



Appeal number: CA/2016/0001

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

THE 1CLICK CHARITABLE TRUST

Appellant

- and -

**THE CHARITY COMMISSION
FOR ENGLAND AND WALES**

Respondent

**TRIBUNAL: JUDGE ALISON MCKENNA
HELEN CARTER
A'ISHA KHAN**

**Determined on the papers, the Tribunal sitting in Chambers
on 28 September 2016**

DECISION

1. The appeal is dismissed.

REASONS

Background

2. The Appellant is a charitable company limited by guarantee, which was entered onto the Register of Charities on 5 October 2010. Its objects, in summary, are to promote any charitable purpose at the discretion of the trustees and in particular to relieve elderly people in need and build the capacity of third sector organisations. At the time of its registration application, it stated that its estimated annual income was £600,000, to be derived from EU grants. However, in the intervening period its highest annual declared income was £3,751 and for three of those accounting years its income was less than £5 per year¹.

3. The Respondent's attention was initially drawn to the charity because of a dispute with the local rating authority about Business Rates Relief. That matter has now been settled. Having made further enquiries about the charity's income and activities (see [6], [14] and [15] below), the Respondent wrote to the Appellant on 7 December 2015, indicating its intention to remove the Appellant from the Register of Charities on the basis that it did not operate. The key passage of Respondent's letter states that:

"Given the charity's very low income, certainly below the income threshold for Registration with the Charity Commission, and that charitable activity has been negligible since registration, we will, on 21 December 2015, be arranging for the removal of the charity from the Register. We have taken this view in the absence of any sufficient level of charitable activity and any real evidence of visible means of income (or the ability to generate such income) to allow sufficient levels of charitable activity to meet the public benefit test".

4. The Appellant sought and was granted an extension of time in which to respond, until 31 January 2016. As no response was then received, the Respondent removed the Appellant from the Register of Charities on 1 February 2016.

5. The Appellant's Notice of Appeal, dated 2 February 2016, includes grounds of appeal that (i) the Respondent had failed to enquire why the charity had not provided a response to the 7 December letter before removing it from the Register; and (ii) that the Respondent had acted unreasonably in removing the Appellant from the Register.

¹ AR 14 Income £2

AR 13 Income £0

AR 12 Income £3, 751

AR 11 Income £0

6. The Respondent's Response, dated 3 March 2016, was to the effect that the Respondent had acted reasonably at all times and in accordance with its published policy and procedures. Having engaged with the charity between August and December 2015 (including a books and records visit, scrutiny of bank accounts, a meeting with some of the charity trustees and their accountant), the Respondent said it had reasonably concluded that the charity had been dormant since registration and that there was no evidence to suggest that it had the capability, or any realistic plan, to carry out its purposes.

7. The Appellant filed a Reply dated 7 April 2014, in which it was submitted that unfounded allegations had been made about it by a person whose identity has not been revealed; that the charity had not been used for improper purposes or personal financial gain; that the Respondent had misunderstood the charity's accounts, in which there were no discrepancies: the Respondent had perhaps confused revenue from the trading subsidiary with revenue to the charity; that the Respondent had not given the charity sufficient time to respond to its notice of intention to remove the charity from the Register and had acted improperly in sending its letter with a deadline just before Christmas; that the charity had tried to raise more income but its trading activity (running a pub) had not proved successful. This was not a reason to remove it from the Register. The Appellant intended to renew its fundraising activities if its appeal is upheld.

The Law

8. Section 34 of the Charities Act 2011 ("the Act") provides that

"(1) The Commission must remove from the register –

- (a) *any institution which it no longer considers is a charity, and*
(b) *any charity which has ceased to exist or does not operate".*

9. The right of appeal to the Tribunal against a decision taken under s. 34 of the Act takes the form of a re-hearing, as the Tribunal must consider the decision *afresh* (s. 319 (4) of the Act). It follows that the issue for the Tribunal in this appeal is whether it would, on the basis of the evidence before it, exercise the statutory power under s. 34 (1) (b) of the Act to remove the Appellant from the Register of Charities. As the Tribunal is taking the decision *afresh*, it is not relevant for it to consider argument directed towards proving that the Respondent acted *ultra vires*, in bad faith, or with maladministration in making its decision.

10. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.

Evidence

11. The Tribunal had before it a bundle consisting of one file of documentary evidence, one file of witness statements from Stephen Flanagan (trustee) and the

Respondent's officers David Holdsworth and Robert Davies, and one file of legal authorities.

12. Mr Flanagan's witness statement dated 23 June 2016 explained that the charity had been formed with the intention of creating a simple home computer system for the elderly. The charity had written to several hundred charities appealing for funds, but this had not been very successful. The charity had set up a trading subsidiary to run a pub, but had been misinformed that it would be entitled to Business Rates Relief for this business. The trustees believe that the charity has a valid future and that given time, funds will be found to go forward. Mr Flanagan is critical of the Respondent's decision to make enquiries into the charity, stating that "...instead of congratulating the Appellant for continuing to act in a good and proper manner it decided to strike it off the Register of Charities on the spurious basis that it should never have been registered in the first place as it had no income".

13. David Holdsworth is the Respondent's Chief Operating Officer. His witness statement dated 22 July 2016 explained the role of the Respondent as Registrar and its statutory objective to increase public trust and confidence in charities. He explained that as the charity is incorporated and remains on the register at Companies House, it cannot be said to have ceased to exist. The Respondent had taken the view that it does not operate because it has very limited assets and is not evidently pursuing any activity in furtherance of its charitable purposes. He also points out that the charity is not required by law to be entered into the Register of Charities in any event, because its gross income falls below the minimum registration threshold.

14. Robert Davies' witness statement dated 22 July 2016 explained that he had held management responsibility for the case file relating to the removal of the Appellant charity from the Register. At paragraph 7, he states that "*The decision to remove the Trust from the Register was taken on the basis that the Trust had not provided the Commission with sufficient evidence that it was operating or of its ability to generate sufficient income to operate as a charity in the foreseeable future*". He explains that the Respondent had found evidence of the charity having made only one grant in furtherance of its charitable purposes since its inception (this was to help a friend of the trustees pay for an operation). He also notes that the charity had not since its inception met the minimum income requirement of £5,000 to be registered as a charity. He helpfully sets out the history of the Respondent's engagement with the charity, which started with a complaint from a member of the public who alleged that the charity had debts for unpaid business rates and that he was himself taking the charity to court for unpaid debts. The Respondent had then contacted the local rating authority and requested to inspect the charity's records and hold a meeting with the charity trustees in order to obtain more information.

15. Mr Davies' (unchallenged) witness statement recounts the meeting with the charity trustees in October 2015. It was accepted at that meeting that the charity had been inactive since establishment, due to lack of funding. The charity had established a trading subsidiary which was running a public house and the trustees said they anticipated that the subsidiary would be able to transfer £50,000 to the charity by the end of the current financial year. The Respondent informed the trustees that it doubted

15 this figure and that the charity could not remain on the Register if it was not operating. The Respondent's notes of that meeting (also unchallenged) record that the charity has not so far solicited any funds from the public but had a friend in Malaysia ready to conduct research and development of the proposed electronic device once
5 £100,000 is in place to fund it; that the trustees planned to initiate a new trading venture of running a backpackers' hostel; that two members of staff had stolen money from the charity; that the same two trustees were signatories to both the charity's bank account and that of the trading subsidiary; that the charity had paid the travel expenses of an Italian builder who had worked on the pub building; that the trading subsidiary
10 had a "tenancy at will" of the pub building and that two trustees lived there rent-free; there were no minutes of trustee meetings as they did not meet face to face. One of the trustees lives in Italy and is quadriplegic, so decisions are taken by Mr Flanagan ringing up the trustee's daughter and asking her speak to her mother. When asked about taking professional advice, Mr Flanagan intimated that he was a lawyer of 40
15 years' standing.

16. The Respondent's subsequent detailed analysis of the financial affairs of the charity (again, unchallenged evidence) projected that the subsidiary would have a surplus of a little under £2,000 to transfer to the charity at the end of the current financial year. It also concluded that not all of the subsidiary's income was banked, as
20 staff wages had been paid out of cash takings. It noted that the financial analysis contradicted the information given to the Respondent by the trustees at the meeting.

Conclusion

17. The question of whether a charity does or does not operate is a question of fact to be assessed in every case. We are satisfied on the basis of the evidence before us
25 that the Appellant charity does not operate. This is because it has undertaken negligible charitable activity since its inception and further that it has submitted no evidence of having adopted a structured approach to generating funds in order to operate in the future.

18. Whilst we sympathise with the charity's inability to obtain grant funding, we do
30 not accept that a charity with wide discretionary objects but low income is necessarily unable to operate. It is trite to observe that many small charities are extremely active in furtherance of their objects and that they are frequently innovative in the face of funding difficulties. We take the view that this charity could have engaged in some more rudimentary type of charitable activity pending the achievement of its loftier
35 goals. However, as it was content to do nothing at all (other than write more letters asking for funding), we find that it became dormant.

19. If the charity had been able to demonstrate a continuing effort to obtain funding in order to pursue any aspect of its wide objects that would have been important evidence for us to consider. However, it did not produce any indication of such
40 activity apart from its unsuccessful trading ventures. Looking at the documents before us as a whole, we consider that the trustees adopted an insufficiently business-like approach to the running of this charity and that this would in turn have hampered its ability to raise funds. The Respondent's notes of its meeting with the charity

trustees indicate a lack of attention to basic governance arrangements which would have been evident to prospective grant-makers.

20. It is clear from the correspondence and from the Respondent's witness evidence that the reason for the removal of this charity from the Register was that it does not operate. As noted above, we concur with that conclusion because the charity does not pursue charitable activities and it has not adopted a sensible and sustainable plan for the generation of future income. However, the Respondent's letter of 7 December, its witness statements and its skeleton argument all also allude to the fact that the charity has never met the minimum income threshold for registration. To be clear, we do not understand the Respondent to have removed this charity from the Register against its wishes on the basis that it did not meet the registration threshold and we have not, accordingly, approached the appeal on that basis.

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

15

(Signed on the original)

18 October 2016

20

PRINCIPAL JUDGE