



Neutral Citation: [2024] UKFTT 311 (GRC)

Appeal No. CA/2023/0011

IN THE FIRST TIER TRIBUNAL
(GENERAL REGULATORY CHAMBER)
CHARITY

FUNDAMENTAL FREEDOM LIMITED

Appellant

-and-

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Heard remotely by CVP on 14-15 December 2023

Decision given on: 17 April 2024

Before

Judge Damien J. McMahon
A'Isha Khan, Tribunal Member
Susan Elizabeth, Tribunal Member

Appearances:

Mr. M. Smith, of counsel, instructed by Keystone Law, LLP, Solicitors, for the Appellant

Mr. A. Ustych, of counsel, instructed by the Respondent, for the Respondent

DECISION

This appeal is dismissed.

REASONS

Introduction

1. This appeal, made on 3 April 2023, concerns a proposed Charitable Incorporated

Institution ('CIO') known as Fundamental Freedom Limited, a company limited by guarantee ('the institution') against a refusal of the Respondent, in a decision made on 15 March 2023, to register the Appellant as a charity.

2. The objects of the Appellant were to promote human rights as set out in the Universal Declaration of Human Rights and European and UN declarations, the same wording set out by the Respondent in its sample objects for the promotion of human rights and the wording found to be charitable by the Tribunal in the *Human Dignity Trust* ('HDT') appeal, save that of 'educating the public about human rights'.
3. The Respondent refused to enter the Appellant onto the Register of Charities as it was not satisfied that the Appellant was established for exclusively charitable purposes.
4. The Respondent's decision was made under section 208 of the Act, that gives rise to a right of appeal in the Appellant to the Tribunal. The Tribunal's role in this matter is to consider afresh the Respondent's decision (section 319(4)(a) of the Act), not to review the Respondent's decision-making. The Tribunal, therefore, must re-determine the registration application itself, considering the evidence before it. It follows that the Tribunal is not concerned in these proceedings to establish whether the Respondent's reasons for refusing the application were well-expressed, whether it acted reasonably in refusing the Appellant's application, or whether it could have handled the application process differently in any respect.
5. If the Tribunal were to allow this appeal, it could exercise discretionary powers to quash the Respondent's decision, and (if appropriate) remit the matter to the Respondent and/or direct it to grant the application (Schedule 6 to the Act). In determining this appeal, the Tribunal could consider evidence which was not before the Respondent when it made its own decision (section 319(4)(b) of the Act). The Appellant invited the Tribunal to quash the Respondent's decision dated 15 March 2023 and direct the Respondent to rectify the Register of Charities to include the Appellant.
6. The Hearing Bundle comprised 826 pages and the Authorities Bundle comprising 671 pages. All of this written evidence and, submissions, together with oral evidence and submissions of the parties, was considered by the Tribunal in deciding this appeal.

Mode of Determination

7. This appeal was heard remotely by CVP.

Factual Background

8. A Notice of Appeal dated 3 April 2023 was submitted to the Tribunal. The Notice of Appeal contained 129 pages, that set out the statutory framework set out in sections 1, 2, 3 and 4 of the Charities Act 2011 ('the Act'), and the approach of the Upper Tribunal in the case of *Independent Schools Council v. Charity Commission for England and Wales* [2012] Ch 214 ('ISC'); an analysis of same and setting out the basis of the Appellant's disagreement with the decision issued by the Respondent on 15 March 2023.
9. The Respondent's Response dated 23 May 2023 to the Notice of Appeal, resisted

the Appellant's appeal on grounds, in summary, that the Appellant's Objects were not charitable only for the public benefit, taking into consideration the Appellant's Strategic Plan documents; a judicial review project proposal of the Appellant, dated 18 June 2022, as well as the contents of its website.

10. Section 208 of the Act states that the Respondent (and, therefore, the Tribunal on appeal), must refuse an application under section 207 of the Act if it is not satisfied that the Appellant would be a charity at the time that it is registered, the onus being on the Appellant to satisfy the Tribunal that the Appellant's Objects, or purposes, fall within section 3(1)(c) of the Act and would be for the public benefit. If the Appellant's proposed means of operation would be unlawful, then it would not operate for the public benefit.
11. An application by the Appellant to be registered as a charity had been refused five times for different reasons, including, that its objects were not exclusively charitable; that while some of its activities may, or may not, advance a charitable purpose, the purposes of the Appellant were not for the public benefit; that the then trustees of the Appellant did not demonstrate that it was established for exclusively charitable purposes for the public benefit; that the charitable purposes within the Appellant's constitutional documents presented with an application for registration as a charity differed from those registered in Companies House (together with various other inconsistencies and omissions). However, this appeal was considered on its own merits based on the Appellant's application for registration as a charity made on 3 November 2022.
12. One witness, a witness for the Appellant, Hannah Rose, the Appellant's CEO, who made a written Witness Statement, attended, at the request of the Respondent, for cross-examination. The evidence of Ms. Rose dwelt on the concept of a 'COVID hoax' theory and that it was intended to raise this potential before the International Criminal Court ('ICC') for investigation by that body. She also stated that the 'wrong questions' were being asked at the COVID Inquiry and that the Appellant regarded 'lockdown' as a fundamental violation of freedoms and rights. She confirmed that benefactors in the United States of America ('USA'), including 'Moms for America', wanted to fund the Appellant by donating shares, through a charity, for, *inter alia*, USA tax purposes. She maintained that the Appellant's first application for registration as a charity, in September 2022, refused because the Respondent was not satisfied that the Appellant's Objects were exclusively charitable, was, in fact, what the Appellant 'was about'. Ms. Rose maintained, however, that the Appellant's Objects in the first application for registration represented only part of the Appellant's activities, since expanded, when it was pointed out that the Objects remained, essentially, the same on both applications. She stated that the Objects would be further expanded once the Appellant was granted charitable status. She accepted that some people would change their minds on issues, following prompting from the Appellant, including not accepting vaccinations.

The Statutory Framework

13. Where an application for charity registration is also an application for the constitution of a CIO under s. 207 of the Act, the Respondent must refuse the application if it is not satisfied that the proposed CIO would be a charity at the time it would be registered (s.208 of the Act).
14. The statutory framework for registration of an institution as a charity may be

summarised as follows. Section 1(1) of the Act defines charity as an institution which is (a) established for charitable purposes only and is (b) subject to the control of the High Court in the exercise of its jurisdiction with respect to charities. Section 2(1) of the Act defines a charitable purpose as one which falls within section 3(1) of the Act and is for the public benefit. Section 3(1) of the Act sets out a list at (a) to (l) of 12 descriptions of charitable purposes and, at description (m) on the list, allows for the recognition of new charitable purposes through a process of analogy. A charitable purpose must, in addition, be for the public benefit. Section 4 of the Act provides that there is to be no presumption that a purpose of any particular description is for the public benefit and that any reference to public benefit is a reference to public benefit as that term is understood for the purposes of the law relating to charities in England and Wales.

15. In the Upper Tribunal's decision in *ISC*, it was held that, when applying the statutory test, the starting point is to identify the particular purpose(s) the institution seeking to be registered as a charity – the Appellant in this appeal. The particular purpose(s) is (are) charitable if it (they) fall within any of the categories listed in section 3(1) of the Act and is for the public benefit. The Upper Tribunal also decided in *ISC* that the meaning of established in the Act is “*what the institution was set up to do, not... how it would achieve its objects or whether its subsequent activities are in accordance with what it was set up to do*”. The Upper Tribunal concluded that ‘public benefit’ has two senses: firstly, whether the nature of the purpose itself is such as to be a benefit to the community; secondly, that those who may benefit from the carrying out of the purpose are sufficiently numerous, and identified in such manner, as to constitute a section of the public. This approach was not in issue between the parties.

Submissions

16. The parties agreed the issues and relevant chronology in this appeal. These were set out in the parties' Skeleton Arguments.
17. In essence, the Appellant submitted that upon examination of the Appellant's purposes or Objects, set out in its Memorandum of Association, essentially, the advancement of human rights, was within the provision of section 3 of the Act, and was for the public benefit within the provisions of section 4 of the Act, namely, that such Objects were good and beneficial to the public.
18. The Respondent submitted that, in determining the Appellants purposes or Objects, within the statutory framework and within the findings of the Upper Tribunal in *ISC*, the Tribunal had to consider whether, and to what extent, it may have regard to extrinsic evidence, that is, evidence beyond the Appellant's stated Objects, the Respondent submitted that the right approach was set out by the Court of Appeal in *Helena Partnerships Ltd v Revenue and Customs Commissioners* [2012] EWCA Civ. 569. This established that where there is a doubt or ambiguity about whether the objects of an institution are charitable, the court may examine the activities of an institution. This is done for the purpose of construing whether implementation of the Objects would achieve a charitable end result. Essentially, the Respondent submitted that it was not clear that the Appellant's Objects were sufficiently charitable or for the public benefit; that, contrary to the Appellants submissions, the Tribunal must have regard to extrinsic evidence and must not disregard what the Appellant asserted on its website and in its Strategic Plans and that the burden of

satisfying the statutory requirements to permit the Appellant to be registered as a charity lay on the Appellant.

19. The Appellant submitted that whether an institution is charitable within the statutory framework, does not, generally, require extrinsic evidence to be considered but that such evidence *may* be relevant to deciding the statutory public benefit criterion. It was submitted that extrinsic evidence might be relevant where the Objects did not reflect the real Objects of the institution (a contention the Respondent agreed did not arise in this case) or to resolve any ambiguity in the Objects, following the *Human Dignity Trust* authority. It was further submitted that Objects being expressed differently did not prove a ‘sham’; instead, following the decision in *Incorporated Council of Law Reporting for England and Wales v. Attorney-General & Another* [1971] EWCA Civ 13, the Court of Appeal held that the Objects should be considered in the context of how the institution’s activity was to be pursued (that could not be to achieve political change), but if the Objects were concerned with addressing a perceived infringement of human rights, that was permissible. Any suggestion of the Appellant pursuing an alternative agenda to that set out in its Objects was rejected. The Appellant submitted that the Tribunal could look to extrinsic evidence if there were some ambiguity in the Appellant’s Objects, but not if there were an ambiguity between the Objects and the extrinsic evidence, as, it was claimed by the Appellant, the Respondent submitted. Here, it was submitted, there was no ambiguity, that is, the Objects were, essentially, the promotion of human rights. Accordingly, there was no reason to look to extrinsic evidence in deciding this appeal. It was submitted There was no reference to changing government policy in the Objects; indeed, there was a caveat limiting political activity. It was further submitted that, following the authority of *ISC*, the pre-eminence had to be afforded to the stated purpose of the institution in the Objects - not what might have happened, or would happen later. It was submitted that the Appellant, on the evidence of Ms. Rose, properly understood the constraints on a charity and ,the ‘disbenefit’ issue ought properly to be addressed as a *regulatory* issue (a shortcoming in a charity’s pursuit of its Objects) – not a *status* issue (that concerns whether the institution’s Objects are charitable and the question of the public benefit criterion being satisfied).
20. The Respondent submitted that extrinsic evidence could and should be used in the Tribunal deciding this appeal, and relied on a number of authorities to support that submission, including the *Yeats* decision (Ref. CA/2017/0007), where the Tribunal there was invited to consider the wider background, due to an apparent ambiguity in the Appellant’s Objects that, it was submitted, was not dissimilar to the position in this appeal. None of those extensive lists of authorities allowed reference to the institution’s Objects or purposes alone. It was submitted that the role of Tribunal was not to look at the reasonableness of the Respondent’s view and, further, it was submitted, the Objects of the Appellant, in themselves, required clarification as they did not adequately reflect the Appellant’s purposes that, therefore, raised a dichotomy that required the Tribunal to look at extrinsic evidence to resolve. It was confirmed on behalf of the Respondent that no question of a ‘sham’ arose. It was submitted that in the *HDT* authority, the same wording of an institution applying for charitable status was at issue as in this case but that, in *HDT*, it was decided that the factual background had to be considered. It was submitted that by simply adopting model wording of the Respondent, the Appellant could, conceivably, avoid scrutiny. The Tribunal was invited to note that, despite the submissions made on behalf of the Appellant in that regard, extensive dialogue had been required

between the Appellant and the Respondent. It was further submitted that if the Appellants Objects included one or more non-charitable Objects, the Appellant could not be granted charitable status as its Objects, in those circumstances, such as a political purpose would not be exclusively charitable. The Respondent relied on the *McGovern* authority in this regard. It was emphasised that the decision of any person to take a vaccination was an entirely voluntary choice on his or her or their part. It was submitted that, on the evidence, the Objects of the Appellant were not exclusively charitable. On the question of the public benefit criterion, it was submitted that an Object 'to promote human rights' was not sufficient in itself and, in any event, the Objects of the Appellant had a political purpose. It was further submitted that there was a question of the perceived benefit being a private rather than a public benefit and, further, that it was open to the Tribunal to find that the Appellant's Objects raised 'disbenefit' considerations rather than 'benefit' considerations.

21. It was accepted by both parties that the task before the Tribunal was to answer three questions:

- what are the particular purposes of the Appellant?
- are those purposes within Section 3 of the Charities Act 2011?
- are those purposes for the public benefit, within Section 4 of the 2011 Act?

If the Appellant could not prove that there was, on the balance of probabilities, a public benefit, the Tribunal should decline registration of the Appellant as a charity.

Conclusions

22. The Tribunal found the witness evidence of Ms. Rose, on behalf of the Appellant to be somewhat focussed on it having a political purpose, that, indeed, this was a substantial reason for it applying for charitable status.

23. The Appellant is a 'political' organ, such as referred to in the *Yeats* authority, in that the Objects are not expressed sufficiently narrowly.

24. Having regard to the entirety of the written and oral evidence and submissions of the parties, the Tribunal found that, essentially, the purpose of the Appellant was to undertake legal litigation in pursuit of a political objective: registration as a charity was not the appropriate route to pursue that purpose. The evidence conclusively indicated, on the balance of probabilities, that the primary purpose of seeking registration as a charity was to access funding from the USA. This was not an incidental activity but the predominant purpose of the Appellant.

25. The Tribunal found that, having regard to all of the evidence and submissions of the parties, both written and oral, on the balance of probabilities, the 'particular purpose' of the Appellant was to undertake litigation with a view to challenging particular government policy – a position that was impermissible according to the non-binding authority in *Yeats* - or, put in an alternative way, to support people who believed they had suffered from government COVID policies and promoting research into non-mainstream considerations of the origins of COVID. The Tribunal found that the Appellant was not interested in people outside the remit of the COVID Inquiry: there was no evidence of there being a 'sufficient number' of potential beneficiaries of the

Appellant's Objects to satisfy the public benefit criterion. When asked, in giving her evidence, what other issues the Appellant might work on, Ms. Rose was unable to offer any examples, as there was 'nothing in the pipeline'. Further, it was only by looking at extrinsic evidence, that the Tribunal could decide the public benefit issue.

26. The key issue in this appeal was whether the statutory imperative of there being a public benefit in the Appellant pursuing its stated Objects would be satisfied. This permitted the Tribunal to have regard to extrinsic evidence if there was any doubt in this regard. The Tribunal decided that having regard to extrinsic evidence, by reference to matters, including, the contents of the Appellants website; its Strategic Plan; its Litigation Policy, and so on, was appropriate in this appeal, bearing in mind, in particular, that the burden of proof was on the Appellant.
27. The Tribunal could not be certain, even on the balance of probabilities, that the Appellant discharged that burden, not least, that it satisfied the Tribunal that all of its Objects, at the date of its application to be registered as a charity, were exclusively charitable (albeit *in simpliciter*, that the Appellant's central Object, the promotion of human rights, was not disputed by the Tribunal), that, alone, was not sufficient. On considering the extrinsic evidence, the public benefit criterion was not, on the balance of probabilities, satisfied by the Appellant. It was accepted on behalf of the Appellant, a position agreed by the Respondent, that where there may be a doubt concerning whether the public benefit requirement was satisfied, it was appropriate to consider extrinsic evidence.
28. It is worth noting that "human rights" as a charitable purpose, is not defined, unlike, for example, the charitable purpose of 'education': 'human rights' is a much more contested area for these purposes.
29. Contrary to the Appellant's submission, Ms. Rose, in her evidence, did not state that the Appellant was no longer pursuing the question of a complaint to the ICC.
30. On the question of 'public benefit', it was clear that a section of the public, through the Appellant, would get an opportunity for support and litigation, but, on the other hand, this could only serve to encourage mistrust among the public with public health agencies. The Tribunal is not in a position to weigh the benefits and disbenefits of the Appellant's Objects. Further, if the public benefit of an Object is incapable of proof, then it cannot be charitable.

Dated 16 April 2024

Signed:

Damien J. McMahon
Tribunal Judge