



Neutral Citation: [2023] UKFTT 562 (GRC)

Case Reference: CA/2021/0024 and CA/2022/0006

**First-tier Tribunal
(General Regulatory Chamber)
Charities**

Heard remotely by CVP on 17-19 January 2023 and 2 February 2023

Decision given on: 26 June 2023

Before

**TRIBUNAL JUDGE DAMIEN J. MCMAHON
TRIBUNAL MEMBER A'ISHA KHAN
TRIBUNAL MEMBER STUART REYNOLDS**

Between

DARREN ANTHONY WILSON

Appellant

and

CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Appearances:

Mr. M. Smith, of counsel, instructed by Brabners, Solicitors, for the Appellant

Mr. F. Sadiq, of counsel, instructed by the Respondent, for the Respondent

DECISION

The appeal against the varied Disqualification Order imposed on the Appellant by the Respondent dated 8 February 2022 (CA/2022/0006) is allowed in part.

The appeal against the Suspension Order imposed on the Appellant by the Respondent dated 12 August 2021 (Ref. CA/2021/0024) is otiose in light of the Tribunal's Decision on the Disqualification Order. However, the Suspension Order was, and is, required to remain in place until the issue of this Decision.

The said varied Disqualification Order made by the Respondent, pursuant to section 181A and section 337(6) of the Charities Act 2011 disqualifying the Appellant from being a charity trustee or trustee for a charity, in relation to all charities, and from holding office or employment in a charity with senior management functions, for a period of four years, is further varied.

The Appellant is disqualified from being a charity trustee or trustee for a charity in relation to all charities for a period of four years. The period of disqualification commences on 8 February 2022. The Appellant is not disqualified from holding office or employment in a charity with senior management functions from the date of issue of this Decision.

REASONS

Introduction

1. The Appellant appealed against, firstly, an Order of the Respondent dated 12 August 2021 ('the Suspension Order') made pursuant to s.181B(4) and s.337(6) of the Charities Act 2011 ('the Act') suspending the Appellant from acting as a trustee of any charity (Appeal No. CA/2021/0024) and, secondly, an Order of the Respondent dated 8 February 2022 ('the Disqualification Order'), pursuant to s.181A of the Act, disqualifying the Appellant from being a charity trustee or trustee for a charity, in relation to all charities, and in addition, from holding office or employment, paid or unpaid, in a charity that involved the exercise of senior management functions, for a period of four years (Appeal No. CA/2022/0006)
2. Power is vested in the Tribunal to determine the appeal pursuant to s.319 and Schedule 6 to the Act. The Tribunal, in determining the appeal, considered afresh the Respondent's decision to make the Orders and made its own determination on the issues raised on the evidence before it.
3. The appeal was determined, following a remote oral hearing, held by CVP, on 17-19 January and 2 February 2023. An agreed bundle was provided, in accordance with Directions, that included written submissions of the Respondent, supporting documentary evidence originating with both parties, relevant extracts of the Act and a bundle of authorities. Further documentary evidence was submitted by both parties at the hearing with the permission of the Tribunal. Specifically, Bundle C related to the Appellant's appeal against the Disqualification Order.
4. It was common case between the parties that the Tribunal need only determine the appeal against the Disqualification Order since, if that were successful, the Respondent would discharge the Suspension Order or, if it were unsuccessful, the Suspension Order would be otiose. The Tribunal proceeded on that basis.

The Appeal

5. The Appellant, in his said appeal against the Disqualification Order sought to have the Order quashed on three grounds, namely, that the Respondent could not show a strong *prima facie* case that a Disqualification Order should be made against him; that the case against him was not based on allegations that give rise to an ongoing threat to charities and that the Respondent had not shown any need to act urgently to protect charities without affording the Appellant the benefit of making representations or pursuing an appeal to the

Tribunal.

6. The Appellant, through oral and written evidence (including the admission into evidence by the Tribunal of an updating statement of the Appellant dated 9 January 2023); oral and written evidence of various witnesses called on his behalf, including cross-examination of those witnesses who had been requested by the Respondent to attend for that purpose, and written and oral submissions of his counsel elaborated on these assertions. All of this evidence, and submissions, including the evidence, with cross-examination of certain witnesses of the Respondent requested by the Appellant to attend for that purpose, along with the written and oral evidence and submissions of the Respondent, were considered by the Tribunal in making its Decision.
7. The Tribunal was invited, *inter alia*, to consider whether the Appellant should be automatically also disqualified from holding senior management positions for all charities, or otherwise, should the Tribunal decide that the Appellant should be disqualified from being a charity trustee.
8. The Tribunal determined the appeal against the Disqualification Order by reference to the statutory imperatives contained in s.181A of the Act, including the discretionary power set out therein (there being no grounds, nor was it asserted by the Respondent, that there existed grounds for automatic disqualification from holding the office of trustee in a registered charity.).
9. The Respondent's concerns, that led to the making, ultimately, of the Disqualification Order, were three-fold, namely, the dealing with a transfer of £1,906,760 to the Charity from the Football Association; the way in which the Charity dealt with several properties owned by it in Manchester and London, including questions of there being a lack of formal leases, occupation of those properties, or some of them, by non-charity related entities; no rent being paid to the Charity and the relationship of the Charity to the Professional Footballers' Association ('the Union'), a non-charitable entity (hereafter, collectively, 'the Respondent's concerns')

Factual Background

10. The factual background was, essentially, not in dispute between the parties. However, the import, significance and interpretation of those facts as they might affect the outcome of these proceedings, were very much in dispute.
11. The Appellant was, until 1 July 2022, the Finance Director of the Union. Pursuant to his holding that position, the Appellant was an *ex officio* trustee of the Professional Football Association Charity ('the Charity'), from 8 January 2013, when the Charity was incorporated, until 1 July 2022, when his appointment as trustee was terminated. His employment as Finance Director of the Union was terminated on 30 June 2022. As a matter of law, the Appellant would not have been permitted, unless authorised, from participating in any decision as to the terms of the relationship between the Union and the Charity, as he was an employee of the former and a trustee of the latter, thus raising competing duties of loyalty.
12. In November 2018, the Respondent opened a regulatory compliance case into the Charity following concerns being raised by an anonymous person, described as a 'whistle blower', concerning the Charity's relationship with the Union. As its regulatory concerns remained, the Respondent opened a

statutory inquiry ('the Inquiry') into the Charity on 20 December 2019, pursuant to s.46 of the Act. These appeals did not involve a challenge to the opening of the Inquiry. However, the fact of the opening of the said inquiry was strong evidence of the significant concerns held by the Respondent in respect of the governance of the Charity. In view of the senior role held by the Appellant in the Charity, particularly, his role as a trustee by reason of his particular financial expertise, was a fact of some significance in the determination of this appeal.

13. With the agreement of the Respondent, after the opening of the Inquiry, the Charity commissioned, and received, its own independent review ('the Review') into the management and governance of the Charity, the remit of the Review being agreed by the Respondent and the reviewer being chosen from a panel of persons from whom the Respondent appointed interim managers, if thought necessary, following the opening of a statutory inquiry into a charity by the Respondent.
14. Initially, on 7 June 2019, the Respondent issued each of the trustees of the Charity (including the Appellant) a notice of intention to issue a warning. Following representations from the trustees in July 2019, the Respondent did not, in fact, issue any warnings but, instead, opened the Inquiry and, subsequently, agreed to the commissioning of the Review. However, on 30 August 2022, the Respondent decided that an Official Warning would be issued to the Charity, as a corporate entity, having, therefore, its own legal personality, on the basis of the same concerns the Respondent had identified resulting in it making the said Orders against the Appellant. The Respondent again referred to mismanagement (but not misconduct) on the part of the Charity. There was no appeal before the Tribunal from the Charity in this, or any other, regard.
15. Ultimately, the Appellant was suspended and subsequently disqualified, pursuant to the respective Orders. The Respondent, however, left open the possibility of there having been misconduct, and not merely mismanagement, on the part of the Appellant, a potential that was left open in these proceedings. These matters were the subject of these appeal proceedings.
16. The Appellant opposed the *making* of the Disqualification Order at all – whatever the duration of the disqualification: in other words, the only relief sought by the Appellant was that both Orders be quashed in their entirety.
17. Another person, the former Chief Executive ('the CEO') of the Union, was, likewise, an *ex officio* trustee of the Charity. However, no action was taken against him, or any other trustee, by the Respondent (even though the Review was highly critical of the CEO but not of the Appellant). The reason for that is unknown, but is outside the scope of these proceedings, and, in any event, was not a determinative matter for the purposes of these proceedings.
18. Further, also on 30 August 2022, the Respondent, in its Decision Review, concluded there had been mismanagement (but not misconduct) in the administration of the Charity but only between 2013 and 2019.
19. A renewed application by the trustees of the Charity, including the Appellant, for a negative declaration, pursuant to s.115 of the Act or, alternatively, s.1157 of the Companies Act 2006, that they had not committed any breach of duty or act of misconduct or mismanagement was refused permission by the High

Court in July 2022, the High Court, in essence, ruling, in respect of the Appellant, that the concerns of the Respondent against the Appellant should be determined before the Tribunal pursuant to these appeals.

20. The Tribunal was satisfied there was no deliberate negligence or fraudulent behaviour on the part of the Appellant.
21. It was found as a fact by the Tribunal, on the balance of probabilities, having regard to the entirety of the written and oral evidence and submissions of the parties, that the Appellant was unfit to be a charity trustee, even though the Respondent had permitted the Appellant to give financial advice to the Charity in his capacity as Finance Director of the Union.
22. The Tribunal also found as a fact, on the same basis, that it was desirable, in the public interest, to make the Disqualification Order, as varied by the Tribunal, in order to protect public trust and confidence in charities. This is inevitably a heavy burden that must be discharged by anyone, including the Appellant here, who agrees to become a charity trustee.
23. The Tribunal did not accept that the matter of the Disqualification Order not being made for a relatively lengthy time after 2019 was an overarching determinative factor.
24. The effect of the making of the Orders on the Appellant's health and livelihood is acknowledged.
25. Having complied with necessary statutory procedural requirements, the said Orders in the terms set out in those Orders, as varied, pursuant to s.181 of the Act are decided by the Tribunal.
26. The Appellant had a long history, of over ten years of involvement with the Charity holding office by virtue of his financial expertise.

The Statutory Framework

27. There are circumstances, set out in ss.178-179 of the Act, in which a person is automatically disqualified from being a charity trustee or trustee for a charity. Those circumstances did not apply in this case.
28. In determining these appeals, the Tribunal had regard to, as it was required to have regard, the Respondent's statutory objectives as set out in s.14 of the Act, in summary, the 'Public Confidence' objective; the 'Compliance Objective'; the 'Charitable Resources Objective' and the 'Accountability Objective'.
29. By virtue of s.181A of the Act, the Respondent may make an Order disqualifying any person from being a charity trustee or a trustee for a charity, whether in relation to all charities or to specific charities or classes of charities as may be specified in the Order, if one or more of the statutory grounds set out in s.181A(6)(a), (b) and (c) and s.181A(7) are satisfied.
30. All of these criteria must be satisfied.
31. In addition, even where the said criteria are satisfied, the Tribunal, standing in the place of the Respondent, having regard to the information before it at the hearing, in determining the appeal against the Disqualification Order, had to

consider whether to exercise its discretionary power to make the Order. There was no dispute between the parties as to the questions that fell to be considered in deciding that particular matter, the burden falling upon the Appellant in that regard (but with the burden of proof falling upon the Respondent in respect of primary facts). The parties took opposing positions in relation to this question of the burden of proof in respect of the matter of the exercise of the discretionary power.

32. The parties properly agreed that, for the purposes of this appeal, as this was the basis upon which the Respondent made the Disqualification Order, only s.181A(7)D was relevant, and in dispute, namely,

“...that the person [the Appellant] was a trustee, charity trustee, officer, agent or employee of a charity at a time when there was misconduct or mismanagement in the administration of the charity, and –

- (a) the person was responsible for the misconduct or mismanagement,*
- (b) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or*
- (c) the person’s conduct contributed to or facilitated the misconduct or mismanagement”*

33. The terms ‘misconduct’ or ‘mismanagement’ are not defined in the Act. However, in Guidance issued by the Respondent, ‘misconduct’ is taken to include any act or failure to act in the administration of the Charity which the Appellant knew or ought to have known was criminal, unlawful or improper while ‘mismanagement’ is taken to include any act or failure to act in the administration of the Charity that may result in significant charitable resources being misused or the people who benefit from the Charity being put at risk. (However, as noted in paragraph 17 of this Decision the Respondent, in its Decision Review dated 30 August 2022, concluded that there had been mismanagement - but not misconduct - in the administration of the Charity between 2013 and 2019).

34. Nevertheless, disqualification is a discretionary power. Accordingly, even if the statutory criteria to make the Order are satisfied, it does not necessarily follow that the Order should be made. It should only be made if, in addition, that it is appropriate and proportionate, in all the circumstances of the appeal, having regard to the provisions of s.181A(6) (with specific reference to the public interest test).

Conclusions and Reasons

35. The Tribunal concluded, on the evidence, on the balance of probabilities, that it, in a de novo hearing would uphold the Disqualification Order against the Appellant, save that, in the exercise of the discretionary power, there should be no automatic disqualification of the Appellant holding senior management positions in any charity.
36. The Tribunal further concluded, on the evidence, that the Appellant, having regard to the matters set out in the Factual Background section of this Decision, was the person primarily responsible for the proven unintentional mismanagement in the administration of the Charity, due to a lack of understanding on his part of the proper management of charities, by reference to the guidance on the meaning of those terms set out in the Respondent’s

Operational Guidance document and the guidance set out in the Explanatory Statement on the discretionary nature of the power to make a disqualification order.

37. The power to disqualify a charity trustee from acting in that capacity is vital to protect charities.
38. The Tribunal was satisfied that the Appellant was not a fit person to be a charity trustee of any charity. As a qualified accountant, the Appellant was, or should have been, in an even better position than, perhaps, his fellow trustees, to know the proper course of acting as a trustee.
39. The Appellant had a particular responsibility in respect of the Charity, being the very reason, he was appointed an ex officio trustee of the Charity, but, nevertheless was also part of the collective group of trustees that relied upon professional advisers. Arguably, there was some culpability on all of the trustees; indeed, in circumstances such as these, the main responsibility for mismanagement such as that found by the Tribunal, should be the Chief Executive Officer or the Finance Director. It was appropriate that the Appellant, due to his special position, should be held responsible for mismanagement to a higher standard than other, non-specialist trustees of the Charity. Nevertheless, it did seem harsh to the Tribunal that the CEO of the Union, also an ex officio trustee of the Charity, should not have been sanctioned too, but that was not a matter before the Tribunal.
40. The Tribunal concluded that the most significant issue leading to its finding of mismanagement (but not excluding the other two areas giving rise to the Respondent's concerns), was the relationship between the Charity and the Union. There had been a complete disregard for the need to operate as two distinct and legally separate entities over a period of years – in essence, operating the two as one entity to all intents and purposes. This relationship was something that should have been resolved at a much earlier point, a matter in respect of which, responsibility particularly fell to the Appellant. This lack of operational separation, exemplified by there being no contract or arrangements for re-charge of services between the two entities, was clear mismanagement
41. The Tribunal considered that the Charity was not particularly well-served by professional advisers upon whom too great a reliance was placed by all the trustees. However the Tribunal found that this did not detract from the particular responsibility of the Appellant given his professional training and specific operational responsibilities.
42. The Appellant, on the evidence, on the balance of probabilities, treated the Union and the Charity as, in essence, one entity, albeit with a separation of accounts exercise taking place at the end of a financial year.
43. There was a distinct lack of appreciation shown by the Appellant that he was dealing with a multi-million pound charity or the issues that raised for the proper management of the Charity.
44. The Tribunal concluded that the Appellant, by his conduct, placed the Charity in significant financial and reputational risk; that the Appellant is unfit to discharge the duties of a trustee of any charity, and by his conduct, the Appellant damaged public trust and confidence in charities generally.

Consequently, the Tribunal was satisfied that it was desirable in the public interest to make the varied Disqualification Order.

45. Nothing emerged in the course of this hearing to justify the Appellant, particularly since he was so highly qualified, being treated differently than any trustee faced with disqualification from acting as a trustee of a charity where they were personally responsible for the mismanagement which took place.
46. The Tribunal was particularly concerned that the Appellant showed no appreciation of the importance of a declaration, or a need to declare, any conflict of interest when acting in his role as trustee of the Charity. This was a very basic failing on his part in that context. It was not acceptable, but understandable at a certain level, that he should seek to rely on not being advised in respect of such matters, particularly when a solicitor was present at each meeting of the trustees, apparently, to merely take minutes of the meeting.
47. The Appellant should have known, particularly since he had a specialised role within the Charity, and the Charity had access to expertise, sets the Appellant apart, to a great degree, from his fellow trustees.
48. The facts surrounding the issue of the £1.9M transfer to and from the Union by the Charity, one of the Respondent's concerns, were not found by the Tribunal to be evidence of mismanagement in the overall scheme of things. However, the Tribunal did find that the Appellant, as Finance Director of the Union and financially qualified Trustee of the Charity should have had a better grasp of this issue than he displayed in the course of the Respondent's Enquiry or in the hearing. In particular, the Tribunal was concerned that the Appellant did not appear to concern himself with whether a sum of this, or any, magnitude was, in fact, properly Charity money until the accountants were producing year end journals.
49. Similarly, by reason of particular issues of law and the dual loyalties held by the Appellant, together with the facts that emerged in the course of the hearing, the Tribunal, on the balance of probabilities, decided that the concern identified by the Respondent concerning the management and operation of properties of the Charity, was not, in itself, strong evidence of mismanagement by the Appellant in his role as trustee of the Charity. However, taken together with the failure to declare an interest and the deficiencies in the accounting for a significant sum of money by the Charity, there was a pattern of behaviour that contributed to the Tribunal's finding of unfitness to act as a trustee.
50. The Tribunal was satisfied that the statutory criteria for making the Disqualification Order were, and are, satisfied. The Tribunal was obliged, however, to also consider whether, as a matter of discretion, it was appropriate for the Order to be made in the circumstances of the case. The Tribunal concluded that it was appropriate to make the Order: the conduct of the Appellant was serious; harm was caused to the Charity for which he was primarily responsible and there was a risk of further harm arising from further mismanagement if the Disqualification Order were not made. Further, the evidence before the Tribunal established a specific link between the Appellant and the stated mismanagement.
51. The Tribunal also considered whether it was proportionate to make the Disqualification Order, including whether it was proportionate to make an

Order for four years. For the reasons stated in the preceding paragraphs, the Tribunal was satisfied that to make the Order for a period of four years was proportionate. In considering the question of proportionality, the key issue is the need to increase public trust and confidence in charities and to promote compliance by charities with their legal obligations in the proper administration of charities. The Tribunal considered that any lesser period of disqualification than four years would only serve to pose an unacceptable level of risk to the charity sector by the Appellant. Bearing in mind the seriousness of the Appellant's mismanagement in relation to the Charity over a period of time, it is proportionate, and appropriate, that his disqualification should apply to charities generally.

52. This appeal against the Disqualification Order was unanimously allowed in part in that the Tribunal removed the disqualification of the Appellant holding office or employment, paid or unpaid, in a charity that involved the exercise of senior management functions. This aspect of the Tribunal's Decision does not, on the balance of probabilities, raise any issue for protection of a charity; there was no dishonesty on the part of the Appellant; even when the Suspension Order was made, the Respondent permitted the Appellant to, in effect, continue to operate the Charity and keep it running; there will be no conflict of interest in the Appellant acting as an employee, even in a senior management position and, in any event, he could be supervised in such a role.
53. The appeal against the Suspension Order is otiose in those circumstances from the date of issue of this Decision.

Dated 26 June 2023

Signed:

**Damien J. McMahon
Tribunal Judge**