study with elite and untrained shooters". She also noted a study of 2009, which demonstrated improved ability of elite air pistol shooters to control cortical activity indicative of their improved "neural efficiency". Experienced shooters have also shown "improved reaction times", according to a study in 2006.

(5) Thomas Trinick

43. Dr Trinick is Consultant Physical and Chemical Pathologist at the Ulster Hospital in Belfast. He has experience in shooting, particularly with pistols. He describes a study in Finland, involving 1712 subjects, "who participated in sport including track and field athletics, cross-country skiing, soccer, ice hockey, basket ball, boxing, wrestling, weight lifting, and shooting" in which it was found that former aerobic sports athletes in particular had high total and active life expectancy and low risk of ischemic heart disease and diabetes in later years. Dr Trinick considers that target shooting "does involve high levels of physical and mental skill and exertion". He refers to his experience in "running to the firing point, getting into position, achieving aim and firing", which means that he is "often perspiring and short of breath. I am fit enough to pass all the military fitness tests, so the view that shooting is not exercise is incorrect. Certainly if you go on to practise some form of [...] infantry skill such as fire and advance (pepper potting), you need to be very fit". Shooting clubs will also have their own specific exercise routines. Coordination of parts of the body is critical to precision and accuracy in target shooting. So far as muscle strength with shooting is concerned, Dr Trinick says that "surprisingly not much has been published in this area". Meditation can improve shooting performance. A study in 2015 showed that "many of the injuries shooters get ... could be reduced by amongst other things stretching exercises". An article in *Experimental Psychology* entitled "the influence of muscle tremor on shooting performance" describes the effect of breathing, cardio-ballistic recall and arterial pulsation along with muscle tremor and other factors which can effect shooting prowess.

44. Dr Trinick considers that physical exertion is involved in target shooting; first, in relation to training for the sport and, second, "by participation in the sport itself. This physical exertion is considerable in my experience involving considerable time in walking the range". Furthermore "the exertion of firing unsupported is tiring".

(6) Gareth Stratton

45. Professor Stratton is Director of the Applied Sports Technology, Exercise and Medicine Research Centre at Swansea University and Adjunct Professor of Paediatric Exercise Science at the University of Western Australia. Professor Stratton makes reference to the recommendations set out in the Start Active Stay Active Report (2011) regarding the recommended amount of physical activity required to promote health, published on behalf of the Chief Medical Officers of England, Scotland, Northern Ireland and Wales. Regular moderate and vigorous intensity physical activity including activities at work, play and home, walking, cycling, sports or dance participation can manifest significant health benefits. For adults, doing 150 minutes of moderate or 75 minutes of vigorous intensity physical activity (in a minimum of 10 minute bouts) a week helps prevent and manage over 20 chronic conditions including coronary heart disease, stroke, type 2 diabetes, cancer, obesity, mental health problems and musculoskeletal conditions.

46. Scientists use pre-determined physical activity intensities, categorised as light, moderate and vigorous. Adults who are sufficiently active accumulate 150 minutes of mvpa per week in at least 10 minutes bouts. The majority of adults in the UK are considered not to be sufficiently active.

47. Professor Stratton notes that “there are many different shooting categories involving various rifles and pistols, of different weights and sizes, shooting at indoor and outdoor ranged targets from distances of 10m up to 2km. There are four main shooting positions, prone, sitting, kneeling and standing with weak or strong shoulder rifle positions”. Professor Stratton considers that target shooting “may provide a small volume of light activity depending on the nature of the competition and the number of visits to the range or home base practice per week. Target shooting does not on average stimulate activity at moderate intensity or above for a duration of 10 minutes or longer without a break. For very inactive people target shooting may increase physical activity levels that may benefit health”. Muscle strengthening is, according to Professor Stratton, likely to be minimal; so too is the effect of target shooting on sedentary time.

48. From a psychological perspective, Professor Stratton considers that, since sport competence is a sub-domain of physical self-esteem, improving shooting competence will promote positive mental health. Affiliation to a club and being part of a team promote psychosocial wellbeing. The act of shooting requires concentration and stillness and may help control emotion and stress.

49. So far as the science base is concerned, Professor Stratton undertook a literature search via the SCOPUS database, using “rifle and shooting” as keywords. The search revealed 293 abstracts published between 1936 and 23 June 2015. None of the studies investigated the physical activity and health benefits of target shooting. The majority of studies were related to competition, some were related to safety and injury, whilst others reported physiological demands of participating in the sport. Professor Stratton

concludes that “there is no scientific evidence that quantifies the link between target shooting and health outcomes”.

50. Professor Stratton considers that Ms Coleman’s linking of mindfulness with the state of mind present during shooting “seems plausible but requires a significant leap of faith with little scientific evidence to support this hypothesis”. There was also little to persuade a scientist “that target shooting on its own can have the same psychological effects as bridge or chess”. The fact that older people with limited mobility and arthritis can take part in shooting demonstrates to Professor Stratton “that there is limited physical strain in target shooting and that the sport does not limit those with physical or psychological limitation from taking part”. So far as Ms Hipkiss was concerned, Professor Stratton considers there is little evidence that target shooting includes exercise using all muscle groups, at what he would regard as an appropriate intensity. The repeated movement of a gun during shooting is, he considers, different from lifting a weight in a gym, where repetitions are completed in continuous fashion and split into “sets”. Dr Mileva is, Professor Stratton considers, carrying out “novel research the findings from which, if published, could inform some of our interpretations on the demands and effects of target shooting on performance and health”.

Discussion

51. We remind ourselves of the legal questions to be determined; namely, whether the relevant objects of the appellant (as amended) which refer to the activity of target shooting, as promoted and carried on by the appellant, constitute a sport which promotes health by involving physical or mental skill or exertion. If so, is that purpose for the public benefit? The experts are agreed (bundles, page 556) that the promotion of health can be considered “to mean improvement in general health, including both physical and mental wellbeing”. That seems to the Tribunal to be correct, with the clarification that the improvement can come from physical or mental wellbeing, or a mixture of both. The physical or mental activity under scrutiny must be more than “effort”; it must amount to “skill or exertion”. That skill or exertion must be shown to promote health.

52. If that is demonstrated, the purpose must also be shown to be for the public benefit. As the case law makes clear, that is an objective question, to be answered on the evidence before the Tribunal, without any presumption that any particular description of purpose must, by its very nature, satisfy the public benefit requirement.

53. In many cases, the finding that a particular mental skill or exertion inherent in a sport promotes health is likely to lead to a conclusion that the public benefit test is satisfied. However, the public benefit requirement serves, amongst other things, to make plain that the promotion of health by the physical and/or mental activity in question must be of sufficient substance or significance to benefit a section of the public. This involves no re-casting of the standard of proof, which remains the balance

of probabilities. It does, however, mean that, in determining whether the appellant has discharged the burden, the Tribunal needs to be satisfied that the evidence relied upon possesses quality and cogency.

54. The evidence presented shows plainly that the activities involved in the sport of target shooting, as undertaken by the appellant, are varied in nature. Those forms which involve prone positions - particularly, shooting from a bench with a supporting device for the gun - involve markedly less physical activity than shooting with a pistol or rifle, whilst standing.

55. Mr Knight's submission was that the Tribunal should look at the various forms of target shooting holistically, in deciding whether it promotes health by involving physical or mental skill or exertion and that we should not separately examine elements of the sport. In order to illustrate his point, Mr Knight submitted that a rower can choose to be a cox; that there is a lot of standing around in the outfield and sitting in the pavilion (waiting to bat) in the sport of cricket; and that the modern pentathlon event has shooting as one of its sports. It would, Mr Knight submitted, be absurd to disregard the physical elements of those sports, merely because of these non-physical elements.

56. The Tribunal rejects this submission. So far as cricket is concerned, the crucial distinction is that, for a player, the time may come in the course of the game, when he or she will be required to engage in what, on any view, is physical exertion. Modern pentathlon is not a sport where the competitor can choose merely to do the pistol shooting element. He or she must also undertake fencing, freestyle swimming and cross-country running. So far as rowing is concerned, a cox is necessary to steer certain types of craft, so that participants may undertake physical exertion safely and in unison. By contrast, in target shooting there is no corresponding connection between those who choose to engage in prone or bench-shooting and those who engage in other forms of the sport. This point undercuts much of the evidence advanced by the appellant; such as that of Ms Hipkiss, which concerns shooting from an upright position and that of Dr Trinick, part of which is about a form of target shooting which involves running and firing. (Dr Hipkiss also describes the benefits to shooters of engaging in other forms of exercise or meditation that are not part of the sport of target shooting).

57. Having reviewed all the evidence, the Tribunal finds that the objects of the appellant encompass discrete activities, namely prone shooting and, in particular, bench shooting involving rests. These activities, which represent a material proportion of the overall shooting activities with which we are concerned, have not been shown to have any physical skill or exertion, such as to promote general health.

58. This came over strongly in the oral evidence of the appellant's own witness, Mr Cowell. At various points, he effectively acknowledged that physical fitness (or improved fitness) was neither a requirement for, nor a necessary consequence of, undertaking target shooting. When asked by Mr Mullen whether it was correct that,

other than at the higher levels of the sport, physical fitness was not important, Mr Cowell replied that physical fitness was not required even at the higher levels, giving the example of the disabled 66 year old man. Indeed, throughout his evidence, Mr Cowell was keen to emphasise the fact that target shooting is a “level playing field”, upon which the able-bodied and the disabled, as well as the elderly, could compete on effectively equal terms. During the course of cross-examination, Mr Cowell effectively retreated to the position that, even if the physical element was taken out of the equation completely, there was still a mental skill or exertion.

59. Although Professor Stratton was able to accept that some health benefits would arise in the case of those moving to target shooting from no activity at all, the Tribunal agrees with Mr Mullen that this is insufficient to have any material bearing on whether the public interest is served by the appellant’s stated purposes. We agree with Mr Mullen that, in this regard, more must be shown than that it is better to get out of one’s armchair in order to drive to a bench on the shooting ground, than merely to remain in that chair. Such a person is engaging in the sport of target shooting, as set out in the appellant’s objects. He or she, however, is not engaging in any activity that can be said to involve physical exertion, to more than a *de minimis* extent. This also means the public benefit requirement cannot be established.

60. In closing submissions, Mr Mullen said that, whilst Mr Cowell probably has a steadier hand than Mr Mullen, the latter was unable to understand what effect that might have in terms of promoting health. By the same token, Mr Mullen said that it was possible to conceive of a club whose purpose was to teach participants to hold their breath for longer than the average person; but in each case he questioned what the public benefit would be. The Tribunal shares this concern.

61. Whilst Mr Knight was correct to say that the appellant’s experts should not have their evidence discounted because of a lack of published research evidence demonstrating a correlation between target shooting (in all its forms) and health benefits, the Tribunal notes the absence of any such evidence. Neither the Commission nor the Tribunal should lightly reach findings, which result in the advantages of charitable status being conferred in respect of activities for which the science base is less than robust.

62. The Tribunal takes account of the fact that Dr Mileva is currently involved in scientific studies involving shooters. Decreased heart rate and activity in upper body muscles indicative of improved psychomotor regulation have been noted in the past in elite, as opposed to novice, shooters. Dr Mileva’s experiments have confirmed that observation. Elite shooters demonstrated the capacity to control tremor for longer than novices.

63. Where the Tribunal takes issue with Dr Mileva, however, is in her assertion that enhancing an individual’s ability to control tremor induces health benefits of relevance to the quality of daily life or at all. Whilst she states that steadiness is required in daily life, (e.g. drinking from a cup or using utensils) and deteriorates

with age, we see no evidence that shooting brings any material improvement in handling a cup; or that shooters are less prone to tremors, as they age.

64. In any event, the basic problem for the appellant is that none of this evidence has been shown to relate to a person who, compatibly with the appellant's objects, chooses only to take part in, say, bench-rest shooting.

65. The same difficulties beset the appellant's contentions regarding the beneficial health effects of shooting on balance, core stability and the performance of particular muscles.

66. We turn to the asserted mental benefits of the various forms of target shooting, which are encompassed in the appellant's objects. We should make plain that we agree with the appellant that it is necessary to look holistically at both the physical and the mental aspects, in order to determine whether health is promoted by the activities in question, so as to confer a public benefit. We conclude, however, that on the evidence before us the appellant has failed to show on balance that there is sufficient mental skill or exertion necessarily involved in the range of shooting activities promoted in pursuance of the appellant's objects. The appellant has, on the evidence, failed to show that the mental element promotes health. The mental element thus not only fails on its own terms to get the appellant home; it also has nothing material to add to the *de minimis* character of the physical element.

67. Ms Coleman seeks to draw a connection between the mental aspects of target shooting, on the one hand, and mindfulness meditation on the other. However, when asked whether there were any studies to show such a connection, she said "there are no studies of this kind that I know of but lack of formal evidence does not mean the effect is not present. Just not proven." Whilst we note Ms Coleman's professional expertise, her answer is revealing. It would, as Mr Mullen contends, require a "leap of faith" in order to conclude that the form of mental state experienced by certain shooters, prior to pulling the trigger, is equivalent to a meditative state, such as experienced by those practising mindfulness or other forms of meditation. Even if it were the equivalent, there is still the obvious consequential question, of whether the length of time that such a state is present in a shooter is such as to confer any of the benefits that studies have shown to exist for meditators.

68. This does not mean that, whenever objects which refer to any sport or game fall to be considered for charitable purposes, the objects cannot be regarded as exclusively charitable unless there is discrete scientific evidence, based on specific studies of the sport or game, which demonstrates benefits to public health. If, for example, a new sport were to emerge which involves running after a moving object suspended on a wire, it would be perfectly possible for the promoters of that sport to contend that the running and jumping involved in chasing the suspended object should be regarded as directly comparable to the running and jumping inherent in, say, the sport of soccer. But where, as here, the connection sought to be drawn is

between activities that are not plainly similar, then it is reasonable to expect there to be some empirical scientific evidence for making the connection.

69. At page 105, Dr Mileva states:-

“ Using electroencephalography to record brain potentials during shooting Del Percio and colleagues (2009) demonstrated improved ability of air-pistol shooters to control cortical activity, indicative of their improved “neural efficiency”. Also, better concentration (Guillot et al., 2004) improved reaction times (Morrillo et al., 2006) due to improved attentional mechanisms via prolonged shooting practice have been demonstrated in experienced shooters versus controls.”

70. Again, however, the problems we have identified resurface. The study involved only elite air-pistol shooters. There is no satisfactory evidence that other shooters enjoy any such benefits. The forms of target shooting permitted by the appellant's objects include those which have not been shown to have any relevant relationship with the type of shooting described in these studies.

71. Mr Cowell's evidence regarding the alleged mental benefits was also revealing. Although he sought to emphasise the mental element, when pressed on the matter during cross-examination, Mr Cowell was reduced to saying that “if you haven't tried it, it is very difficult to explain”. When asked by the Tribunal if he could give an example from his own experience of a shooter who had received benefits to health, Mr Cowell's example was about a scout whose mother had died and who found that shooting gave him an activity in which he could excel. The example was, thus, of a social benefit; not one that shed any light on how target shooting promotes health.

72. The comparison between the appellant's case and that of the Hitchin Bridge Club is instructive. Amongst the materials before the Tribunal is the respondent's decision on an application by that club for registration as a charity. The club was successful. At paragraph 19 of the decision we find the following:-

“ 19. A body of research evidence¹ produced to the Commission specifically identifies the potential health benefits of playing bridge among seniors in lowering the risk of developing Alzheimer's disease and other dementia by as much as 75%, compared to those who didn't exercise their minds and identified a possible relationship between the cerebral cortex and the immune system. Further research also points towards the connection between the lack of mental (and physical) activity in middle years of life and subsequent memory loss, dementia and other associated mental illnesses.”

¹ Research studies include: Diamond studied (Dr Marion Diamond), the Franklin Institute, West Case Western Reserve University Medical School, Mayo Clinic Rochester, Minnesota, Dr Geda from the Mayo Clinic Study for Aging (MCSA) University of California and Seattle Longitudinal Study.

73. Whilst Dr Mileva's research may, in due course, prove of assistance to the appellant, it is not sufficient as it stands, either alone or in combination with the remainder of the evidence, to discharge the burden of proof.

74. The appellant sought to draw a connection between target shooting and archery, which has been held to be a sport which promotes health for the public benefit. There is no detailed evidence before us regarding what is involved in archery or any submissions as to how that activity is analogous to target shooting or otherwise instructive in this appeal; but in any event it appears to the Tribunal that there is a very material difference between drawing a longbow and firing a rifle from a rest on a bench. The appellant also drew attention to the apparent acceptance by the Commission of a croquet club as a charitable body. Again, we are without any evidence; in particular, what thinking may have informed the decision in that case.

75. Finally, it is necessary to mention a matter touched on by Mr Mullen. Amongst the objects of the appellant are those which would, in the Commission's view, meet the statutory requirements. Paragraph 3.2 concerns the advancement of education, whilst paragraph 3.3 concerns the relief of the disabled by promotion and encouragement of inclusive participation in the sport of target shooting. (Paragraph 3.4 relating to the defence of the realm is to be dropped.) A body which had only these as its objects may well be charitable.

Decision

76. This appeal is dismissed.

Judge Peter Lane

Date: 23 November 2015

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