



**Appeal number: CA/2013/0009**

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

**HARROGATE FAIRTRADE SHOP**

**Appellant**

**- and -**

**THE CHARITY COMMISSION FOR  
ENGLAND AND WALES**

**Respondents**

**TRIBUNAL: JUDGE ALISON MCKENNA  
MARGARET HYDE OBE  
HELEN CARTER**

**The Tribunal met to determine the appeal on the papers on 24 February 2014**

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## DECISION

1. The appeal is dismissed.

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## REASONS

2. The Appellant is a company limited by guarantee which was established in December 2009, when it took over the activities of an unincorporated association.  
10 The Appellant sells fairly traded goods, that is Fairtrade goods purchased from suppliers accredited by the Fairtrade Foundation, and goods from other suppliers who are members of the British Association of Fairtrade Shops and Suppliers, in a shop located in the porch of a church. It also periodically sells these goods from stalls set up in churches and schools. This matter concerns the company's appeal against the  
15 Charity Commission's decision to refuse to register the company as a charity. The decision under appeal was made on 29 August 2013.

3. The Tribunal's role in this matter is to "consider afresh" the Respondent's decision (s.319 (4) (a) Charities Act 2011). If the Tribunal allows the appeal it has power to quash the Respondent's decision, remit the matter to the Respondent and  
20 direct the Respondent to rectify the register of charities (Schedule 6 to the Charities Act 2011). The Tribunal can consider evidence which was not before the Charity Commission when it made its decision (s. 319 (4) (b) Charities Act 2011). The parties agreed that this matter could be determined on the papers and without an oral hearing and the Tribunal considered that it could fairly proceed on that basis (rule 32  
25 (1) The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009).

### *Background*

4. The Appellant's first application for registration as a charity (reference number 4049622) was rejected by the Charity Commission in March 2010 on the basis that its  
30 objects were not exclusively charitable. No appeal was made against that decision. A second registration application was made in January 2013, (reference number 5033835) following correspondence between the Appellant and a case officer in the Charity Commission's Registration Division.

5. The Appellant company did not formally amend its objects after the first  
35 registration application was rejected. It made its second registration application on the basis of a set of objects which it proposed to adopt if the Respondent prospectively agreed to register it with those objects. An amended set of objects ultimately went forward for formal consideration, these objects having been suggested to the Appellant by the Respondent's case officer. The case officer told the company  
40 not to take any steps formally to adopt the suggested objects but to await the Charity Commission's formal decision. Subsequently, the same case officer wrote to the Appellant on 29 August 2013 to say that the Charity Commission had refused to agree to register the company if it adopted those draft objects.

6. The Tribunal was told that following the second registration rejection the company's directors formally resolved, on 4 October 2013, to adopt new objects. These are set out at paragraph [33] below. We note that the directors' decision to adopt those objects post-dates the formal decision by the Charity Commission which is the subject of this appeal and so they are not formally before us for consideration. However, as it appears likely that the Appellant will wish to make a third registration application, we hope that what we say in determining this appeal may be helpful to the parties in taking matters forward.

7. We note here that on 29 August 2013 the Charity Commission made a decision that it told the Appellant was a formal determination of its second registration application. It issued a formal letter telling the Appellant of its right of appeal to the Tribunal. However, we do have some reservations as to whether the Charity Commission was at that time in a position to make a formal appealable registration decision, pursuant to s. 30 of the Charities Act 2011. Our doubts stem from the fact that, at the date of the determination of the second registration application, there was in fact no charitable institution in existence which was capable of entry into the Register of Charities because the Appellant had not yet reached the stage of formally adopting a fresh set of objects. It therefore seems to us that the most that the Charity Commission could do in August 2013 was to offer the company its informal opinion of the proposed draft objects, indicating whether it would or would not enter the institution into the register once the proposed objects had been formally adopted. The expression of such an opinion would not of course give rise to a right of appeal to the Tribunal, but there would be a right of appeal to the Tribunal once the new objects were formally presented and a decision under s. 30 of the 2011 Act was formally made. The Appellant in this case was told that a further formal decision had been made (on the basis of a "re-review" of the 4049622 decision which had been made over three years previously) and that its right of appeal to the Tribunal was engaged. We take the view that it would now be unfair to the Appellant to treat the Charity Commission's decision otherwise than as one engaging our jurisdiction, but we hope that the Charity Commission will review its practice in this area of its work to distinguish in its response between where draft objects are under consideration and where they have been formally adopted.

8. Finally, we note that during the course of the second registration application, the parties engaged in correspondence on the subject of whether the company, if registered as a charity, would be conducting primary purpose or non-primary purpose trading. The Charity Commission case officer repeatedly expressed the view that it would be conducting taxable trading and appeared to suggest that this was a bar to charity registration. He encouraged the Appellant to seek the views of HMRC on the subject. The Appellant (perhaps inevitably) then got caught up in a circular correspondence with the two Government Departments in which HMRC wanted to know the Charity Commission's view on charitable status before it committed itself on the issue of trading, and vice versa. We note that the Charity Commission has no statutory power to determine that question and, as no decision capable of appeal to this Tribunal has been made on that subject, we may not decide the issue. However, we hope that what we say in determining the appeal against the rejection of the second registration application may be helpful to the parties in taking matters forward.

*The Registration Application*

9. The only issue between the parties in this appeal is the question of whether the Appellant company's draft objects (as presented after discussion with the Charity Commission's case officer) express exclusively charitable purposes and are for the public benefit. We note that the Charity Commission has not raised any other objections to the company's constitutional arrangements or means of operation (apart from the potential taxation issue, to which we return at paragraph [43] below).

10. The draft objects which the Appellant initially presented to the Charity Commission in making its second registration application were as follows:

10       (1) *The prevention and relief of poverty in developing countries around the world by selling fair trade goods, that is goods for which the producers of those goods have received a fair price, thus enabling those producers to lift themselves out of poverty;*

15       (2) *The prevention and relief of poverty in developing countries around the world by promoting and raising public awareness of fair trade goods and the benefits which the purchase of fair trade goods creates in alleviating poverty where those goods are produced and thereby encouraging a preference for fair trade goods generally;*

20       (3) *The furtherance of the exclusively charitable purposes of such charities which work directly in relieving poverty suffering and distress in any part of the world as the trustees see fit.*

11. After correspondence with the case officer, the draft objects which we understand were formally considered for registration if adopted were as follows:

25       (1) *The prevention and relief of poverty in developing countries around the world by selling fair trade goods, that is goods for which the producers of those goods have received a fair price, thus enabling those producers to lift themselves out of poverty and raising awareness of the same in the UK for the public benefit;*

30       (2) *The furtherance of the exclusively charitable purposes of such UK registered charities which work directly in relieving or preventing poverty, relieving financial need, hardship, suffering or distress or those relieving those with a charitable need in any part of the world as the trustees see fit.*

12. The Charity Commission's letter of 29 August 2013 unfortunately does not recite the objects which it considered on that date, but it appears from the chain of e mail correspondence presented to the Tribunal that its decision concerned the objects as drafted at paragraph 11 above and not those at paragraph 10. We are bolstered in that conclusion by the contents of the Appellant's written submissions and by the fact that the Appellant adopted virtually identical objects to those at paragraph 11 following the Charity Commission's decision (see paragraph 33 below). In cases such as this, where there have been several versions of the objects discussed, we take the view that it would be appropriate for the Charity Commission's formal letter to set out clearly which version of the objects it has considered.

13. The Charity Commission's letter of 29 August 2013 gives the following reasons (in summary) for rejecting the registration application:

5 (1) That as the company's main activity is the operation of a shop, consideration should be given to the establishment of a charitable trust to which the company would covenant its profits;

(2) That as trading is not a charitable purpose and undertaking a permanent taxable trade is not charitable in itself, the company could not be charitable in law;

10 (3) That the prevention and relief of poverty is a good charitable purpose but the means by which the object is to be furthered must be considered and HMRC's view was central to that question. HMRC's view was that the company's activity is "simply trading" and that the sale of fairly traded goods has not been accepted by the Charity Commission or the courts as a charitable purpose, therefore the company is not a charity and the question of primary purpose trading does not arise;

15 (4) That the core of the company's argument is that growing the market share for fairly traded goods would increase the impact of the work of the Fairtrade Foundation (itself a charity) and therefore that it must be charitable to sell fairly traded goods. This argument relies on a subtle re-characterisation of ancillary activities as purposes;

20 (5) That whilst the Commission has recognised that the Fairtrade Foundation relieves poverty by improving the terms and conditions of producers, it has not accepted that the work done by others in expanding the Fairtrade market and promoting the Fairtrade brand has the effect of relieving poverty;

25 (6) That the relief of potential beneficiaries is remote from the company's activities. The personal benefits for shoppers choosing the brand and of wholesalers and importers selling the branded goods are less remote consequences. The company does not work to secure terms and conditions for the workers or contribute to the supply chain for charitable purposes associated with the producers.

#### *The Appeal*

14. The Appellant filed its Notice of Appeal to the Tribunal on 4 October 2013. The grounds of appeal may be summarised as (a) the purposes are charitable; (b) trading is not the purpose but the means of achieving the purpose; (c) selling fairly traded goods is primary purpose trading; (d) the purposes are for the public benefit and none of the directors or members of the company receive a benefit; (e) the relief of potential beneficiaries is not remote.

15. In the Charity Commission's formal Response to the Appellant's Notice of Appeal, the Charity Commission explains briefly its view of the original objects which it rejected in registration application 4049622 and then its view of the Appellant's originally proposed draft objects, as described at paragraph 10 above. It

does not address the objects at paragraph 11 above which we understand to have been those considered in the 29 August 2013 letter.

16. The Charity Commission suggests in its Response that the questions for the Tribunal are (a) what are the purposes of the institution?; (b) are the purposes of the institution exclusively charitable - (i) do they fall within the descriptions of charitable purposes in s. 3 of the Charities Act 2011?; and (ii) are the purposes for the public benefit? It provides its suggested answers to these questions, which we consider further at paragraphs [37] to [43] below. It concludes that the Appellant has not demonstrated that it is established exclusively for purposes which fall within the description of purposes set out in s. 3 (1) (a) of the Charities Act 2011 or are directed towards benefitting the public in a way recognised as charitable.

17. The Appellant filed a Reply to the Charity Commission's Response, in which it agreed that the issues for the Tribunal are as set out at paragraph 16 above, save that it asks for the Tribunal's view of the primary purpose trading issue which had featured so prominently in its correspondence with the Charity Commission.

#### *The Parties' Submissions to the Tribunal*

18. We are grateful to Mr Seaman for the Appellant and Mr Dibble for the Respondent for sending us their very helpful written submissions. We considered these, together with the bundle of documents and the bundle of authorities, when we met for our paper determination of the appeal. We are also grateful to Ms Clarke and Ms King, both directors of the Appellant company, who filed witness statements in support of the appeal in which they gave us some helpful background information about the company, although we did not find it necessary to refer to this evidence in construing the company's objects which we found to be quite clear and unambiguous. The Charity Commission has confirmed that it does not dispute the facts as set out in the witness statements.

#### *(a) The Appellant's Case*

19. The Appellant's submissions underlined the commitment of the directors to helping people living in poverty in less developed parts of the world and confirmed that they see the Fairtrade movement as a means of alleviating poverty which is more useful and constructive than merely giving aid. Importantly, they believe that by selling fairly traded goods to the British public they are contributing "albeit in a small way" to the aims of the wider Fairtrade movement.

20. The Appellant acknowledges that it has limited knowledge of charity law and did not have the benefit of professional advice when it formed the company in 2009 and in making its registration applications, so that it was grateful for what it saw as the constructive suggestions and advice of the Charity Commission's case officer. However, having been advised not to amend its objects formally, it was surprised to read in the 29 August 2013 letter that as the company remained established for its original objects it was not charitable. It comments that it was difficult not to see this as the "springing of a trap" by the Charity Commission.

21. The Appellant was concerned by the Charity Commission's repeatedly-made statement that "trading is not a charitable purpose", pointing out that trading is not the company's purpose but the means by which the charitable purpose of relieving poverty is to be achieved by the company. The Appellant gives examples of  
5 recognised primary purpose trades and argues that they are not fundamentally different from the trading the company proposes to carry out as a means to alleviating poverty, rather than as an end in itself. The Appellant characterises the Charity Commission's approach as being: "*You are trading. Trading is not a charitable purpose. Therefore you cannot be a charity*" and describes this as an invalid  
10 assertion.

22. The Appellant takes issue with the comments of the Charity Commission (and HMRC) to the effect that the promotion of awareness of fairly traded goods has not previously been accepted by the courts as charitable. It is submitted that the fact that a proposition has not been accepted by the courts is not the same as saying it has been  
15 rejected by the courts, so that spurious authority has been attached to what is in reality only the opinion of each Government department.

23. The Appellant points out that the Charity Commission's Response to the appeal refers to a second discrete object of raising public awareness of fair trade goods, whereas this object has already been abandoned (and subsumed into the first object)  
20 on the advice of the Charity Commission's officer. The rejection by the Charity Commission of this object is in any event contrasted by the Appellant with the prior registration of another charity with objects to "*relieve poverty ...including by raising awareness of the benefits to poor third world producers of the Fairtrade label...*"

24. The Appellant makes submissions with respect to the 1995 Decision of the Charity Commissioners (as they then were) regarding the charitable status of the Fairtrade Foundation. It is submitted that the Charity Commissioners accepted in that decision that the Fairtrade Foundation would, in addition to providing an independent certification of the trade supply train with the Fairtrade mark, facilitate the market for Fairtrade goods and raise awareness amongst consumers of the need for and  
30 importance of the Fairtrade mark. The Appellant argues that all of these activities must be in furtherance of accepted charitable purposes because they are directed to the same end and are complementary to each other.

25. With regard to the public benefit test, the Appellant's case is encapsulated in these extracts from its written submissions:

35 [6.4] It is my contention and the belief of the directors and members of HFTS, that selling goods for which Third World producers have been paid a fair price creates a benefit for those producers which helps to alleviate their poverty. Of course I cannot produce specific examples to prove that this is the case. HFTS is at the end of a chain of supply,  
40 or rather multiple chains of supply, each of which may involve a number of links and which in any case stretch to Harrogate from distant regions of the world. HFTS does not have the resources to verify that that the principles of fair-trade have been followed in

respect of the goods it buys and sells and so must rely on accreditation of those goods by other agencies.

5 [6.10] Thus the Fairtrade Foundation has created a structure which ensures that poor producers receive a fair price for their products and the Commission accepts that this delivers a public benefit by providing some relief from their poverty. It is the Appellant's case however that creating the structure under which the producers receive a fair price would be of no avail if no goods were sold via this structure. HFTS sells fair-trade goods to the British public and every item sold benefits a producer to a small extent. If no items were sold, there would be no benefit, regardless of all the efforts of the Fairtrade Foundation.

10 [6.11] The argument is therefore that, if the producer receives a benefit which helps relieve his poverty by getting a fair price for his produce, then HFTS is contributing in a small but essential way to delivering that benefit.

15 [6.23] HFTS delivers the public benefit of alleviating the poverty of producers and workers in Third World countries by the sale of fair-trade goods. It does so by selling only goods which satisfy fair-trade principles and relies on other agencies to ensure that this is the case. That the benefit exists can clearly be demonstrated, though the size of the benefit cannot be measured or quantified.

26. The Appellant also argues that the sale of the non-foodstuff goods it purchases from Traidcraft and Namaste relieves the poverty of the producers. These goods do not carry a Fairtrade mark, and so the directors rely on the assurances of the suppliers, who are members of the British Association of Fairtrade Shops and Suppliers.

27. In its reply to the Charity Commission's submissions, the Appellant submits that the purposes of the company are charitable with reference to the Charities Act 2011. With regard to the Charity Commission's concern that the company's activities are remote from the relief of poverty, the Appellant employs the striking metaphor of a tap and submits that the eventual sale of the Fairtrade goods to a consumer is the tap at the end of the supply pipeline, so that if the tap is not turned on, no goods will flow and no financial benefits will flow in the opposite direction. It is also submitted that the length of the pipeline and the course it takes between the source and the tap does not change this.

*(b) The Charity Commission's Case*

28. The Charity Commission summarised the legal framework for its determination of the company's charitable status as follows.

29. Section 1(1) of the Charities Act 2011 defines "charity" as "*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*". The Charity Commission confirmed that (a) was in dispute in this case but (b) was not.



30. Section 2 (1) of the Charities Act 2011 defines a “charitable purpose” as one which “(a) falls within section 3 (1) and (b) is for the public benefit (see section 4)”. Section 3(1) of the 2011 Act sets out a list of 13 descriptions of charitable purposes. The Commission accepted that the prevention or relief of poverty is included in the list at s. 3 (1) (a) and that the relief of financial hardship, suffering and distress are purposes falling within the description at s. 3 (1) (j) of the 2011 Act. However, that conclusion was not determinative and it went on to consider the effect of the inclusion in the objects of an express means of furthering those purposes, namely the sale of goods produced by those in poverty.

31. Section 4 (2) of the 2011 Act provides that “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”. The Charity Commission pointed out that there is no presumption that the relief of poverty is for the public benefit and referred us to the Upper Tribunal’s decision in the “Poverty Reference” reported at [2012] UKUT 420 (TCC). Its position in this case was that the appeal must fail because the Appellant had not provided evidence that the particular purpose of the company (taking into account the specific means by which it sought to achieve its purpose) would provide a direct or even indirect benefit to its potential beneficiaries. It submitted that public benefit cannot be vague or remote and that the onus of proof is on the Appellant to demonstrate the public benefit it will provide.

32. The Charity Commission’s basis for opposing this appeal was set out in its submissions with reference both to the original objects which it had rejected in 2010 and the objects which were adopted by the company in October 2013.

33. The Objects which were adopted by the Appellant in October 2013 were as follows:

- a) The prevention and relief of poverty in developing countries around the world by the sale of fair trade goods, that is goods for which the producers of those goods have received a fair price, thus enabling those producers to lift themselves out of poverty, and by raising awareness of the same in the UK for the public benefit.
- b) The furtherance of exclusively charitable purposes of such UK registered charities which work directly in relieving or preventing poverty, relieving financial need, hardship, suffering or distress in any part of the world as the trustees see fit.

34. The fundamental issue between the parties in relation to the first object (as set out at paragraph 11 above) is encapsulated in the following extracts from the Charity Commission’s written submissions:

[7] The Commission’s principal concern about the purposes of HFTS is that having considered the evidence presented to it in support of charitable status it is not satisfied that the sale of Fairtrade goods by HFTS impacts on the relief of poverty. It considers that any benefit to the poor producers of Fairtrade goods is too remote. It is possible for charities relieving poverty to do so indirectly providing that the manner

in which it does so is capable of impacting on the relief of poverty in a way which the courts could recognise. The Appellant has not provided sufficient evidence to demonstrate that its activities do or are capable of impacting upon the relief of poverty.

5 [9] The Commission's view is that it is not evident that the organisation is established for exclusively charitable purposes for public benefit.

10 [40] The central question is whether the purchase and sale of goods by HFTS is too remote from the relief of the poor producers engaged in the various programmes which are administered by other registered charities. The issue of remoteness relates to the link between the activities of HFTS and the relief of poverty. It is not concerned with remoteness in the physical sense of being at a geographical distance.

15 [41] The Commission is of the view that HFTS is several stages removed from the point at which it can be shown poverty is relieved. HFTS has not shown that its activities are capable of achieving the relief of poverty. It has not shown any tangible benefits to show the impact of HFTS on the relief of poor producers through the sale of goods.

20 [47] The Commission accepts that the activities of HFTS may serve to facilitate the work of other charities but it has not been demonstrated that its activities are capable of impacting on the relief of poverty.

25 [48] The Commission accepts there is some justification for the view that raising awareness of and promoting goods that have been produced by poor producers and marketed to ensure a fair price to lift them out of poverty may have some impact on the wider community. The benefit may be, in part, that it promotes compassion and altruism and is commonly accepted as a good thing. The Commission considers that raising awareness of such goods may be undertaken in furtherance  
30 of the charitable purpose of the promotion of the moral improvement of the community. However, that is distinguished from the sale of such goods.

35 35. The Charity Commission's submissions with regard to the second object (as set out at paragraph 11 above) were that it is capable of being charitable insofar as the company's directors exercise their discretion in making grants to other charities with appropriate objects. The Commission also accepted that making grants to other charities was for the public benefit in both the senses in which that term is used following the Upper Tribunal's decision in "the Independent Schools Reference" reported at [2011] UKUT 421 (TCC).

40 36. With respect to the primary purpose trading question, the Commission's written submissions pithily describe the issue as follows:

45 [69] If the Tribunal determines that the purposes of HFTS are exclusively charitable for public benefit and the sale of goods by it contributes directly to exclusively charitable purposes for public benefit then it would follow that the trading is primary purpose trading.

If the Tribunal determines that HFTS is not a charity, the issue of charitable tax relief does not arise.

*Conclusion*

5 37. Draft object one, as described at paragraph 11 above, is specific about the means by which poverty is to be relieved, namely by selling fairly traded goods. We agree with the Charity Commission that, whilst the relief of poverty falls within the list of descriptions of charitable purposes in the 2011 Act, the Appellant's specific incorporation of the means of furthering the intended charitable purpose into the draft object has the effect of requiring a more detailed inquiry into whether the company is established for exclusively charitable purposes. On the basis of the evidence before us, we conclude that the benefits which the Appellant's draft objects require it to confer on its potential beneficiaries are insufficiently evidenced for us to be certain that they can be achieved. That is not to say that the benefits to poor producers could not be proven, just that they have not been proven in the context of this appeal. We have considerable sympathy with the Appellant's conceptual position and its argument that the Fairtrade movement must function as an organic whole, but we note that because the Appellant regards it as a self-evident fact not requiring proof, it has not taken the necessary steps to demonstrate in this appeal whether, and if so how, the sale of fairly traded goods relieves the poverty of its potential beneficiaries. We agree with the Charity Commission that the onus of proof rests on the Appellant in this regard and conclude that we are unable to allow this appeal in the absence of sufficient evidence on this point.

25 38. The parties referred the Tribunal to two authorities which state that the Tribunal must decide on the basis of the evidence before it whether the company is established for the public benefit. These were, firstly, the comments of Mr Justice Slade in *McGovern v AG* [1981] 3 All ER 493 that "*the question whether a purpose will or may operate for the public benefit is to be answered by the court forming a view on the evidence before it*". Secondly, we were referred to the Upper Tribunal's decision on the "Poverty Reference" reported at [2012] UKUT 420 (TCC) in which the Upper Tribunal commented at [39] that "*.the Court or Tribunal will form its own view on the evidence before it whether the trust is for the public benefit and will do so, not by way of assumption but by way of decision*". As noted above, we do not have sufficient evidence before us on which we can make the relevant finding that the company is for the public benefit. It seems to us that this is an argument eminently capable of proof, either with expert evidence from an economist or with the assistance of the Fairtrade Foundation itself, which will doubtless have better evidence than anyone else of the impact that the ultimate sale of the goods has on the overall Fairtrade project. However, the lack of sufficient evidence to support the Appellant's assertions in this regard requires us to dismiss this appeal.

40 39. We sympathise with the Appellant's frustration with regard to the issue of primary purpose trading. We agree with the Charity Commission's submission at [33] above that, if the Appellant can provide the necessary proof of the link between the sale of fairly traded goods and the relief of poverty, then it would follow that the trading is primary purpose trading. It is unfortunate that the Charity Commission's

officer did not make the same point at an earlier stage. We also sympathise with the Appellant over the confusion that arose due to the moving feast of new objects suggested by the Commission's officer. The Appellant graciously acknowledged to the Tribunal that the officer intended to be helpful, but it is apparent that this case has suffered from confusion as to the status of various sets of draft objects which, arguably, ought not to have been the subject of a formal determination in any event.

40. It seems to us that the Appellant may have failed to appreciate that the recognition of new charitable purposes proceeds by a process of analogy with previously-recognised charitable purposes. This is why both the Charity Commission and HMRC refer to the courts and the Charity Commission not having previously recognised the Appellant's purposes. The inclusion of any particular charity on the register without a formal determination of its status is not generally regarded as creating a precedent. We recognise that these factors can be confusing for the lay person and note that the Charity Commission might have helpfully explained its stance to the Appellant more fully.

41. The Charity Commissioners' decision on the Fairtrade Foundation assumes an important role in this case as a result of this process of analogy. It is a published determination, intended to create a precedent, and is not merely an opinion as the Appellant submits. The Fairtrade Foundation was registered as a charity on the basis that it was operating a licensing system which would relieve the poverty of the producers of the licensed goods. We do not read the decision as establishing, as the Appellant argues, an implicit precedent that the creation of a mass retail market or the raising of awareness about Fairtrade goods were also means of alleviating poverty. However, the Fairtrade Foundation has clearly evolved since the Commissioners' decision in 1995 and we were referred to its Summary Information Return ("SIR") for 2012 in which it records the growth in UK Fairtrade sales by 80% from £836 million in 2008 to £1.5 billion in 2012. We note that the SIR also records one of the charity's main objectives as "*growing Fairtrade's share of key markets to propel sales to a new level*". It seems to us that there may be aspects of the way in which the Fairtrade Foundation relieves poverty which have only become apparent in the years following the Charity Commissioners' decision, as the Fairtrade movement has itself matured. It may be that, in the light of evidence that the Appellant and others produce about the role that the establishment of the retail market for fairly traded goods plays in the relief of poverty, that the 1995 decision could be revisited by the Charity Commission.

42. We are satisfied that the company's second object (as set out at paragraph 11 above) is exclusively charitable and for the public benefit, and so is capable of registration. It seems to us that the Charity Commission has reached the same conclusion (see paragraph [35] above), although it has not clearly told the Appellant so. In the circumstances we need say no more about that object.

43. In conclusion, it seems to us that there is much of value in the Appellant's ethos and activities but a deficiency of evidence to support key elements of its case. We express the hope that it will move forward with its work and not be put off by losing its appeal to the Tribunal. It could work with others in the Fairtrade movement to try

to collate the evidence which the Charity Commission would need to see in order to determine a fresh registration application. If that evidence is sufficient to enable charity registration then we would not see the trading rules as creating a problem, although that is not a matter which we can finally determine. Alternatively, as the  
5 Charity Commission has suggested, it is open to the Appellant to create a charitable trust to which the company could transfer its profits by gift aid.

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**PRINCIPAL JUDGE**  
**DATE: 27 March 2014**