



Appeal number: CA/2020/0009/P

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

The Sikh Channel Community Broadcasting Company Limited Appellant

- and -

The Charity Commission for England and Wales Respondent

Before:

**Judge Rebecca Worth
Lay Member Helen Carter-Shaw
Lay Member Stuart Reynolds**

Determined on the papers, the Tribunal sitting in Chambers on 30 July 2020

DECISION

1. The appeal is allowed.
2. The decision to appoint an Interim Manager is quashed.

MODE OF HEARING

3. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of the Chamber's Procedure Rules.
4. The Tribunal considered a bundle of evidence comprising pages A1 to A1272; the Tribunal also considered a skeleton argument submitted by the respondent, a bundle of authorities and submissions sent in on behalf of the appellant. We are grateful to parties for their submissions.

REASONS

Background

5. The Sikh Channel Community Broadcasting Company Limited ("the Charity") is a registered charity (1136163).
6. On 13 November 2019 the Charity Commission opened a Statutory Inquiry under s. 46 of the Charities Act 2011¹. On 19 March 2020, the Charity Commission made an Order pursuant to s. 76(3)(g) of the Charities Act 2011 to appoint an Interim Manager².

Appeal to the Tribunal

7. A Notice of Appeal dated 28 April 2020 was submitted to the Tribunal in which the Charity appeals against the decision, made on 19 March 2020, to appoint an Interim Manager of the Charity.
8. The Charity's Notice of Appeal relied on grounds of appeal which can be summarised as follows:
 - 8.1. The statutory inquiry is unwarranted by a miscalculation of risk and by misjudging the facts;
 - 8.2. The appointment of an interim manager is unwarranted by a miscalculation of risk and by misjudging the facts;
 - 8.3. The Charity Commission misconstrued the size of the Charity by describing it as a "big charity" whereas the Charity has a "hand to mouth" existence;
 - 8.4. The Order has locked down the Charity and deprived it of management rather than protect the Charity;

¹ See letter, dated 14 November 2019, from Charity Commission to the Charity found at pages A50-A57 and A223-A231 of the bundle and the decision log at pages A219-A222

² In fact, 2 persons were appointed, for the purpose of this decision we will use the singular

- 8.5. The Charity Commission's decision to appoint an Interim Manager has brought the Charity close to insolvency, disenchanted the Trustees and damaged the Charity's reputation, the reputation of the Trustees and caused the SMART centre to be closed;
- 8.6. The Covid-19 prevents the Interim Manager from engaging with the Trustees;
- 8.7. Appointment of non-Sikhs in the position of Interim Manager breached the Equality Act.
9. In respect of the outcome sought, the Charity asked the Tribunal to:
 - 9.1. Discharge the appointment of the Interim Manager;
 - 9.2. Thoroughly review the need for a Statutory Inquiry.
10. The Charity Commission's Response dated 21 May 2020 resisted the Charity's grounds of appeal, its grounds of opposition as summarised in its skeleton argument dated 20 July 2020 were:
 - 10.1. The Charity Commission has opened an Inquiry into the Charity, that step was not challenged or appealed, so the first criteria for the making of the order is satisfied.
 - 10.2. There is substantial evidence to support the conclusion that, on the balance of probabilities, there was misconduct and/or mismanagement by the former trustees.
 - 10.3. That there is sufficient evidence to conclude that, on the balance of probabilities, the new trustees have also failed in their duties as trustees since their appointment by failing to recognise and manage conflicts of interest and by failing to ensure that programs that do not meet charity objects are not broadcast and that the former trustee, Mr D Bal, is still very involved in the management of the charity.
 - 10.4. That the Interim Manager's report (appeal bundle pages A1011 to A1012) suggests a number of current concerns, including a lack of financial monitoring, inadequate arrangements with connected companies and possible breach of the Commission's order by furloughing all employees without discussing with the Interim Manager.

The Law

11. Section 76 of the Charities Act 2011 provides (where relevant) as follows:

76 Suspension of trustees etc and appointment of interim managers

- (1) Subsection (3) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is satisfied—

- (a) that there is or has been [a failure to comply with an order or direction of the Commission, a failure to remedy any breach specified in a warning under section 75A, or any other] misconduct or mismanagement in the administration of the charity, or
- (b) that it is necessary or desirable to act for the purpose of—
 - (i) protecting the property of the charity, or
 - (ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity.
- (2)
- (3) The Commission may of its own motion do one or more of the following—
 - (a).....(f)
 - (g) by order appoint (in accordance with section 78) an interim manager, to act as receiver and manager in respect of the property and affairs of the charity.
- (4) ...
- (5) ...
- (6) The Commission—
 - (a) must, at such intervals as it thinks fit, review any order made by it under paragraph (a), or any of paragraphs (c) to (g), of subsection (3), and
 - (b) if on any such review it appears to the Commission that it would be appropriate to discharge the order in whole or in part, must so discharge it (whether subject to any savings or other transitional provisions or not).
- (7)

12. Section 78 of the Charities Act 2011 provides (where relevant) that:

- (1) The Commission may under section 76(3)(g) appoint to be interim manager in respect of a charity such person (other than a member of its staff) as it thinks fit.
- (2) An order made by the Commission under section 76(3)(g) may make provision with respect to the functions to be discharged by the interim manager appointed by the order.

This does not affect the generality of section 337(1) and (2).

- (3) Those functions are to be discharged by the interim manager under the supervision of the Commission.
 - (4) In connection with the discharge of those functions, an order under section 76(3)(g) may provide—
 - (a) for the interim manager appointed by the order to have such powers and duties of the charity trustees of the charity concerned (whether arising under this Act or otherwise) as are specified in the order;
 - (b) for any powers or duties specified by virtue of paragraph (a) to be exercisable or performed by the interim manager to the exclusion of those trustees.
 - (5) ... (9)
13. There is no statutory definition of the terms “mismanagement” or “misconduct” so the terms carry their ordinary meaning. The Charity Commission’s published guidance defines them as follows:
- “misconduct includes any act (or failure to act) in the administration of the charity which the person committing it knew (or ought to have known) was criminal, unlawful or improper”.*
- “mismanagement includes any act (or failure to act) in the administration of a charity that may result in significant charitable resources being misused or the people who benefit from the charity being put at risk”.*
14. 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.
15. An appeal against the Charity Commission’s Order under s. 79(3)(g) 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).
16. 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 (or continue the appointment of) an Interim Manager on the basis of the evidence now before it. There is no right of appeal under s. 78 of the 2011 Act concerning matters such as the identity of the Interim Manager appointed, their remuneration or the timescale for their work. We have considered whether the appointment of an Interim Manager was necessary and/or premature; we have not considered whether the appointment of 2 individuals from the solicitors firm Anthony Collins was, or was not, the right appointment to make.

Evidence

17. Documentary evidence was contained in the hearing bundle; the bundles included witness statements for the Charity from the two current trustees (Manjinder Khatra and Satnam Singh Bal), two former trustees, Davinder Bal and Paul Singh and from an employee, Gaganjeet Soroya. Thomas Yin provided a witness statement on behalf of the Charity Commission.
18. The Tribunal's Case Management Directions dated 18 June 2020 (pages A167 to A169 of the bundle) set out the steps that the Charity was to take to provide evidence and submissions; the dates were amended on 21 July 2020 and all evidence should have been provided by 13 July 2020. Skeleton arguments should have been lodged and served by 24 July 2020.
19. Following an urgent telephone hearing at 12:30 p.m. on 30 July 2020, the Charity was given permission to provide a skeleton argument by 1:45 p.m. on 30 July 2020, thus enabling the Panel to have sight of that when meeting to discuss the merits of the appeal. A separate document records the Judge's decision in that urgent telephone hearing.
20. The Charity provided written submissions, which were undated and unsigned, by email on 30 July 2020 at 13:35; as above, those were considered.
21. The Charity also provided a zip file of additional documents, we did not consider it necessary or appropriate to open the documents contained therein as the Charity had only been given permission to provide a skeleton argument.
22. Finally, the Charity provided a document named "S.47 DSP Part 2(1)", we did not consider it necessary or appropriate to refer to the contents of that document, again because the Charity had only been given permission to provide a skeleton argument.

Submissions

23. The Charity Commission's submissions dated 20 July 2020 are summarised above (paragraph 10).
24. The Charity's document of submissions provided by email on 30 July 2020 at 13:35 may be summarised as follows:
 - 24.1. The Interim Managers have, in the past, acted for the Charity and, therefore have a conflict of interest in being Interim Managers appointed by the Charity Commission.
 - 24.2. That the Charity Commission had not listened to explanations about the entry "Jewellery Quarter" on bank statements.
 - 24.3. That the Charity Commission had not recognised that Sikhs have special characteristics.
25. One point of concern in those submissions was the comment, at paragraph 28: "Then the Respondent proceeds to discredit new Trustees who dared support me,..."; which the Panel felt may indicate they had been drafted by Davinder Bal who is not a current trustee of the Charity. The new point in the submissions –

choice of Interim Manager – cannot be part of this Tribunal’s consideration (see paragraph 16 above), therefore we did not need to investigate the authorship of the submissions as the points which were relevant (that is, on which we could rely) had been covered by previous submissions.

Consideration

26. The Charity Commission’s decision to commence the Statutory Inquiry could have been appealed to this Tribunal. The Charity did not lodge an appeal and the Charity will not be permitted to use these proceedings to go behind the decision to open the Statutory Inquiry. The outcome sought by the Charity to “thoroughly review the need for the statutory inquiry” is not available within these proceedings.
27. We consider that the current trustees – Manjinder Khatra and Satnam Singh – overall accept that there had been mismanagement of the Charity, at least by the former trustees.
28. We considered the evidence about the meeting on 10 January 2020 at which the then trustees (Manjinder Khatra, Satnam Singh and Paul Singh) sought to deal with the historic problem of Davinder Bal’s apparent self-appointment as CEO. By that date, Davinder Bal was no longer the CEO of the Charity. The Charity Commission consider this evidence of mismanagement by the current trustees. On balance, we considered that the new trustees – i.e. those calling the meeting and making the decisions – believed that they were required to in some way regularise the historic fact of Davinder Bal’s CEO appointment; it seems to us that they believed they needed to do that to enable them to move forward. We do not consider that to be an example of mismanagement or misconduct.
29. Having read all the documents, including the statements from the current trustees and from Paul Singh (who was a trustee for a short period of time and is willing to be so again) we are satisfied that, on the balance of probabilities, those trustees demonstrated a genuine desire to act in the interest of the Charity and we find that they were independently minded and not influenced by Davinder Bal.
30. We also took account of the evidence by which the current trustees seem to recognise that they are coming into a Charity which is currently in difficulties. We note that they indicated a willingness to receive guidance from the Charity Commission – for example by asking for a meeting in January 2020 – and were seeking to progress the Charity’s work from the position the Charity was in when they became trustees. It seemed to the Panel that, on considering all the evidence, Manjinder Khatra, Satnam Singh and Paul Singh would have responded positively to being asked to agree an Action Plan about matters of regulatory concern, such as whether the Charity’s Governing Document needed amendment, the writing of policies and having procedures in place to regulate financial matters and a policy or procedure whereby the trustees gave the Charity’s staff clear direction about what could, and could not, be broadcast by the Charity.
31. The Panel consider it to be most regrettable that the Charity Commission did not use its power under s. 76(3)(b) of the Charities Act 2011 to appoint new trustees, perhaps finding suitable persons from within the Sikh community. Such a step would strengthen the trustee board – something which we recognise would be of

great benefit to the Charity – and the Charity itself would then remain sensitive to the cultural needs of its beneficiaries.

Conclusion

32. We have considered the statutory test and find that the provisions of s. 79(1) are met (1) a Statutory Inquiry has been commenced, (2) this is a time after the Charity Commission has instituted an inquiry under section 46 with respect to the Charity and (3) there has been mismanagement of the Charity.
33. We do not find that the second limb of s76(1) is met, namely that it is necessary or desirable to act for the purpose of protecting the property of the charity, or securing a proper application for the purposes of the charity of that property or of property coming to the charity. Whilst this is not a necessary requirement for appointing an Interim Manager we find it to be relevant to the exercise of discretion.
34. For the reasons explained above, we conclude that we ourselves would not exercise our discretion to appoint an Interim Manager.
35. Accordingly, the Charity's appeal against the Charity Commission's Order is allowed.

Judge Rebecca Worth

Dated: 31 July 2020

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