



Appeal number: CA.2020.0015 V

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(CHARITY)

SHAZIA BASHIR Appellant
(Chair of the Trustees of the Mohiuddin Trust, Charity Number
1105585, litigating as a person affected by an Order)

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES Respondent

- and -

TARIQ MAHMOOD Second
(Vice Chair and a Trustee of the Mohiuddin Trust, Charity Respondent
Number 1105585, litigating as a person affected by an Order)

BEFORE

DDJ Rebecca Worth (authorized to sit as a Tribunal Judge in the GRC),
Tribunal Member Manu Duggal and Tribunal Member A'Isha Khan

Appearances:

Mr Merali for the Appellant
Mr Rechtman for the Respondent
The Second Respondent represented himself

Determined at a remote hearing via CVP on 17 September 2021

DECISION

1. The appeal is dismissed.

MODE OF HEARING

2. The proceedings were held by CVP. All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.
3. The Tribunal considered:
 - 3.1. An agreed Hearing Bundle comprising pages 1 to 595.
 - 3.2. A witness statement bundle comprising pages 1 to 74.
 - 3.3. An Authorities Bundle comprising pages 1 to 83.
 - 3.4. The Appellant's Skeleton Argument (dated 01 June 2021) which Mr Merali adopted as his closing argument.
4. At paragraphs 27 and 31 of his witness statement, Tariq Mahmood says that he "supplied a video recording of this meeting to the Tribunal Judge"; as set out in my Case Management Directions dated 20 March 2021 I only considered the transcripts, not the recordings.

REASONS

Background

5. The Mohiuddin Trust ("the Charity") is a registered charity (1105585).
6. The Charity was set up by Shaykh Alaudin, a venerated religious scholar and high priest of the Islamic faith. In around April 2016 he expressed a wish that, if he were to pass away, his two sons (Sultan (the elder son) and Noor (his younger son) along with a son in law and a grandson should continue the work of the charity.
7. In February 2017 Shaykh Alaudin passed away. What followed was some sort of internal conflict or power struggle during which names of trustees were entered and deleted on the Charity Commission Register and the Charity's bank became so concerned with changes to the signatories that they stopped the Charity's bank account. The Charity Commission became aware of this and felt they needed to find out more about what was going on. It seemed that loyalties were divided amongst Shaykh Alaudin's sons with one group aligning with Sultan, the other aligning with Noor. As there appeared to be two groups formed, the Charity Commission met with each group:
 - 7.1. On 24 October 2017 the Charity Commission met with a group of persons claiming to be the properly appointed trustees (this group included Aftab Zaman who was a witness at the Tribunal hearing), it is believed that this group was aligned with Sultan;
 - 7.2. On 14 November 2017 the Charity Commission met with another group also claiming to be properly appointed trustees; it is believed

that this group was aligned with Noor. This group included Tahir Choudhury who is one of the persons that the appellant, Ms Bashir, says should not have been appointed by the Charity Commission as a trustee, when (after the events outlined below) a s. 80(2)(b) Order was made on 01 July 2021.

8. Following the meetings with the two groups, the Charity Commission told them to mediate to come to a solution about how the Charity could be effective going forward, including who the trustees would be. That was unsuccessful.
9. It is also worth recording here that no person asked a Court to determine who the true trustees were. Whilst we recognised that the Charity Commission indicated that they did not consider that Court proceedings were a proper use of the Charity's funds, it appears that neither group put together a proposal whereby a Court would be able to determine the issue with the Charity's resources protected – whether by advisors acting pro bono and fees being met by personal finance from the individual(s) who wanted this settled or all costs and fees being met by personal finance; such proposal may have changed the Charity Commission's initial indication of opposition to litigation.
10. On 05 December 2018 a Statutory Inquiry was opened under s. 46 of the Charities Act 2011. No appeal was made against the making of the Order – Sch. 6 of the Charities Act 2011 allows "(a) the persons who have control or management of the institution or (b) (if a body corporate) the institution itself" the power to lodge an appeal with the Tribunal against an order issued under s. 46.
11. On 25 March 2019 the Charity Commission used s. 76(3)(g) of the Charities Act 2011 to appointed Emma Moody, of Womble Bond Dickinson as Interim Manager to the exclusion of anyone purporting to be a trustee of the Charity. No appeal was lodged against the making of that Order – Sch. 6 of the Charities Act 2011 allows "any person who is or may be affected by the order" to appeal to the Tribunal about an order issued under s. 76(3).
12. On 16 April 2019 Ms Moody met with Noor (the younger brother) who was accompanied by a legal representative (Zain Siddiqui) and by Akber Ali Siddiqui, Tahir Choudry, Rahail Raza Chohan and Mohammed Razak Sherif.
13. On 07 May 2019 Ms Moody met with Sultan (the elder brother) who was accompanied by a legal representative (Mr Merali – who represented Ms Bashir at the hearing of this appeal) and by Aftab Zaman, Chaudry Abdul Razzaq and Mohammed Zahir Uddin.
14. On 01 July 2020 the Charity Commission made an Order pursuant to s. 80(2)(b) of the Charities Act 2011 which appointed 6 persons as trustees, namely Shazia Bashir (the Appellant), Tahir Choudry, Tariq Mahmood (the Second Respondent), Aseid Malik, Zahid Nawaz and Zaid Rehman; also on that date the

Interim Manager's appointment was varied (under s. 76(3)(g)) so that she was appointed alongside the new trustees.

15. On 02 December 2020 the Interim Manager was discharged from her duties. The Charity Commission issued an Action Plan which set out what the new trustees were to do to enable the Charity to progress and work to a secure future in its governance and its work.
16. The Statutory Inquiry was closed on 18 March 2021 with the publication of an inquiry report.

Appeal to the Tribunal

17. A Notice of Appeal dated 09 August 2020 was submitted to the Tribunal by Shazia Bashir.
18. That Notice of Appeal relied on grounds that:
 - 18.1. The Charity Commission was responsible for sowing the seeds of an internal dispute which was then used to justify drastic measures of dissolving the board and placing the charity into administration.
 - 18.2. The method by which the Charity Commission assigned the Interim Manager recruited new trustees was flawed and illegal.
 - 18.3. One or more newly appointed trustees had conflicts of interest which the Interim Manager chose to ignore during the recruitment process.
 - 18.4. The Charity Commission removed former trustees that were the backbone of the charity with track records of delivering successful projects.
19. In respect of the outcome sought, Ms Bashir (in her notice of appeal) asked the Tribunal:
 - 19.1. Restore the former trustees Mohammed Zahir Uddin, Choudhry Abdul Razaq and Aftab Zaman (all these persons had attended the meeting on 07 May 2019 with Ms Moody – see paragraph 13 above).
 - 19.2. Remove “new trustees that have conflict of interest” (albeit that she did not state which trustees those were). It is now clear that Ms Bashir believes that Tahir Choudry who attended the meeting on 16 April 2019 with Ms Moody (see paragraph 12 above) should not have been appointed as a trustee.
 - 19.3. Advertise new trustee positions with due care and attention within the target community.

20. In her grounds of appeal, Ms Bashir stated the Order sought as:
 - 20.1. That the Charity Commission be ordered to re-instate the Board of Trustees as constituted at the date of SA death but excluding both Sultan and Noor "to avoid further sibling quarrels".
 - 20.2. Alternatively, the Charity Commission be ordered to start the selection process again and replace Tahir Choudhry and Zahid Nawaz by the appointment of two independent, professional and skilled trustees in substitution.
 - 20.3. Any other order that the First-tier Tribunal thinks fit and just having regard to the facts of this case.
21. The Charity Commission's Response dated 05 October 2020 resisted Ms Bashir's grounds of appeal on the following basis:
 - 21.1. That the Tribunal does not have jurisdiction to consider the approach adopted by the Interim Manager to recruit new Trustees.
 - 21.2. That the Interim Manager's decisions about conflicts of interest are not for this Tribunal.
 - 21.3. That these proceedings, as a matter of law, are not a challenge of the removal of former trustees.
 - 21.4. That the Tribunal does not have jurisdiction to consider the characteristics of the individual trustees who were appointed.
 - 21.5. That the Tribunal's jurisdiction is limited to considering whether the Order should have been made in the first place and whether it should continue. Meaning that the Tribunal's decision is whether it is appropriate to make an order appointing the trustees to the Charity under s. 80(2)(b) of the Charities Act 2011.
22. Mr Tariq Mahmood (Vice-Chair of the Mohiuddin Trust) applied to join the appeal and on 04 January 2021 he was joined as Second Respondent. He provided a response to the appeal and, in that response, asked to be permitted to withdraw from involvement in the appeal. His request to withdraw was refused by directions dated 07 February 2021 because I (as the Judge considering interlocutory matters for the Charity jurisdiction of the First-tier Tribunal General Regulatory Chamber) considered that he would be able to contribute significant information about the situation at the Charity. The directions sought to enable his involvement to be proportionate to the role that he should play in the appeal. Mr Mahmood's response, dated 29 January 2021, included the following:
 - 22.1. Concern that Ms Bashir had not mentioned at the August 2020 board meeting that she had lodged this appeal.

- 22.2. That the trustees have, over the past few months made remarkable progress.
 - 22.3. That Ms Bashir appears to be subject to external influence.
 - 22.4. That if Ms Bashir wanted the best for the Charity, she would not have lodged this appeal (after which she indicated she would not attend meetings) but would have led the Board over the preceding months so that the Charity progressed out of Statutory Inquiry and through the actions set out in the Action Plan issued by the Charity Commission.
23. Parties were notified of the hearing date by email sent on 22 April 2021 at 10:58, all parties, representatives and witnesses were able to join the hearing using video link.

The Law

24. Section 80(2)(b) of the Charities Act 2011 provides (as relevant) as follows:

80 Other powers to remove or appoint charity trustees

(2) The Commission may by order made of its own motion appoint a person to be a charity trustee-

(b) If there are no charity trustees, or if because of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;

25. The Tribunal's power on appeal is found in s. 319(5) and Schedule 6 to the Charities Act 2011. They provide (as relevant):

319 Appeals: general

(5) The Tribunal may-

(a) dismiss the appeal, or

(b) if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of Schedule 6.

Schedule 6

Column 3

Power to-

(a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission;

- (b) substitute for all or part of the order any other order which could have been made by the Commission;
 - (c) add to the order anything which could have been contained in an order made by the Commission.
- 26. The Charity Commission's statutory objectives under s. 14 of the 2011 Act include a public confidence objective, a compliance objective and an accountability objective. Its statutory functions under s. 15 of the 2011 Act include encouraging and facilitating the better administration of charities, identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action.
- 27. An appeal against the Charity Commission's Order under s. 80(2)(b) requires the Tribunal to "*consider afresh*" the Charity Commission's decision (s.319 (4) (a) of the 2011 Act). In so doing, it can consider evidence which has become available subsequent to the Charity Commission's Order (s.319 (4) (b) of the 2011 Act).
- 28. The Court of Appeal, at paragraph 45 of *R (Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31 considered what weight should be given to a statutory decision maker's decision. Its approach was confirmed by the Supreme Court in *Hesham Ali (Iraq) (Appellant) v Secretary of State for the Home Department (Respondent)* [2016] UKSC 60. Adapting that reasoning for this appeal, the following can be said:

The Tribunal should pay careful attention to the reasons given by the Charity Commission for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place the responsibility for making such decisions on the Charity Commission. The weight which the Tribunal should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on appeal.
- 29. It follows that the issue for the Tribunal in determining the Charity's appeal is whether the Tribunal would, as at the time of the hearing, appoint as charity trustees Shazia Bashir (the Appellant), Tahir Choudry, Tariq Mahmood (the Second Respondent), Aseid Malik, Zahid Nawaz and Zaid Rehman.

Evidence

- 30. The documentary evidence parties relied upon was contained in the Hearing Bundle.
- 31. Oral evidence was given, at the hearing, by Ms Bashir, Mr Aftab Zaman, Mr Chris Sladen, Ms Emma Moody and Mr Mahmood. Each appeared to be giving to us their honest recollection and thoughts on the situation as it was in early 2020, as it developed and as it is now.

Submissions

32. The closing submissions and positions of the parties can be summarised as follows:

32.1. The Charity Commission:

32.1.1. This appeal is solely about the s. 80(2)(b) Order made on 01 July 2020.

32.1.2. Ms Bashir had been inconsistent in her complaints about the trustees. Sometimes she complained about four, sometimes three, her appeal now focusses only on Tahir Choudry and Zahid Nawaz.

32.1.3. That Ms Bashir's case appears to be on three bases, namely that the recruitment was flawed, that there were conflicts of interest and that the trustees she complains to the Tribunal about are connected with a different charity.

32.1.4. The recruitment was by open, transparent process and nothing had been put forward by Ms Bashir to substantiate any "illegality". If the recruitment was, indeed, flawed, then Ms Bashir's position as trustee and Chair would be similarly tainted.

32.1.5. The conflict is alleged due to a friendship that Tahir Choudry and Zahid Nawaz are said to have with Noor (the younger brother). However, to exclude from being a trustee all those who may be seen to favour Noor (or favour Sultan) was considered impossible by the Interim Manager due to the nature and history of the Charity.

32.1.6. There was the potential for conflict, but that was managed as the nature of charities (particularly faith-based charities) is that there are likely to be conflicts of interest and what is key is how such conflicts are managed. Further, if there is a conflict of interest in Tahir Choudry and/or Zahid Nawaz being friends of Noor, then Ms Bashir's position is questionable as, from how this appeal has been conducted, it gives the appearance that she is aligned with Sultan's group (Sultan being the elder brother). The Charity Commission recognised that Ms Bashir refused in cross-examination to accept that she is aligned with the Sultan group, however they drew the Tribunal's attention to her appearing only to criticize Noor in her evidence and

submissions and that Ms Bashir wants three of the trustees who were at the "Sultan Group" meeting (with Aftab Zaman) to be made trustees and that her representative has, in the past, represented Sultan.

- 32.1.7. If there was a second charity claiming to be the Mohiuddin Trust which collected money in that name, that would be a problem. However, here there were two charities, the Charity and the "Alauddin Siddiqui Trust" competing in the same space, but the Charity Commission found no evidence of passing off by the Alauddin Siddiqui Trust, that is of them claiming to be the Mohiuddin Trust.
- 32.1.8. The burden is on Ms Bashir to persuade the Tribunal that the Charity Commission was wrong to make the s. 80(2)(b) Order on 01 July 2020; but the evidence clearly shows that the two trustees complained of should continue in their roles as trustees.
- 32.1.9. In conclusion, the appeal should be dismissed, meaning that the Charity's trustees should remain as the individuals named in the Order: Ms Bashir, Tahir Choudry, Mr Mahmood, Asied Malik, Zahid Nawaz and Zaid Rehman.

32.2. Mr Mahmood:

- 32.2.1. The Charity is in a very different place now than when he and the other were appointed as trustees. The Board members who have been meeting (Mr Mahmood, Tahir Choudry, Asied Malik, Zahid Nawaz and Zaid Rehman) are working well together and have been working through the Action Plan issued by the Charity Commission when the Interim Manager was discharged by the Charity Commission in December 2020.
- 32.2.2. In conclusion, the appeal should be dismissed, meaning that the Charity's trustees should be the individuals named in the Order: Ms Bashir, Tahir Choudry, himself, Asied Malik, Zahid Nawaz and Zaid Rehman.

32.3. Ms Bashir:

- 32.3.1. The skeleton argument lodged on behalf of Ms Bashir was adopted as her final submissions. In it, she argues that the selection process did not take account of conflicts of interest as Tahir Choudry was a member of one of the groups competing to be represented on the

board of trustees; she also argues that because the Interim Manager did not (through illness) attend the second of the interview days the interview process and outcome were both flawed.

- 32.3.2. Further, Ms Bashir's representative argued that there should have been two stages to the process of settling on Tahir Choudry and Zahid Nawaz as trustees. Firstly, hearing from each about their commitment, loyalty and genuine intention to promote the Charity (which the Interim Manager did) and secondly looking at the whole picture and asking whether, despite their expressions of commitment, loyalty and genuine intentions, it would be seen as objectively proper to appoint these two individuals. It was submitted that that the Interim Manager went wrong at the second stage because Tahir Choudry and Zahid Nawaz had promoted and done fundraising for the Alaudin Siddiqui Trust and, therefore, could not be considered suitable trustees for the Charity.
- 32.3.3. As part of the second step, it was argued, the Interim Manager should also have concluded that, as Tahir Choudry was a member of a group associated with a "rival" charity, he should not be appointed and that, as she had in her interim report been concerned about the possibility of the existence of Alaudin Siddiqui Trust detracting from the success of the Charity, this should have led to her not recommending Tahir Choudry and Zahid Nawaz for appointment as trustees of the Charity.
- 32.3.4. In conclusion, Ms Bashir argues, the appeal should be allowed and the Tribunal should quash the appointments of Tahir Choudry and Zahid Nawaz and remit the matter to the Charity Commission "with further directions to set up a process of selecting replacement trustees under a new Interim Manager"; that there should be seven or perhaps nine trustees in total and that the Tribunal considers directing the Charity Commission to "consider whether the experienced [Aftab Zaman], who has served the [Mohiuddin Trust] for twenty-five years ..., should be included in the new board" or, alternatively, be given a role in the Charity.
- 32.3.5. At the hearing, Mr Merali summarised Ms Bashir's position as being that the Interim Manager should have taken a step back and considered the guidelines about conflicts of interest and used her own intuition

concluding that, where there was even the possibility of a conflict of interest, she should not recommend the appointment of Tahir Choudry and Zahid Nawaz. If they had not been appointed, all the problems the Charity faces today would have been avoided.

Jurisdiction

33. Whilst it seems important to deal with jurisdiction first as, if the Tribunal does not have jurisdiction, the Tribunal must strike out the appeal (see rule 8(2)(a) of the GRC Rules), the jurisdiction issue only really comes into play if the appeal is allowed:
 - 33.1. Sch. 6 of the Charities Act 2011 clearly grants the Tribunal jurisdiction to consider the making of the s. 80(2)(b) Order.
 - 33.2. Whilst the Tribunal perhaps does not have jurisdiction to find that the trustee selection process was “flawed”, it clearly can, as part of considering matters afresh, consider whether, based on the recruitment process that took place, this Panel would have appointed the trustees named in Order dated 01 July 2020.
 - 33.3. It seems to us that the jurisdiction question goes to what the Tribunal can do if the appeal is allowed (i.e., what Sch. 6 means by “substitute” and “add to the order”).
34. Therefore, we will first consider whether we allow the appeal because only then does the question of jurisdiction become relevant.

Consideration

35. We will first concentrate on the issues which Ms Bashir, via her representative, identified as being her concerns, namely (in the order in which we will deal with them) (a) that Tahir Choudry and Zahid Nawaz each has a conflict of interest, (b) that Tahir Choudry and Zahid Nawaz were connected with the Alaudin Siddiqui Trust and that, of itself, should have meant that they should not have been appointed as trustees of the Charity and (c) the process of appointment was flawed.

Conflict of interest

36. Ms Bashir is convinced that each of Tahir Choudry and Zahid Nawaz had a conflict of interest, at the time of interview and at the time of appointment. By continuing her appeal to its hearing date, we conclude that she is also convinced that Tahir Choudry and Zahid Nawaz have a conflict at the present time.
37. We hope that Ms Bashir will carefully read our objective analysis below of the evidence upon which she has based her conviction.

38. By way of background, it is not clear to us why Ms Bashir believes that her preferred candidate to be a trustee (Aftab Zaman) who has served the Charity for twenty-five years, has no conflict of interest. It is also not clear to us why Ms Bashir sincerely believes that she does not have any allegiance to either Sultan or Noor when she has chosen to instruct Mr Merali (who has previously advised Sultan) and does not make any criticism of Sultan in her appeal documents but is highly critical of Noor. However, what each of the brothers has (or has not) done does not need to be determined by us in this appeal.

Conflict of interest – Tahir Choudry

39. Ms Bashir states in paragraph 28 of her witness statement (see page 4 of the witness bundle) that:
- 39.1. Tahir Choudry was a party to the initial dispute which led to the former board being disbanded and replaced by an Interim Manager.
- 39.2. Tahir Choudry was a fundraiser for a competing charity, the Alaudin Siddiqui Trust whose mission and outlook is “virtually identical” to the Charity’s.
- 39.3. Tahir Choudry was the “fundraising face of [Alaudin Siddiqui Trust]”.
- 39.4. Tahir Choudry helped deliver projects on behalf of the Alaudin Siddiqui Trust as evidenced by social media which “conflicted with his role on [the Charity]”.
40. In support of this evidence, Ms Bashir relied on photos which, she said, confirmed that there was (and is) a conflict of interest. It was not challenged that the person on the right-hand side in the top left photograph on page 569 of the Hearing Bundle is of Tahir Choudry; no evidence was provided about who the other person in the photograph is. The photograph is in a screenshot, dated 07 December 2019, of a social media account run in the name “Tahir Choudry” the other screenshots are dated 09 December 2019 and 30 December 2019.
41. Therefore, we conclude that, on the balance of probabilities, Tahir Choudry (who was on 01 July 2020 appointed as a trustee of the Charity) was, in December 2019 handing out aid in Bangladesh and was “happy to see Alaudin Siddiqui Trust doing [a] fantastic job”.
42. This must be placed in context: in December 2019 the Charity was subject to a statutory inquiry and placed, by the Charity Commission, under the governance of an Interim Manager. Due to all that had previously happened, it was not possible for anyone seeking to serve in Shaykh Alaudin’s name to do so under the banner of the Charity (i.e., by going to Bangladesh as part of a Mohiuddin Trust mission).

43. The evidence before us suggests, therefore, that in December 2019 Tahir Choudry decided that he wanted to honour Shaykh Alaudin and found a way of doing so.
44. Ms Bashir's assertion that Tahir Choudry was a party to the initial dispute (paragraph 28(i)) does not appear to be supported by any other evidence. Therefore, we cannot rely on that assertion.
45. The Charity Commission, prior to making the s. 80(2)(b) Order, considered the evidence provided by Ms Bashir. The caseworker wrote to Tahir Choudry (see email sent on 15 June 2020 at 14:05 on page 414 of the Hearing Bundle) setting out the concerns and he replied (see email sent on 15 June 2020 at 16:39 on page 415 of the Hearing Bundle) by stating (in relation to the Alaudin Siddiqui Trust): "I can assure you that I have not been involved in any fundraising appeals for the Alauddin Siddiqui trust for a long time, My heart and mind is clear that I want to work with the Mohiuddin Trust and carry on with the legacy of Shaykh Pir Alauddin Siddiqui RA and support as much as possible with my full capacity, I am fully committed with my time and efforts."
46. The Charity Commission also wrote to Tahir Choudry on 18 June 2020 at 13:18 (see page 418 of the Hearing Bundle) about a Noor TV clip/video which Ms Bashir had supplied asking if he is the speaker, whether he appears in the video and for his assessment of the concern that donations are sought for the Alaudin Siddiqui Trust rather than the Charity (Mohiuddin Trust). Tahir Choudry responded by email sent on 19 June 2020 at 00:34 stating "I can confirm that I am not the speaker in the video and I am also not present in the video". He characterized the allegations about him as "false". Tahir Choudry wanted to know who had raised these concerns; it is not clear at what point he became aware that it was Ms Bashir (the proposed Chair of the Charity), indeed, it may be that he is not yet aware of this, and we deal with the repercussions of that in the section below titled "Going Forward".
47. As set out at paragraph 28 above, the Court of Appeal's instruction in *Hope and Glory* must guide us here. The Charity Commission did investigate Ms Bashir's serious allegations against Tahir Choudry prior to issuing the s. 80(2)(b) Order. The caseworker did this by writing to him and having received his responses, concluded that they did not need to take matters further. In our judgment the Charity Commission came to a reasonable conclusion that the evidence provided by Ms Bashir did not provide a reason why Tahir Choudry should not be appointed but did provide a reason why this Charity (and especially its Chair) needed to carefully manage potential conflicts of interest.
48. We conclude that, objectively, and taking Ms Bashir's evidence at its highest, Tahir Choudry's involvement with Alaudin Siddiqui Trust did not amount to a conflict of interest which should have precluded him from being a trustee for the Charity. It did, however, amount to a potential conflict of interest which the trustees (particularly the Chair) could, and should, have sensitively explored with Tahir Choudry.

49. Part of Ms Bashir's case is that there was an undeclared conflict of interest. However, as Chair of the trustees (and when Chair elects), Ms Bashir could have pointed Tahir Choudry to what she had seen and explained that she felt he should declare this as a potential conflict of interest. This would have encouraged him to discuss matters with Ms Bashir and, perhaps, give her the reassurance that she needed about his intentions and loyalty.

Conflict of interest – Zahid Nawaz

50. Ms Bashir, in her witness statement says that "I expressed my reservations about Zahid Nawaz on a number of occasions to both [Emma Moody] and the Charity Commission but it all seemed to fall on deaf ears". Her concerns specific to Zahid Nawaz are, it appears, found on page 143 of the hearing bundle where she expresses concern in an email sent to Ms Moody on 03 March 2020 at 12:07: "... after the phone calls with the two Zahid's was my concern was Loyalty and Commitment to the Mohiuddin Trust".
51. Ms Bashir's evidence that the person seen at the podium in the photograph on page 574 of the Hearing Bundle is Zahid Nawaz was not challenged Ms Bashir did not know who else was in that picture. It is placed next to a poster which advertises a Conference on 19 October 2019 under the name of Muhammad Noor-Ul-Arfeen, a photograph which appears to be the same as one found on the poster is seen at the back of the photo which includes Zahid Nawaz. Therefore, we conclude that the photograph is of Zahid Nawaz speaking at that event. Another photograph that she relies on is found on page 575 and says that a "Special Tribute Show" to Alauddin Sidiqqi will be broadcast on Noor TV on 08 March 2017 and hosted by Raja Zahid Nawaz.
52. Dealing first with the broadcast on 08 March 2017 which, according to the evidence, was before trustees of the Charity had come into internal dispute. There does not appear to us to be anything untoward with Zahid Nawaz having hosted a tribute show and it does not, to us, objectively show that Zahid Nawaz has a conflict of interest. Even if the complaint is that the show was on Noor TV, we consider that this was the usual practice at that time, that Noor TV was used by the Charity as its main way of engaging with its public (indeed, one of the Interim Manager's concerns was the lack of documentation setting out the nature of the relationship between the two entities).
53. Turning then to the Conference on 19 October 2019. Objectively, the attendance at an event which was about the life and work of Shaykh Alaudin and at a time when the Charity (the Mohiuddin Trust) was not functioning does not, on an objective analysis, appear to show a conflict of interest which should have prevented Zahid Nawaz from becoming a trustee of the Charity in 2020.
54. Looking at the two matters together: in 2017 and in 2019 Zahid Nawaz was involved in events about Shaykh Alaudin. Even taking the two matters together, objectively, we find that the two events (which appear to be the only ones linked to Zahid Nawaz) do not amount to showing that a conflict of interest existed.

Moreover, if a conflict of interest was found to exist by the trustees of the Charity, any such conflict was capable of being managed by them, under the leadership of the Chair. Again, Ms Bashir could have asked Zahid Nawaz directly about these issues and managed her concerns in that way instead of through appeal to the Tribunal.

Connections to Alaudin Siddiqui Trust

55. The allegation here is that the Alaudin Siddiqui Trust for 6 months ran an extended advertising campaign on Noor TV claiming the Charity's projects as its own which channelled donors away from the Charity and into the Alaudin Siddiqui Trust. That fundraising appeals were run on Noor TV for a Rohingya/Burma project under the banner of the Charity but not delivered (as the Charity Commission froze the Charity's account) and that Alaudin Siddiqui Trust was later created and delivered aid to that project.
56. To support this, Ms Bashir relies on the concerns expressed by the Interim Manager in her Interim Report on 07 June 2019 and on a transcript of an Alaudin Siddiqui Trust appeal which was on Noor TV on 06 June 2018. The transcript is found on page 581 of the Hearing Bundle. The words are spoken by a person called Shezard Mogul, in an appeal hosted by Shezard Mogul, Mujtaba Hussain and Noor Ul Arfeen:

... Pir Alauddin Siddiqui has always worked on the front line. This is what I want to keep reminding you of that this is the same charity that has been established in the name of Hazrat Sahib (Pir Alauddin Siddiqui). This is the same charity and the same mission that Hazrat Sahib used to run. I keep telling you for those people with any doubt that after the passing of Hazrat Sahib this responsibility has fallen to Noor Ul Arfeen. Neither has the charity changed, nor have the people changed nor has the mission changed. It's the same way, same footpath, same people, same friends, same projects. All that has changed is the responsibility has been passed to (NUA) who is making full effort with sincerity and honesty to carry the responsibility that has been bestowed upon him.

Tomorrow on the day of Judgement when in front of his father he (NUA) can say 'the responsibility you gave me and the trust you vested in me....this is the result'....

57. Ms Bashir's evidence and the submissions made on her behalf do not connect Tahir Choudry or Zahid Nawaz to the comments made by Shezard Mogul. It seems that the height of this point is that, as Tahir Choudry and Zahid Nawaz supported the Alaudin Siddiqui Trust, they must therefore agree with what Shezard Mogul stated on 06 Jun 2018. Objectively, this is not supported by any evidence. Again, it is something which the trustees could have discussed and that Ms Bashir, as Chair, could have raised in an appropriate way – either individually with Tahir Choudry and with Zahid Nawaz, or with the two of them together or at a Board meeting.

58. Furthermore, we find that Ms Bashir's evidence and submissions do not connect Tahir Choudry or Zahid Nawaz directly with any passing off. It is also the position that the Interim Manager's concerns were just that, concern about passing off by another entity. It seems that the Charity Commission did not take those concerns further as they considered that the two charities were sufficiently different in name, etc., so that donors were not being misled as to which body they were donating to.

Process of appointment

59. In December 2019 the Charity Commission established that there were no trustees of the Charity and so appointed an Interim Manager, Ms Moody, who was tasked with recruiting trustees.
60. Whilst mention was made of the recruitment process being "illegal" (i.e., in some way contrary to the law), Ms Bashir and her representative did not identify which law was broken.
61. It appears to us that, overall, Ms Bashir's position is that the process was flawed only in respect of some appointments. For example, it does not appear that she considers that she should not be appointed and, given the outcomes she now seeks from the proceedings, it appears that she does not believe that Mr Mahmood, Aseid Malik or Zaid Rehman should not have been appointed.
62. Ms Moody's evidence is that she and her team engaged with the community which follows the founder Shaykh Alaudin. One outcome of that engagement was that it seemed to her that many of those in the community of Shaykh Alaudin's followers had views about the dispute. Therefore, when considering how to recruit and appoint trustees, Ms Moody considered it would be almost impossible to find a sufficient pool of potential trustees if she excluded from consideration those who had (or may have had) an allegiance to one or other brother or those who had a view about the internal dispute.
63. Ms Moody arranged for the trustee positions to be advertised on the Charity's website and in the sector press, requesting any person seeking to apply to provide a CV and a covering letter, we understand that each applicant could state whether they were interested in being Chair or Vice Chair as well as being a trustee without those additional responsibilities.
64. Ms Moody decided to first set out to appoint a Chair and a Vice Chair and, following shortlisting and interviews at which Ms Moody was present, Ms Bashir (appellant) was appointed as the Chair and Mr Mahmood (Second Respondent) was appointed as the Vice Chair. Amongst those unsuccessful at the interview for Chair/Vice Chair were Aftab Zaman, Noor (the younger brother) and Sultan (the elder brother). That neither of the sons of the founder of the Charity was accepted following interviews informs us that Ms Moody was diligently reviewing all possible candidates in an impartial manner.

65. A second date was set for interviews for potential trustees. Ms Moody was unable (through illness) to be present at the interviews for trustees. Ms Bashir participated in the interviews for trustees as one of the interviewers, the other interviewers being Mr Mahmood and two of Ms Moody's colleagues. Ms Bashir did not, on the date of the interview, raise any objection to going ahead without Ms Moody being present; Ms Bashir states in her evidence that she was concerned that the advert had not reached all those who it should have reached but it appears that, on the date of the interview, she went ahead with the candidates who had been identified.
66. Ms Bashir's case has developed in her evidence and in the skeleton argument lodged on her behalf (which was adopted as final submissions) and it seems that the flaws she alleges in the recruitment process are:
 - 66.1. The correct criteria of selecting new trustees "was to ensure that no one from the former dispute would be included on the new board"; Ms Moody did not take on one previous trustee because she wanted a clean slate which criterion was disapplied when appointing Tahir Choudry.
 - 66.2. Ms Moody should, following the interviews, have stood back and concluded that Tahir Choudry and Zahid Nawaz were not suitable for appointment.
67. The problem with the first assertion is that it was not possible to work out who was on the former board. If Ms Moody had made that a criterion then, with the lack of evidence about who was (and therefore, who was not) "on the former board", there could have been no certainty about who was eligible for appointment. We therefore find as a fact that, on the balance of probabilities, Ms Moody did not decide against any candidates as a result of aiming to look only for those with a "clean slate".
68. It is clear to us that the Charity Commission took appropriate steps to investigate Ms Bashir's concerns about Tahir Choudry and Zahid Nawaz. It was after those matters had been considered that they were, under the Order of 01 July 2020, appointed. Just because Ms Moody and the Charity Commission did not agree with Ms Bashir, does not of itself mean that they did not take her concerns seriously; they simply concluded that any appearance of conflict could be managed by the trustees, including the Chair. The trustees' training included training about conflicts of interest and managing them, this demonstrates to us that there was an awareness of the issue being potentially live and that the Charity Commission and Ms Moody (as Interim Manager) wanted to ensure that all trustees had that at the front and centre of their mind.
69. Ms Bashir says that she felt her concerns were overlooked and that she felt dismissed; we have no reason to go behind her evidence of how she was feeling inside. It is possible that she was not told about all the steps which were being taken to look into the concerns and that is regrettable. It seems that Ms Bashir's

understanding of what actually happened could have been helped if she had been more involved and/or informed about what was going on.

70. With the benefit of hindsight, it would probably have been better for the Charity Commission and Ms Moody to have dealt with the concerns by engaging with Ms Bashir and finding out what reason (if any) she had for not discussing the issues with the person who was to be her Vice Chair, encouraging (even persuading) her to talk to Mr Mahmood and then giving them (the Chair and Vice Chair) more information about what had been done to look into these concerns and why the Charity Commission and Ms Moody did not consider the concerns to be such as to prevent Tahir Choudry or Zahid Nawaz from being trustees. This would have been consistent with the decision to include Ms Bashir and Mr Mahmood in the interview selection process. However, the position at the time that Ms Bashir raised her concerns was that she, like Mr Mahmood and the other four individuals, were prospective trustees of the Charity and it may not have been appropriate for it to appear that the prospective Chair and Vice Chair were being given preferential treatment in the due diligence process.
71. It is likely that there were flaws in the process, but that is because no process is perfect. It is possible that Ms Moody underestimated the strength of feeling about the bothers and the dispute; it is also possible that Ms Moody did not fully understand the cultural sensitivities surrounding the Charity, the brothers and Shaykh Alaudin. We do, however, believe, that she did her best with the information as she understood it; we are sure that (as she said in her evidence) she will have learned from this experience and will use that learning in any future Interim Manager appointments.
72. We believe that Ms Moody was right to conclude that there was insufficient evidence that Tahir Choudry and Zahid Nawaz had conflicts of interest such that they could not carry out their duties as trustees of the Charity. Therefore, we have, for the reasons set out above, concluded that Ms Moody lawfully and reasonably decided that they should have been appointed as trustees of the Charity.

Conclusion

73. The recruitment process was not "illegal".
74. The recruitment process was not so fundamentally flawed as to cause any illegality.
75. Any perceived conflict of interest of Tahir Choudry and Zahid Nawaz was, based on the evidence provided, not a reasonable perception. Even if there was the perception of conflict of interest due to the matters unearthed by Ms Bashir, they were capable of being managed by her as Chair along with her fellow trustees. The recruitment process was, therefore, right to consider that Tahir Choudry and Zahid Nawaz were suitable to be appointed as trustees.

76. We have considered the statutory test. In other words, we have asked ourselves “was the criteria of s. 80(2)(b) met on 01 July 2020¹”. We find the answer is “yes”:
- 76.1. The Charity Commission had appointed an Interim Manager to the exclusion of any trustees and, therefore, no trustees were appointed to the Charity.
- 76.2. The Charity Commission was therefore able to appoint trustees to the Charity.
77. Having considered all the evidence before us we are satisfied that, on the balance of probabilities, the appointments made were appropriate.

Ms Bashir

- 77.1. On 01 July 2020, Ms Bashir was in a very special position. She was a woman appointed to be Chair of a charity which has significant prominence in the eyes of those who wish to honour the work, life and legacy of Shaykh Alaudin.
- 77.2. Ms Bashir had concerns about two of the trustees, Tahir Choudry and Zahid Nawaz. She had the ability to discuss those concerns with each of Tahir Choudry and Zahid Nawaz on a private basis. Further, there was a Board Meeting on 27 July 2020 when Ms Bashir could have raised her concerns. This particularly applies to Tahir Choudry who asked at a Board Meeting on 27 July 2020 (see page 586 of the Hearing Bundle): “My question to this concern [about the allegations made against him] will be to Emma, Shazia and Tariq. Are you guys aware of the complaint against my name?”, he went on to ask: “Do you guys [meaning Ms Moody, Ms Bashir and Mr Mahmood] know about this, any of this, my allegation or complaint that has been made against my name through this process?”. Ms Bashir did not, it seems, tell him and the other present that she had made the complaint; the transcript (the accuracy of which was not challenged) records her as saying “if we’re [going to] work as a team together moving forward, we have to trust each other” and “was this video shared with this group?”. It may be that Tahir Choudry was, prior to the hearing on 17 September, aware that Ms Bashir was the person who raised concerns about him. If he is not already aware, he will be when he reads this decision.
- 77.3. Instead of raising those concerns privately, alongside her Vice Chair or in a Board Meeting, Ms Bashir chose to bring these proceedings. It seems to us that this has the potential to bring the Charity back to

¹ Whilst the Tribunal often expresses its decision as “would we, at the time of hearing decide...”, that seems inappropriate as, at the date of the Charity Commission’s decision there were no trustees whereas there are now trustees

where it was in 2017/18, namely with there being conflict between trustees. We did consider whether this meant that we should, when considering matters afresh (and as we can consider matters not before the Charity Commission) amend the Order so that Ms Bashir was no longer appointed as a trustee.

77.4. Ms Bashir was asked in cross-examination whether she had been influenced to appeal. Her answer was "Do I look like I can be influenced?". We understand that to mean that these proceedings, and despite being represented by a solicitor who had been assisting Sultan, were Ms Bashir's idea.

77.5. Whilst we are concerned about her bringing the appeal and that she did not appear to be open with her fellow trustees about that, the Charity Commission and Mr Mahmood present their opposition on the basis that the appeal should be dismissed, meaning that Ms Bashir remains a trustee and remains appointed as Chair. We agree.

Tahir Choudry

77.6. For the reasons set out above, we consider that his appointment was appropriate.

Mr Mahmood

77.7. In this appeal Ms Bashir raised no issues with him continuing in his post as trustee.

Aseid Malik

77.8. In this appeal Ms Bashir raised no issues with him continuing in his post as trustee.

Zahid Nawaz

77.9. For the reasons set out above, we consider that his appointment was appropriate.

Zaid Rehman

77.10. In this appeal Ms Bashir raised no issues with him continuing in his post as trustee.

78. We conclude that we would ourselves have made the Order at the time it was made and that we would appoint the same trustees in that Order now.

79. Accordingly, Ms Bashir's appeal against the Charity Commission's Order is dismissed.

Going forward

80. Mr Mahmood was asked whether he and his fellow trustees would still be able to work with Ms Bashir. His reply was “this is about being professional” and that, whilst he perhaps had concern about whether Ms Bashir would be able to work with him, Tahir Choudry, Aseid Malik, Zahid Nawaz and Zaid Rehman, he did not see that they would have a difficulty in working with Ms Bashir. He fully understood that if, as he was asking, the Tribunal dismissed the appeal, that would mean that Ms Bashir remained as a trustee and as Chair.
81. We are concerned that, if Ms Bashir remains adamant that Tahir Choudry and Zahid Nawaz have conflicts of interest, it will be difficult for her to effectively lead the Board of trustees. We ask that she understands what we have concluded about Tahir Choudry and Zahid Nawaz and that she reflects on the work which has been done by the Board to move the Charity on to a position of being able again to do the work which Shaykh Alaudin originally desired the Charity to do.
82. Another matter which will, we hope, assist the Charity as it moves forward is for Mr Mahmood to immediately (re-)send to Ms Bashir the minutes of meetings (with agendas and supporting documents) of the Board and of any Sub-Groups which have been prepared since the Board first met (we believe this was 27 July 2020). Ms Bashir stated to us that she had not been sent minutes of meetings when she has not been attending, indeed she indicated that she had not been invited to meetings. We do not need to make any findings on this as it is not relevant to our decision; but we encourage Mr Mahmood to enable Ms Bashir to be an effective Chair of this trust, as appointed by the Charity Commission on 01 July 2020 and confirmed by this decision.
83. Finally, we encourage all parties involved in this latest dispute in this charity, particularly Ms Bashir and the two trustees who she asked to be removed (Tahir Choudry and Zahid Nawaz) not to allow their feelings about each other to prevent the Charity from fulfilling its objects. This may well take some time as many elements of trust need to be (re-)built; but it seems to us that Shaykh Alaudin would want those who follow his teaching and work to progress that by carrying out good works rather than throwing this Charity (which is only now becoming effective after a period of stasis) into further, internal, dispute.

DDJ Worth

Deputy District Judge Worth, authorised to sit as a Tribunal Judge in the GRC

Dated: 06 October 2021, amended (rule 40) 11 October 2021