



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

**Appeal no: CA/2015/0009**

**BETWEEN:**

**JONATHAN BISHOP ON BEHALF OF CROCELS  
COMMUNITY MEDIA GROUP**

**Appellant**

**- AND -**

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**

**Respondent**

**TRIBUNAL:**

**JUDGE ALISON MCKENNA, Ms. SUSAN ELIZABETH and Ms. CAROLE PARK**

**Determined on the papers on 29 June 2016**

**DECISION**

1. The appeal is dismissed.

## REASONS

### *Background*

2. The Appellant is Jonathan Bishop, on behalf of Crocels Community Media Group (“CCMG”).

3. On 20 July 2015, CCMG applied for constitution as a Charitable Incorporated Organisation (“CIO”) and registration as a charity under s. 207 of the Charities Act 2011 (“the Act”). CCMG’s governing document is in the Charity Commission’s model form for a CIO. Its objects clause, in its entirety, reads as follows:

*“The object[s] of the CIO are, for the public benefit,*

- *Improving fraternity between nations, including through:*

*The advancement of citizenship and community development*

*The advancement of the arts, culture, heritage and science*

*The advancement of amateur sport*

*The advancement of environmental protection and improvement*

*The prevention or relief of poverty*

- *Advancing the understanding and promoting the cause of peace through:*

*The advancement of education*

*The advancement of conflict resolution and reconciliation*

*The advancement of equality and diversity*

*The promotion of religious and racial harmony*

- *Innovating for the abolition or reduction of standing armies, including through:*

*The advancement of health and saving of lives*

*The advancement of human rights*

*The promotion of the efficiency of the armed forces of the crown*

*The promotion of the efficiency of the police, fire and rescue services  
and/or ambulance services*

*It will achieve these aims by*

*facilitating the publication of academic research*

*facilitating the holding of academic and other conferences*

*facilitating debate and discussion*

*facilitating the creation and management of information sources, including  
libraries and search engines*

*facilitating the development of hardware and software*

*facilitating news gathering and reporting*

*facilitating community regeneration*

*multimedia education*

*by attempting to persuade politicians and other decision-makers to adopt  
the charities values and policies.”*

4. CCMG now appeals against the Charity Commission's decision of 7 October 2015 to refuse to constitute the proposed CIO and enter CCMG onto the Register of Charities. The Charity Commission's decision was made under s. 208 of the Act, which gives rise to a right of appeal to this Tribunal. Mr Bishop, on behalf of CCMG, filed a Notice of Appeal to the Tribunal on 22 October 2015.

5. The Charity Commission's stated reason for refusing to constitute CCMG as a CIO and register it as a charity was that it did not appear to be established for exclusively charitable purposes for public benefit. In particular, the proposed objects of improving fraternity between nations, advancing the understanding and promoting the cause of peace, and innovating for the abolition and reduction of standing armies were not recognised charitable purposes and the fact that in each case these objects were intended to be furthered by means which consisted of the descriptions of charitable purposes in the Act did not thereby make the objects themselves charitable.

6. The hearing on 29 June 2016 was, by agreement of the parties and the Tribunal, a determination on the papers pursuant to rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Tribunal's Rules 2009 ("the Rules"). We would like to thank both parties for their written skeleton arguments and submissions.

7. The Tribunal's role in this matter is to "consider afresh" the Charity Commission's decision (s.319 (4) (a) of the Act). That is, effectively to re-determine the registration application. It follows that the Tribunal is not concerned to establish whether the Charity Commission acted unreasonably in public law terms in refusing CCMG's application.

8. If the Tribunal allows CCMG's appeal it has discretionary powers to quash the Charity Commission's decision, remit the matter to the Charity Commission and/or to direct the Charity Commission to grant the application (Schedule 6 to the Act). In determining the appeal, the Tribunal can consider evidence which was not before the Charity Commission when it made its decision (s. 319 (4) (b) of the Act).

### ***The Legal Framework***

9. Where an application for charity registration is also an application for the constitution of a CIO under s. 207 of the Act, the Charity Commission *must* refuse the application if it is not satisfied that the CIO would be a charity at the time it would be registered (s. 208 of the Act).

10. The statutory framework for registration as a charity may be summarised as follows. Section 1 (1) of the Act defines *charity* as an institution which is (a) established for charitable purposes only and is (b) subject to the control of the High Court in the exercise of its jurisdiction with respect to charities. Section 2 (1) of the Act defines a *charitable purpose* as one which falls within section 3 (1) of the Act and is for the public benefit. Section 3(1) of the Act sets out a list at (a) to (l) of 12 descriptions of charitable purposes and at (m) allows for the recognition of new charitable purposes through a process of analogy. A charitable purpose must be for the public benefit. Section 4 of the Act provides that there is to be no presumption that a purpose of any particular description is for the public benefit and that any reference to public benefit is a reference to public benefit as that term is understood for the purposes of the law relating to charities in England and Wales.

11. In the Upper Tribunal's decision in *ISC v Charity Commission* [2011] UKUT 421 (TCC), it was held at [82] that, when applying the statutory test, the starting point is to identify the *particular purpose(s)* of the institution. The *particular purpose* is charitable if it falls within any of the categories listed in s. 3(1) of the Act and is for the public benefit. The Upper Tribunal also decided in *ISC* at [188] that the meaning of *established* in the Act is "what the institution was set up to do, not... how it would achieve its objects or whether its subsequent activities are in accordance with what it was set up to do". This Tribunal is bound by the decisions of the Upper Tribunal as a matter of legal precedent.

### ***Evidence***

12. The written evidence from CCMG consisted of two witness statements: one from Jonathan Bishop, Chief Executive Officer of CCMG and the other from Paul Cantrill, who is a Business Adviser from the Wales Cooperative Centre. Mr Bishop's witness statement contained opinion evidence to the effect that the Charity Commission's staff are ignorant and lazy and stated that he was grossly offended by the rejection of his application. Mr Cantrill's statement contained opinion evidence to the effect that CCMG is a charity. The Tribunal is able to admit evidence which would not be admissible in a civil trial (see rule 15 of the Rules) so we are able to take into account opinion evidence which is not given by an expert witness. Nevertheless, we found it regrettable that Mr Bishop chose to express in evidence to the Tribunal his views of the Charity Commission's staff in these terms. In the event, the witness evidence did not greatly assist us in determining this appeal, as it turns on points of law more suitable for submissions.

13. The Charity Commission did not file any witness evidence.

### ***Submissions***

14. The Charity Commission, in summary, submitted that CCMG's three objects were not charitable and that incorporating into the governing document a list of the descriptions of charitable purposes from the Act as the means by which the objects would be furthered did not have the effect of making the objects charitable. The three objects were not charitable because:

(i) The Courts have held that promoting international friendship or understanding is not charitable - *Anglo-Swedish Society v IRC* (1931) 47 TLR 295;

(ii) Advancing the understanding and promoting the cause of peace would appear to encompass both charitable and non-charitable purposes. Educating the public about peace has been held to be charitable – *Southwood v AG* [2000] The Times, October 1998 - but promoting the cause of peace would appear to permit activity aimed at seeking to change Government policy. This would constitute a political purpose – *McGovern v AG* [1982] Ch 321.

(iii) Innovating to abolish or reduce standing armies would also appear to involve seeking to influence Government policy so as to constitute a political purpose;

(iv) All of the above objects can expressly be furthered by means of attempting to persuade politicians to the charity's views. This is an inherently political activity and suggests a political purpose.

15. Mr Bishop on behalf of CCMG made submissions and also replied to the Charity Commission's submissions. His arguments may be summarised as follows:

- (i) CCMG is an academic, educational and informational organisation without a political agenda. Its strategic focus is to win the Nobel Peace Prize;
- (ii) CCMG seeks to test the co-operative consortia model to enable not-for-profit, for profit and mixed-profit organisations to work together to improve outcomes for young and disabled people;
- (iii) CCMG's proposed activities include: a community arts project; the development of a device to treat survivors of war (civilian and military) by re-programming their emotions using EEG signals; the development of a device to assist people with social difficulties with communication; the development of a device for monitoring and mentoring young or disabled people over the internet; the development of projects to assist the career prospects of young and disabled people through encouraging their participation in research and writing, access information if they are being cyber-bullied and to facilitate the distribution of opinion and cultural artefacts; facilitating the development of technologies used in warzones to reduce civilian casualties, for example a drone which can detect the emotional state of people on the ground, a drone which could assess material transmitted by wi-fi to determine whether it constitutes a threat to peace, and a CCTV system to help prevent crime; and promoting academic discourse on the subjects of war and peace through publications and conferences, educational courses and research;
- (iv) The *Anglo-Swedish Society* decision has been superseded by s. 2 of the Charities Act 2006. It is now on the Register of Charities along with other charities with aims similar to CCMG. CCMG aims to work in a manner consistent with existing registered charities such as British Red Cross, Amnesty and Joseph Rowntree Charitable Trust;
- (v) The Charity Commission has misunderstood CCMG and characterised it as a political organisation. The Charity Commission did not spend sufficient time in understanding CCMG's application with the result that it has failed to appreciate that CCMG does not campaign against war but researches and develops technologies to reduce the impact of war;
- (vi) The Charity Commission's decision is in breach of its obligations under European Community Law which guarantees freedom of establishment and freedom to provide services. CCMG's activities will assist the UK Government to meet its obligations under the Geneva Convention and the Charity Commission's decision unreasonably impedes this objective;
- (vii) The proposed objects do not permit non-charitable activities by a charity because all non-charitable activities will be carried out by the for-profit pillar of CCMG;
- (viii) In applying the legal framework, the Tribunal must consider not only the Act but the Hansard reports concerning the Act. In determining whether an organisation is charitable, its activities and not the wording of its governing document are the important factor;
- (ix) The Charity Commission has misunderstood and misapplied the case law in *ISC*, *Southwood* and *McGovern*. These authorities support the view that CCMG is charitable.

## **Conclusion**

16. Following the approach of the Upper Tribunal in *ISC*, we have firstly identified the *particular purpose(s)* of CCMG. We find that this purpose is described in the three objects set out in CCMG's objects clause. Again following *ISC*, we are satisfied that these are the purposes for which CCMG was *established*. On a plain reading of the objects clause in CCMG's governing document, we find that there is a clear distinction between the three objects there stated and the means by which they are intended to be furthered. We agree with the Charity Commission that incorporating the descriptions of charitable purposes set out in the Act as a means of furthering the objects does not by itself serve to make the objects charitable.

17. We have, secondly, considered whether CCMG's three objects themselves express "charitable purposes" i.e. ones which fall within section 3 (1) of the Act and are for the public benefit. We note that a charity must be established for charitable purposes *only* (s. 1 (1) (a) of the Act) so it follows that if any one of the objects is not charitable then CCMG cannot, as a matter of law, be a charity.

18. As to the first object, we are satisfied that the decision of Rowlatt J in *Anglo-Swedish Society* remains good law and that we are bound by it as a matter of legal precedent. We are not persuaded that it has been superseded by subsequent legislation, as the descriptions of charitable purposes in the Act do not include the promotion of fraternity between nations. We conclude that the first object is not a charitable purpose falling within the descriptions of charitable purposes in the Act and neither is it analogous to any recognised charitable purpose.

19. As to the second object, we are satisfied that, although the *advancement of conflict resolution* is listed as a description of a charitable purpose in the Act, this is a purpose quite distinct from advancing the understanding and promoting the cause of peace as described in the objects of CCMG. The object as drafted would appear to meld a potentially charitable purpose (advancing education on the subject of peace) with a political purpose, within the meaning given to that term by Slade J in *McGovern*, namely seeking to change Government policy by promoting a cause. We conclude that the second object is not a charitable purpose because it is not *only* a charitable purpose.

20. Turning to the third object, the purpose of innovating for the abolition or reduction of standing armies is, in our judgement, a clear political purpose within the meaning given to that term by Slade J in *McGovern*. We conclude that the third object does not express a charitable purpose because it necessarily involves seeking to change Government policy.

21. As noted above, CCMG has an express power, albeit within the objects clause, to attempt "to persuade politicians and other decision-makers to adopt the charities (*sic*) values and policies". This provision would inevitably raise concerns even if the objects were exclusively charitable. As we have concluded that they are not, it would appear to permit CCMG to operate as a non-charitable pressure group rather than to undertake ancillary political activities as a means of furthering a charitable purpose.

22. We have concluded that CCMG would not be a charity if it were constituted as a CIO, so we must dismiss this appeal. In view of the conclusion we have reached about the technical failure of the governing document to establish a charity as a matter of law, we do not need to go on to form a conclusion about whether CCMG would operate for the public

benefit. We also do not need to form a conclusion as to whether the relationship between CCMG and the other companies in the group, under the provisions of the agreement we have seen, would permit or preclude charitable status. As Mr Bishop acknowledges: “*Crocels is pushing the boundaries of organisational architecture,*” so it may not surprise him if the group structure needs further work if any part of it is to be recognised as charitable.

23. In view of our findings above, we do not need to reach formal conclusions on each and every one of Mr Bishop’s submissions, but we will address them shortly. We agree with the Charity Commission that the test we must apply in determining this appeal is derived from the Act and not from International or European Law. We are not persuaded that there is ambiguity or absurdity in the Act so as to allow us to interpret it with reference to Parliamentary materials under the rule in *Pepper v Hart* [1993] AC 593. We find that the Register of Charities does not exist as a precedent bank and so we were not assisted by being invited to compare CCMG with other institutions which have been entered onto the Register. Finally, we refuse Mr Bishop’s applications for summary judgement and for costs as (i) we have no power to give summary judgement and (ii) we do not consider either that the Charity Commission’s decision, or the conduct of these proceedings, was unreasonable.

24. In his Notice of Appeal, Mr Bishop asked the Tribunal to advise him how CCMG’s purposes could best be expressed. We are unable to offer him advice, as our statutory remit extends only to determining the appeal before us. However, we were struck by Mr Bishop’s submission that “*the charitable pillar is intended to focus on a group of beneficiaries who are best described as young and disabled people*” as this intention is not clearly expressed in the objects clause. We acknowledge Mr Bishop’s philanthropic intentions (as did the Charity Commission in its letter of 7 October 2015 and in its submissions to the Tribunal) and it seems to us that some of the proposed activities of CCMG may indeed be suitable to be taken forward by a charity. We can only suggest that Mr Bishop seeks specialist advice as to the technical formalities involved in establishing a charity and the responsibilities involved in administering it thereafter before deciding how to proceed.

25. For all of the above reasons, we now dismiss this appeal.

**(Signed on the original)**

**JUDGE ALISON MCKENNA**

**18 July 2016**

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