



Neutral Citation: [2024] UKFTT 111 (GRC)

Case Reference: CA/2023/0009V

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

Heard remotely by CVP.
On: 27-29 November 2023

Decision given on: 19 January 2024

Before

**Tribunal Judge Peter Hinchliffe
Tribunal Member Helen Carter-Shaw
Tribunal Member Stuart Reynolds**

Between

SUZANNE GOODBAND

Appellant

and

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Representation:

For the Appellant: Christopher Buckley, counsel.

For the Respondent: Felix Rechtman, Charity Commission.

In accordance with directions issued by Judge Neville on 21 November 2023, the hearing took place by video. The hearing used the Tribunal Service's CVP Video Hearing System. The parties were reluctant in advance of the hearing to proceed on this basis. We found that a hearing by video conference was suitable for this case and avoided delay whilst being compatible with the proper consideration of the issues.

Documents to which we were referred included a bundle of 3097 pages containing the decision that is the subject of the appeal, the notice of appeal, the evidence from the parties, the parties'

correspondence and documentation relating to the appeal. These bundles were supplemented by additional submissions and precedents. The bundle and other papers were available to the parties and the Tribunal in electronic form and the parties confirmed that they had received and had access to such bundles.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

DECISION

The appeal is upheld in part.

The tribunal agrees with the Commission's decisions to make a disqualification order against Ms Goodband in respect of charities generally. However, we consider that the proportionate disqualification period in this case is seven years starting from the date of this decision.

REASONS

The Disqualification Order

1. The Appellant, Ms Goodband, appeals against an order made by the Respondents (the "Commission") on 19th December 2022 and varied on 26th January 2023 (the "Order"). The Order disqualified Ms Goodband from being a charity trustee or trustee of a charity pursuant to the Commission's powers under section 181A of the Charities Act 2011 (the "Act"). The Order provides that Ms Goodband is disqualified from being a trustee, but is not disqualified from holding a senior management position in charities.
2. The Order in its amended form states:
 - "The Charity Commission for England and Wales (the Commission) is satisfied that:
 - (a) In relation to the person, condition [D] of section 181A(7), more fully described in the schedule to this order is met;
 - (b) the person is unfit to be a charity trustee and/or trustee of any or all charities generally;
 - (c) it is desirable in the public interest to make this order to protect public trust and confidence in charities generally.The Commission therefore orders that the person is disqualified from being a charity trustee and/or trustee for a charity in relation to:
 - (a) Any or all charities generallywhether registered with the Commission or not for a period of 12 years from the date contained in paragraph 3 of this Order."
3. The Order took effect from 30th January 2023, if no appeal proceedings against the order are started. As a result of this appeal proceeding the Order has yet to take effect. The Order was accompanied by an extensive statement of reasons.

The Appeal

4. Ms Goodband submitted an appeal against the Order dated 30th January 2023. The Notice of Appeal set out the grounds for the appeal in some detail, running to 74 paragraphs in total. The main grounds of the appeal are as follows:

“2.1 The Commission was wrong to conclude that condition D of section 181A(7) of the 2011 Act) was met in relation to Ms Goodband (Ground 1);
 2.2 the Commission was wrong to conclude that Ms Goodband is unfit to be charity trustee or trustee for a charity (as required by section 181A(6)(b) of the 2011 Act) (Ground 2);
 2.3 the Commission was wrong to conclude that making the Disqualification Order was desirable in the public interest in order to protect public trust and confidence in charities (as required by section 181A(6)(c) of the 2011 Act) (Ground 3);
 2.4 a disqualification period of 12 years is disproportionate (Ground 4).”

Legislation

5. Section 181A of the Act gives the Charity Commission the power to issue orders disqualifying a person from being a charity trustee or trustee for a charity.
6. The relevant parts of sections 181A of the 2011 Act are as follows:

“181A Disqualification orders

- (1) The Commission may by order disqualify a person from being a charity trustee or trustee for a charity.
- (2) The order may disqualify a person—
- (a) in relation to all charities, or
 - (b) in relation to such charities or classes of charity as may be specified or described in the order.
- (3) While a person is disqualified by virtue of an order under this section in relation to a charity, the person is also disqualified, subject to subsection (5), from holding an office or employment in the charity with senior management functions.
- (4) A function of an office or employment held by a person (“A”) is a senior management function if —
- (a) it relates to the management of the charity, and A is not responsible for it to another officer or employee (other than a charity trustee or trustee for the charity), or
 - (b) it involves control over money and the only officer or employee (other than a charity trustee or trustee for the charity) to whom A is responsible for it is a person with senior management functions other than ones involving control over money.
- (5) An order under this section may provide for subsection (3) not to apply—
- (a) generally, or
 - (b) in relation to a particular office or employment or to any office or employment of a particular description.
- (6) The Commission may make an order disqualifying a person under this section only if it is satisfied that—
- (a) one or more of the conditions listed in subsection (7) are met in relation to the person,
 - (b) the person is unfit to be a charity trustee or trustee for a charity (either generally or in relation to the charities or classes of charity specified or described in the order), and
 - (c) making the order is desirable in the public interest in order to protect public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order.
- (7) These are the conditions—

7. Section 181A(7) list six conditions. In this case the Commission relied on Condition D, which provides as follows:

“D that the person 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”.

8. The following parts of sections 181B of the 2011 Act are relevant to this appeal:

“181B Duration of disqualification, and suspension pending disqualification.

(1) An order under section 181A must specify the period for which the person is disqualified.

(2) The period –

- (a) must be not more than 15 years beginning with the day on which the order takes effect, and
- (b) must be proportionate, having regard in particular to the time when a conviction becomes spent or, where condition B applies, would become spent if it were a conviction for the relevant disqualifying offence, and to circumstances in which the Commission may or must grant a waiver under section 181 where a person is disqualified under section 178.

(3) An order takes effect –

- (a) at the end of the time specified by Tribunal Procedure Rules for starting proceedings for an appeal against the order, if no proceedings are started within that time, or
- (b) (subject to the decision on the appeal) when any proceedings started within that time are withdrawn or finally determined”.

9. Section 181B (4) of the Act also relates to the Commission’s power to suspend a person from being a charity trustee or trustee of a charity pending disqualification and section 181C of the 2011 Act sets out the procedure that the Commission must follow when making a disqualification order under section 181A of the Act.

10. Schedule 6 of the Act sets out the decisions and actions of the Charity Commission that can be appealed, the persons who can bring such an appeal and the powers of the Tribunal in deciding such appeals and includes the following:

1 Decision, direction or order	2 Appellants/applicants	3 Tribunal powers if appeal or Application allowed
Order made by the Commission under section 181A.	The persons are the person who is the subject of the order.	Power to— <ul style="list-style-type: none"> (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

Background

11. The following matters of fact set out some of the background to the appeal and were agreed between the parties and we find them to be accurate on the basis of the evidence and submissions we have seen:
- i. The Island Health Charitable Trust was formed on 12th February 1992.
 - ii. On 28th December 2008 the Island Health Charitable Trust was incorporated as the Island Health Trust (“the Charity”). The Charity was registered with the Commission on 12th January 2009.
 - iii. Ms Goodband was appointed as a trustee of the Charity on 29th October 2009 and appointed as Chair of the trustees on the same date.
 - iv. The Charity was set up with the aim of owning the Island Health Centre on land owned by the Charity at 145 East Ferry Road, London, E14.
 - v. The Charity’s Objects were set out in clause 3 of its Memorandum of Association and the objects are “to promote the provision of primary health care in any manner which is deemed by law to be charitable” (“the Objects”).
 - vi. During 2014 the Charity finished paying off the mortgage on the land owned by the Charity on which the Island Health Centre is located.
 - vii. On the 10th of July 2014 the Charity was approached by RER London Limited with a view to developing the land owned by the Charity.
 - viii. On 3rd March 2015 the Charity entered into a consultancy agreement with Suzanne Goodband Interim Solutions Limited (SGIS).
 - ix. On 18th September 2015 Montague Evans, a firm of surveyors prepared a briefing note for the Charity regarding the development potential of the land owned by the Charity in which they indicated that the potential value of the land and property owned by the Charity would, in the event that the redevelopment proceeded, be £9.4m.
 - x. On 1st April 2016 Alan Holman resigned as a trustee of the Charity. Leone Hirst, Saadia Mujeeb, Ruth Brannvall, Barak Maoz and Chris Woodhead were appointed as trustees alongside Ms Goodband on 1 April 2016.
 - xi. On 14th December 2016 the Commission opened a compliance case into the Charity.
 - xii. On 31st March 2017 the consultancy agreement with SGIS was terminated.
 - xiii. In June 2017 the Commission provided advice under section 15 of the Act to the Charity and closed its file.
 - xiv. Three additional trustees were appointed to the Charity in 2017; Jocelyn Braun, Elaine Bagshawe and Mavis Wenham.
 - xv. On 25th August 2017 the Commission reopened the compliance case against the Charity.
 - xvi. On 20 November 2017 the Commission opened a section 46 inquiry into the Charity.
 - xvii. Ms Goodband resigned as a trustee of the Charity on 31st October 2018.
 - xviii. On 18th July 2019 the Commission appointed interim managers to the Charity. On 21st February 2020 the interim manager provided a report to the Commission. The interim manager was discharged on 15th March 2020.
 - xix. On 15th November 2021 the then trustees of the Charity reached a settlement with Ms Goodband under which Ms Goodband agreed to repay £165,000 to the Charity in order to settle the litigation initiated by the Charity.

Issues for the tribunal to consider in this appeal.

12. The parties had prepared a draft list of issues to be resolved by the tribunal. The tribunal considered this list and the evidence and submissions that it received and concluded that the following matters will need to be addressed in order to determine the outcome of this appeal.
 - i. Whether Ms Goodband was a trustee, charity trustee, officer, agent or employee of the Charity? Having considered the agreed facts as set out above the tribunal finds that Ms Goodband was a trustee of the Charity at all times that are material to this appeal.
 - ii. Whether during the period in which Ms Goodband was a trustee of the Charity, there was misconduct or mismanagement in the administration of the Charity?
 - iii. In the event that there was such misconduct or mismanagement, whether (a) Ms Goodband was responsible for the misconduct or mismanagement, (b) Ms Goodband knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or (c) Ms Goodband's conduct contributed to or facilitated the misconduct or mismanagement?
 - iv. Depending upon the answers to the above matters, the tribunal will need to determine if Ms Goodband is unfit to be a charity trustee or trustee for a charity, either generally or in relation to specific charities or classes of charity.
 - v. Depending upon the answers to the above, the tribunal would need to decide that if any order it may consider making to disqualify Ms Goodband is desirable in the public interest in order to protect public trust and confidence in charities, either generally or in relation to specific charities or classes of charity.
 - vi. If the tribunal is satisfied that the preconditions for the making of the disqualification order are met, it would need to determine if Ms Goodband should be disqualified from being a charity trustee or trustee for a charity or from holding a senior management function, in relation to all charities or in relation to such charities or classes of charity as maybe specified or described in the Order.
 - vii. Depending upon the answers to the above the tribunal would need to determine what duration any disqualification order may have.
13. The tribunal's function in determining an appeal against a disqualification order under section 181A of the Act is to consider afresh the decision made by the Commission and, in so doing, it can consider evidence which has become available subsequent to the Commission's Order (see section 319(4)(b) of the Act).
14. The tribunal will give appropriate weight to the Charity Commission's decision in relation to the Order as the Commission is the body tasked by Parliament with making decisions to disqualify trustees. In doing so the tribunal will be aware of the need to conduct a rehearing and not a review of the decision made by the Commission. The tribunal will use its own judgement and can vary such decision where it disagrees with it, despite having given it due weight.
15. It is up to the Commission to demonstrate that the statutory criteria for disqualifying Ms Goodband from being a trustee are met. Should it succeed in doing so, the burden of proof rests with Ms Goodband to show the disqualification order should not be made or that it should be made on different terms and/or for a shorter period of time.
16. The standard of proof is on the balance of probabilities.

Misconduct or Mismanagement

17. There is no definition of misconduct or mismanagement in the Act. The approach adopted by this tribunal in earlier cases where these terms have been considered is summarised in *Mountstar (PTC) Limited v Charity Commission for England and Wales (CA/2013/001 and 003)* as follows:

“136 There is no statutory guidance as to what is meant by mismanagement or misconduct. Both are ordinary English words which should be given their ordinary meaning : Neuberger J page 123 of *Scargill vs the Charity Commission (unreported) 4th September 1998* (which was confined to the meaning of mismanagement) ..

138... the Commission’s guidance may provide illustrations of what might constitute mismanagement and misconduct, but cannot restrict their ordinary meaning.

139 it is a question of fact and degree to be viewed in the overall context of each case whether the act(s) or omission(s) complained of constitute mismanagement or misconduct. In our view it would encompass a failure by the charity trustee to act as an ordinary prudent man of business both in terms of process (how decisions are made, including declaring and managing conflicts of interest) and substance (what decisions are reached and why they have been reached). If the process is adequate and the decision reasoned it may be rare for the Commission to challenge the decision per se”

This tribunal is not required to follow the position set out above, but regards it as a useful statement of the approach to be adopted.

18. The Commission has issued specific guidance in OG525 to set out its own understanding of what constitutes misconduct and mismanagement. The Commission has adopted the following definitions:-

“Misconduct includes any act (or failure to act) in the administration of the charity where the person committing it knew (or ought to have known) that it was criminal, unlawful or improper” and “mismanagement includes any act (or failure to act) in the administration of the charity resulting in charitable resources being misused or the people who benefit from the charity being put at risk”.

19. In the amended Order issued on 26th January 2023 the Commission referred to and attached amended findings of reasons for the Order. In such statement of reasons the Commission identified the following misconduct and/or mismanagement by Ms Goodband:

- i. Ms Goodband failed to act in the interests of the Charity by engaging in speculative activities and expending charitable funds on strategic development and a significant property deal which did not go ahead. As a result, she placed charitable funds at risk, exposed the charity to reputational damage and also resulted in a direct loss of charitable funds of approximately £371,926.
- ii. Ms Goodband was aware that the proposed new strategy fell outside of the scope of the charity’s objects and despite this Ms Goodband continued to expend significant funds which caused significant loss to the Charity, such expenditure and activity outside the charity objects amounted to misconduct and/or mismanagement in the administration of the Charity.
- iii. Whilst chair of the Charity Ms Goodband received substantial remuneration from the Charity for her company SGIS. Ms Goodband was the only director of SGIS and the only shareholder is Goodband Board Solutions Limited of which Ms Goodband is the only director and shareholder.
- iv. During the 2015 financial year SGIS received £7,219 from the Charity whose income was £284,371 in that year. In the 2016 financial year Ms Goodband received £179,176 via SGIS. The Charity’s income in this year was £270,855. In the 2017

financial year Ms Goodband received £163,560. The Charity's income in this year was £246,759.

- v. Ms Goodband was also involved in decisions to approve the payment to other trustees of the Charity. In order for payments to a trustee to comply with section 185 of the Act the Commission said that the majority of the trustees must not be receiving remuneration. During a period in which Ms Goodband was being remunerated by the Charity the majority of the trustee board was being remunerated.
 - vi. Ms Goodband did not act in the best interest of the Charity in causing or permitting the expenditure of charitable funds on speculative strategic developments and property deals and in committing charity funds to be spent on remunerating trustees. These actions have caused damage to the reputation of the Charity as well as losses to the Charity.
20. Ms Goodband rejected the arguments used by the Commission in reaching the conclusion that she had responsibility for misconduct or mismanagement in the Charity. She pointed to the legal advice that she and the Charity had obtained in relation to the contract between SGIS and the Charity and in relation to the proposed amendments to the Charity's Objects that would have permitted it to change its strategy and pursue broader objectives. In addition, Ms Goodband disputes that the revised strategy that the Charity sought to pursue was outside the Charity's Objects. She stated that the burden is on the Commission to establish that is the case.
21. Ms Goodband accepts that over the course of the contract between SGIS and the Charity £349,955 was paid to SGIS and this ultimately benefitted Ms Goodband. She does not accept that entering into the consultancy contract and subsequently receiving payments was in any way improper. She stated that the decision to enter into the SGIS contract was taken by the non-conflicted trustees of the Charity (not Ms Goodband) . It was necessary in order for the Charity to pursue the property development opportunity. Prior to entering into the SGIS contract the Charity had tried, over a two year period, to recruit externally to senior positions but had been unsuccessful. The work to pursue the property development opportunity went beyond the role and remit of an unremunerated trustee. The decision to enter into a contract with a company in which a Trustee had a beneficial interest was only taken after seeking legal advice at Ms Goodband's insistence. Ms Goodband also stated that her work under the SGIS contract was not limited to the development strategy, as concluded by the Commission, but also covered an interim executive role and work for the Charity on property development, lease renewal, developing of the board and corporate development.
22. Ms Goodband denied that there was any unauthorised trustee remuneration. The SGIS contract was entered into on 3rd March 2015 and at that time only one trustee (Ms Goodband via SGIS) was remunerated. Ms Goodband did not participate in the decision by the Charity to enter into the contract with SGIS or to authorise payment under that contract. When subsequent payments were made to other trustees, Ms Goodband was not involved in the decision to approve such payments. The decision to enter into such contracts and make such payments were made by a committee of trustees that was chaired by a legally qualified trustee. Mr Buckley on behalf of Ms Goodband pointed to the minutes of the trustees/directors service contract review subcommittee meeting on 16th June 2016 in which it was recorded that:

“Charity Commission Requirements

It was noted that the Charity Commission required that no more than 50% of trustees held service contracts at any point in time.

The subcommittee agreed this requirement.”

This position was repeated in the trustees/directors service contract review subcommittee meeting on 13th October 2016. Mr Buckley submitted that the duty on Ms Goodband was to act in a way that she considered, in good faith, would be most likely to promote the success of the Charity. This is a subjective test. She believed that her actions were in the best interests of the Charity. The Commission have concluded that Ms Goodband's conduct was not dishonest and that her actions were not dishonest.

23. Ms Goodband's position is that at all times she believed that she and the rest of the trustees were acting in the best interests of the Charity and that she acted honestly and in good faith and exercised reasonable care, skill and diligence.
24. In the witness statement that Ms Goodband submitted in advance of the hearing and the evidence that she gave at the hearing, she set out the background to her activities within the Charity during the period of her appointment as Chair of Trustees. Ms Goodband stated that the Charity had built the Island Health Centre on the Isle of Dogs at 145 East Ferry Road, London to house the Island Health GP Practice (the "Centre") as well as practice nurses and training facilities for primary care and community practitioners. The practitioner base of the centre was expanded to include health visitors, district and school nurses as well as a private dental practice. The bulk of the rental income from the healthcare organisations were used in order to repay a mortgage loan taken out to fund the Centre. In addition to providing these primary care facilities the Charity offered small support grants to primary care organisations and charities.
25. The Objects of the Charity expressly refer to promoting the provision of primary health care. Ms Goodband has strong views on how primary health care should be regarded based on her long experience in the healthcare sector. Ms Goodband placed particular emphasis on the definition of primary health care that was adopted by the World Health Organisation at a conference in 1978 and reaffirmed in 2018. This definition states that primary healthcare is;

“essential healthcare based on practical, scientifically sound, and socially acceptable methods and technology made universally accessible to individuals and families in the community through their full participation and at a cost that the community and country can afford to maintain at every stage of their development in the spirit of self-reliance and self-determination. It forms an integral part of both the country's health system, of which it is the central function and main focus and of the overall social and economic development of the community. It is the first level of contact for individuals, the family, and community with the national health system bringing healthcare as close as possible to where people live and work, and constitutes the first elements of a continuing healthcare process.”
26. Ms Goodband stated that between 2011 and 2014 the funds available to the Charity to make grants or otherwise further the Objects of the Charity were very limited. However, in 2014 the Charity was able to repay the mortgage loan on the Island Health Centre. Therefore, from 2011 onwards Ms Goodband and the other trustees began to anticipate that greater funds would be available to further the Objects. Ms Goodband developed a strategy project in order to “focus on the full concept of primary health care” based upon the WHO definition. Ms Goodband referred to the meetings which she held in 2013 to 2015 with interested parties to discuss expanding the Charity's future strategy aspirations, these included relevant public health and local authority officials in the Tower Hamlets area.
27. Ms Goodband stated that in the middle of 2014 the Charity was approached by a developer who had recently acquired the development rights on a supermarket site adjoining the Centre. The developer stated that they intended to develop the supermarket site and they

were also willing to include and develop the Centre site and were interested in purchasing that site from the Charity. Ms Goodband stated that she was first approached by the developer on 10th July 2014. This approach happened shortly after Ms Goodband had arranged for the Charity to hire Mike Brooks as a consultant to the Charity. Mr Brooks, who had previously worked with Ms Goodband, was hired to manage the lease negotiations between the healthcare organisations based at the Centre and the Charity. Ms Goodband stated that Mr Brooks was asked to meet the developer and assess what they were proposing. Prior to being approached by the developer, Ms Goodband stated that the Charity had assumed it would have around £250,000 per annum to spend on charitable grants once it had repaid the mortgage on the land on which the Centre had been built. Ms Goodband attended a meeting with the developer on 17th July 2015 along with Mr Brooks. Following that meeting the trustee board of the Charity instructed chartered surveyors to carry out a valuation survey. On 18th September 2015 the surveyors produced a briefing note setting out their findings in which they stated that the indicative capital receipt due to the Charity would be;

“in the region of £6,567,500 based on the assumptions outlined above plus the value of [the Centre] of £2,865,000 giving an overall potential capital receipt to the Charity ... in the order of £9,432,500”.

The surveyors considered the developer as an appropriate development partner subject to the agreement of commercial terms.

28. Ms Goodband stated that in late 2015/early 2016 the developer’s plans changed and that they envisaged that the part of the site that had been earmarked for a new health centre was now to be used for an expanded school. It was at this point that the developer stated that “they would not be proceeding with the redevelopment of the Centre at this time”.
29. The agreement to the Charity entering into a consulting agreement with Ms Goodband’s company was recorded in the “minutes of the directors and trustees meeting of Island Health Trust held on Friday 27th at the Wesley, 81-103 Euston Street, London NW1 2EZ”. It is agreed that the date of the meeting was 27th February 2015. The minutes show that the three then current trustees of the Charity: Alan Holman, Suzanne Goodband and Stephen Molyneaux were present and Mike Brooks was in attendance. Mr Holman is shown as being the chair of the meeting. Ms Goodband declared a conflict of interest in relation to the consulting agreement. Ms Goodband left the room after the discussion about the consultancy proposal and the terms of the proposed contract, whilst Mr Holman and Mr Molyneaux made a decision on whether the Charity should enter into the consultancy agreement. The minutes record that;

“ Mr Holman and Mr Molyneaux agreed to request SG to submit a final commercial offer and confirm her willingness to proceed and sign the agreement assuming that the commercial offer was acceptable”.

The minutes continued:

“AH and SM confirmed that they had had regard to the guidance produced by the Charity Commission regarding payment to trustees, CC11, and in particular chapter 5 of that guidance and had the read the summary of chapter 5 produced by MB on this matter.”

The minutes also record that Mr Holman and Mr Molyneaux;

“noted the advice provided by BWB with regard to the start date of the agreement” and that Mr Brooks tabled during the meeting;

“a summary of the legal advice and comments from BWB with regard to the agreement, schedule 1 and schedule 2”.

30. The consultancy agreement was signed on 3rd March 2015 and provided for SGIS Ltd to provide services to the Charity. Ms Goodband is not specifically referred to in the agreement, although it does provide for a substitute to provide the services in the place of a non-specified person. The fees were agreed to be £1375 per day or part therefore exclusive of VAT. Invoices were to be submitted on a monthly basis “setting out the time that you have worked for IHT during the preceding month”. Expenses were to be paid on top of the fee. The services to be provided were set out in schedule 2 to the agreement and the scope of the services was summarised in paragraph 2.1 as follows:

“The consultant is engaged to act on a temporary basis as Programme Director across three main areas of work:

- (a) To put in place and mobilise the organisational, board and the executive arrangements for the Trust.
- (b) To direct all activities in relation to the RER/ASDA site redevelopment.
- (c) To direct the implementation of the IHT Strategy”.

Further details were provided of these three main areas of work, which included:

- “To manage the services of external legal advisors to review and revise the Trust’s objects and articles to enable the Trust to deliver its refreshed strategic direction
- To manage the service of external legal advisors and commercial property expertise to independently value the Trust’s assets in context of the future development of the wider ASDA site
- To act as the lead for IHT in all commercial and related discussions with ASDA and their development partner, RER, to explore options for the creation of a new health centre within the confines of the current wider site.”

The agreement was said to have an initial budget of 60 days calculated from the date stated at the start of this agreement and at the end of this 60 day period the trustees, with the engagement from Mr Brooks, would conduct a review of this agreement before continuing to commit any further funds towards the consultancy. The parties acknowledge that the total fee for the services during the initial budget period would therefore be £82,500 plus VAT and expenses.

31. Arrangements were agreed for the governance of this consultancy on the basis that Ms Goodband was the chair of the Charity. The agreement stated that at each board meeting Suzanne Goodband would provide a progress report and;
- ” A periodic review of the contract would be undertaken by two trustees chaired by Mike Brooks. Where appropriate this review may include Suzanne Goodband for purposes of providing clarity. This review to be minuted by Mike Brooks.”
- The lease renewal programme manager was to provide oversight and approval of resource and budgetary expenditure. This is believed to be a reference to Mr Brooks.
32. Schedule 1 to the Consultancy Agreement set out the background under which the appointment was made. This referred to developing the Charity’s strategy based upon the World Health Organization definition of “health” and “determinants of health” in the context of their definition of primary health care. The schedule went on to state that IHT envisaged achieving the objective it was setting itself in three ways. Firstly, to operate as a professional landlord to provide a well-maintained purpose-built health centre on the Isle of Dogs. Secondly, to make grants to organisations providing health and social care services to the population of the Isle of Dogs. Thirdly, to stimulate enterprise and employment

opportunities for the population of the Isle of Dogs. In paragraph 1.10 of schedule 1 it states the following:-

“IHT now faces a significant implementation programme to put in place the modus operandi to realise a refreshed and modernised strategy including necessitating the revision of the charity’s objects and articles”.

The schedule concludes that:-

“The current chair, Suzanne Goodband (SG) has the necessary credentials to provide this assistance in the form of a consultancy engagement which would be between IHT and Suzanne Goodband Interim Solutions Ltd (SGIS)”.

“SG will deliver the services in combination with her role as chair of IHT (though subject to appropriate conflict of interest considerations and a proper involvement of the independent trustees) with a view to the modernisation of IHT’s internal processes and structure, and the appointment of a senior executive team to manage IHT in the long term”.

33. The SGIS consultancy agreement was extended on 15th January 2016 for a further 75 days i.e. until March 2016,. This was done retrospectively for the period from November 2015 to 14th March 2016.. The second extension was agreed on 16th June 2016. This covered the period April 2016 to September 2016. In this extension the monthly fee payable to SGIS was fixed at £12,000 per month regardless of how many days were worked. A third extension was agreed in November 2016, which appears to have agreed a total budget of 175 days. On 23rd February 2017 a fourth extension was agreed and the monthly fee was reduced to £6000 per month.
34. In total SGIS charged the charity for around 280 days of service and for this charged total fees in excess of £330,000 excluding expenses.
35. The charity also entered into a consultancy agreement with Mr Brooks. In the transcript of an interview Mr Brooks gave to the Commission he states that he was appointed in 2014 and he was paid at a rate of £1,000 a day initially for a fixed number of days, but it was incrementally extended to provide services in respect of the lease renewal process and some other services. When asked by the Commission how his consultancy with the Island Health Trust had come about Mr Brooks replied:
- “I have, from time to time, over the past more than 20 years worked for Suzanne. I first met Suzanne when she was a student in a workshop around the East Anglia Regional Health Authority, and that is how I was known to IHT. I was invited in by Suzanne.”
- Mr Brooks was not made available for cross examination.
36. In Ms Goodband’s witness statement, she confirmed that at a meeting of the trustees/directors service contract review board subcommittee meeting on 6th June 2016, the subcommittee asked another trustee, Mr Moaz, to undertake consultancy work in assessing the potential for the Charity to work as a health oriented social finance intermediary within the charitable sector for the population of Tower Hamlets and Newham as part of a Government initiative. Ms Goodband stated that the non-conflicted trustees asked her to agree with Mr Moaz an all-inclusive fee of £750 per day to undertake 15 days’ work. In addition, the same board subcommittee agreed at that meeting to appoint a company owned by another trustee, Ms Brannvall, to undertake desktop research into poverty on the Isle of Dogs, and how this reinforced the need to view the health of the population through the

whole spectrum of primary health care using the WHO Determinants of Health. Ms Brannvall, via her company, was engaged under a consultancy agreement with the Charity dated 1st July 2016 and subsequently presented her findings to the Charity. The board subcommittee approved payment for this work at its subcommittee meeting on 13th October 2016. The Charity's Annual Accounts for 2016-17 disclose that Mr Moaz received £8,325 for his consultancy services and Ms Brannvall's company received £13,646 under its contract for research work.

37. ". In the meeting of the SGIS's contract review committee held on 26th February 2016, Mr Brooks is stated to be the chair of the meeting and Mr Holman and Sangita Patel attended as members with Ms Goodband in attendance. Mr Molyneaux gave apologies for his absence. At this meeting the minutes of previous meetings on 3rd July 2015, 31st July 2015, 25th September 2015, 20th November 2015, 16th December 2015 and 15th January 2016 were all agreed and all were to be signed by Mike Brooks in his capacity of chair. At each of these meetings Mr Brooks presented his report on the activities carried out by SGIS. Mr Brooks also minuted these meetings.
38. The minutes of the trustees/directors service contract review subcommittee meeting of 16th June 2016 show that Leone Hirst was the chair and also present at the meeting were Sadia Mujeeb and Chris Woodhead and Mike Brooks. There were no apologies for absence. Ms Goodband was also in attendance. At this meeting at which the issue of consultancy work to Mr Moaz and Ms Brannvall was agreed and a review of Ms Goodband's work by SGIS was recorded, Mike Brooks is recorded as having "resigned as the Independent Chair of this Board Subcommittee.
39. There was common ground between the parties in relation to a number of matters: It was agreed that the charity had consulted external lawyers during the period in which it was considering its strategic options and SGIS was providing consultancy services. Originally, the external advice was provided by Bates, Wells and Braithwaite (BWB). Later the charity sought advice from Winckworth Sherwood. Mr Brooks was the main contact between the Charity and its external lawyers. Ms Goodband also dealt directly with the lawyers from time to time. It was not disputed that the Memorandum and Articles of the Charity permitted payment of trustees, subject to certain charity law and procedural safeguards.
40. Ms Goodband and Mr Buckley referred to a subsequent development opportunity that the Charity had been made aware of and pursued in relation to for the land owned by the Charity after discussions with RER, the original potential developer, had ceased. This new opportunity also envisaged the purchase of the Charity's land.
41. It is agreed by the parties and the evidence supports the conclusion that the Objects of the charity had not been changed by the time that Ms Goodband resigned as a trustee and that no development or redevelopment of the Island Health Centre had taken place by such time.
42. A settlement agreement was entered into between Ms Goodband and the Charity on 15th November 2021. The dispute between these parties is said to cover, all claims as set out in the letter of claim dated 14th July 2020 sent on behalf of the Charity to Ms Goodband together with all claims arising out of Ms Goodband's conduct as a trustee of the Charity and the Charity's engagement of Suzanne Goodband Interim Solutions Limited. The settlement agreement required Ms Goodband to pay the Charity a total sum of £165,000 in full and final settlement of the dispute between the parties and the former trustee. In her evidence, Ms Goodband stated that this amount had been paid by insurers. This was not challenged by the Commission and the tribunal sought clarification of the insurance that

provided such cover. Ms Goodband confirmed that the insurance cover was provided under the policy that the Charity had taken out in order to provide cover to the trustees of the Charity for any liability that arose in connection with their role as a trustee.

The Hearing

43. At the hearing Ms Goodband was called to give evidence. Ms Goodband had provided a witness statement of 67 pages with a number of attachments. Mr Buckley introduced Ms Goodband and clarified certain aspects of her evidence. Mr Rechtman then cross-examined Ms Goodband. The tribunal asked questions for clarification. The only other witness in the hearing was Miss Butt of the Commission. Miss Butt had submitted a witness statement of 9 pages with attachments. Miss Butt was cross examined by Mr Buckley and the tribunal asked questions for clarification.
44. In his opening and closing remarks Mr Buckley asked the tribunal to accept that Ms Goodband had acted in good faith at all times during her period as a trustee and chair of the trustees of the Charity. He stated that there had been no lack of integrity. He also stated that Ms Goodband had sought to act in the best interests of the Charity at all times. Mr Buckley relied in part on decisions in previous cases dealing with the disqualification of company directors, including directors of charitable companies. He argued that the tribunal should assess Ms Goodband's good faith and her intention to act in the best interests of the Charity on the basis that this was a subjective assessment.
45. Mr Rechtman in his opening and closing submissions sought to emphasise the severity of the breaches of trustee duty by Ms Goodband that had led to the Order being made. He stated that her failures were amongst the most serious that the Charity Commission had seen in recent years. The Charity was a small charity. Ms Goodband was the chair of the trustees of the Charity. She was involved in the decision to award a consultancy contract to a company that she owned and benefitted from. Around two thirds of the Charity's total income had been paid to Ms Goodband over a two-year period. Mr Rechtman asked the tribunal to conclude that Ms Goodband had obtained a significant personal benefit from the Charity of which she was a trustee. Mr Rechtman stated and, in his cross examination of Ms Goodband, sought to establish that Ms Goodband had knowingly acted in breach of the Objects of the Charity in carrying out the work for which she had been remunerated. Mr Rechtman also asked the tribunal to conclude that Ms Goodband was unfit to be a charity trustee as she lacked integrity. The cross examination of Ms Goodband by Mr Rechtman sought to establish a basis for this conclusion. Mr Rechtman did not accept that cases relating to the disqualification of company directors were relevant to the decision that the tribunal was asked to make.
46. In the course of her evidence Ms Goodband sought to dwell upon and emphasise her very strong desire for the Charity to move on from merely providing a building that hosted a health centre in the Isle of Dogs in order to create a charity that was capable of, not only providing the health centre, but also working to improve primary health care within the wider area in which the Centre was based. Ms Goodband had very strong views about the importance of viewing primary health care as covering the full definition set out by the World Health Organisation. During the course of her tenure as chair of the trustees the Charity had, she said, changed from being a charity in 2009 that provided a building and was paying off the mortgage on that building to being a charity that had £10m of assets as well as rental income. It was therefore, in a position to provide a health centre and also to support a structured funding programme for the delivery of primary health care.

47. Ms Goodband took the tribunal through her background. She said that she has had a 50 year career in health and public service and rose from joining the National Health Service as a nurse to holding senior management positions in the NHS including working as a regional lead with oversight of 22 NHS trusts and holding NHS chief executive posts on two occasions. She later established a role as a consultant working for major consultancy businesses and for her own companies.
48. Ms Goodband pointed to the basis of the new strategy that the Charity was to pursue as having been established in meetings and workshops that the trustees held in around September 2013 and developed in various meetings of the trustees over the next two to three years. Ms Goodband accepted that this new strategy had not had the support of all trustees at the time. She described the trustee board as having “two camps in relation to the health role” i.e. on the decision as to whether the role of the charity should expand from being the provider of a healthcare centre for the local community and making small grants into a charity with a much larger and wider grant making capability. By April 2016 Ms Goodband said she had “put a new board together” in order to manage the new strategy of the Charity and the redevelopment project.
49. The change in the Charity’s financial position arose from the approach it had received from a developer regarding the redevelopment of the health centre site. It was this approach and the valuation that the Charity obtained from external surveyors that led Ms Goodband to conclude that it had assets of £10m and that around £4.5m would be available for the structured grant programme to provide primary health care.
50. The evidence of Ms Goodband in relation to whether or not the new strategy was compatible with the objects of the Charity was unclear. Ms Goodband pointed to the fact that she had sought and she had received legal advice from 2014 onwards from both of the law firms that advised the Charity. Both had advised on a change in the objects of the Charity. Ms Goodband’s evidence was that she sought advice about broadening the remit of the Charity in order to permit it to provide a broader range of healthcare and support for those needing primary health care. She was clear in her evidence that her intention in doing so was to permit the Charity to improve the provision of primary health care locally according to the World Health Organisation definition. Ms Goodband did not directly answer questions about whether she understood from the legal advice that she had seen that the change in the Objects of the Charity was an essential prerequisite to the new strategy that she supported being implemented.
51. Mr Buckley and Mr Rechtman sought in their questions of Ms Goodband and Miss Butt to address the issue of when it would have become apparent that the development opportunity presented by RER was unlikely to proceed. In her witness statement Ms Goodband stated that this was in late 2015/early 2016. Mr Rechtman pointed the tribunal towards an interview with the senior executive at RER who suggested that the deal had not been in a position to proceed and Ms Goodband was aware of that as early as July 2015. Mr Buckley pointed the tribunal to correspondence that showed that the architects for RER were sending plans for the redevelopment to the Charity and Ms Goodband on 24th September 2015. Ms Goodband was asked if the other trustees Mr Molyneaux and Mr Holman were aware that the development was unlikely to proceed at the trustee meeting of 1 April 2016 when the new strategy was being discussed. Ms Goodband stated that she still thought the development would happen at that stage. Ms Goodband pointed to the discussions initiated with advisors about an alternative development proposal that might have benefited the Charity. She said that this was clearly being discussed during 2016 and 2017 but came to nothing.

52. In discussing the consultancy arrangements Ms Goodband accepted that her firm had been paid £197,000 in the 2016 financial year for 171 days' work. On some days she said she had worked considerably more than 8 hours. In total Ms Goodband and Mr Buckley accepted that Ms Goodband and her companies had received £349,995 including expenses whilst the SGIS contract was in force. Ms Goodband stressed that the arrangements under which the consultancy agreements had been entered into and then supervised, managed and payments approved had been designed by external lawyers, BWB. These arrangements were managed by an independent consultant, Mike Brooks. Ms Goodband accepted that Mr Brooks had been paid £1000 per day as a consultant, earning a total of £105,000 for his work for the Charity. Ms Goodband stated that Mr Brooks had originally been employed by the Charity to assist in the renegotiation of leases with the health centre tenants. He had subsequently come to play a role in supervising and managing her consultancy contract and reporting back to a subcommittee of the board of trustees. It was this subcommittee that made all relevant decisions in relation to her appointment, the extension of the consultancy agreement, the renegotiation of fees and fee rates and approved the work that was being done by Ms Goodband under the consultancy agreement and the payment for such work. She also referred to Mr Brooks as being the representative of the Charity to liaise with the external lawyers regarding her appointment and the terms of the consultancy agreement. She confirmed that she had met BWB during the period in which the consultancy agreement was being discussed and approved. Ms Goodband said that she had worked with Mr Brooks for many years. He had worked as a contractor, i.e. he had been providing services to her in earlier roles. She said the decision to appoint Mr Brooks was made by the trustees and they had been happy with it.
53. In hearing evidence in relation to the work undertaken by Ms Goodband, it was apparent that she had sought and had carried out an extensive role in relation to strategy, operational matters, management, recruitment of trustees and the attempts to recruit senior staff as well as a substantial amount of work in organising the design and use of the health centre premises. Both Ms Goodband and Mr Brooks worked on the renewal of leases for the tenants of the health centre. Ms Goodband explained that she needed to understand how GPs worked in order for the lease to be effective and efficient. She also explained how she needed to consider safeguarding issues in the premises and gave as an example the design of entry points into the different healthcare users in the premises. She felt it was her role to rework, test and discuss the plans for the design and development of the healthcare centre and the areas that were to be leased to individual healthcare tenants. She confirmed that the Charity had instructed solicitors and surveyors and that these advisors worked at the same time as Ms Goodband and Mr Brooks were undertaking work in relation to the Centre and their future use. Under questioning from Mr Rechtman she confirmed that the lease with the dentists who occupied a part of the Centre had been agreed on 2nd March 2015 and therefore predated her consultancy work. She also confirmed that a new lease had not been concluded with the GPs in the Centre during her time as a consultant to the Charity.
54. The recruitment of new trustees by the Charity had largely been undertaken by Ms Goodband in her consultancy role. She stated that she worked for 27.5 days on the recruitment of trustees in 2016/17. She stated that she had not charged the Charity as a consultant for her work on the day of the interviews of the potential trustees as she had undertaken the interview role in her capacity as chair of trustees. Ms Goodband emphasised the complexity and difficulty that was required in recruiting the right trustee board, given the skills that would be required to implement the new strategy. She sought and found individuals with academic and private equity expertise as well as those with healthcare

backgrounds. In 2017, following criticisms of the payments made to Ms Goodband in public, she also recruited trustees from the local community. Ms Goodband regarded the recruitment and the strategy as requiring a sophisticated and skilled approach and that she was the best person to do this. A recruitment agency was also involved in the process of finding potential trustees.

55. When asked by the tribunal about the alternatives that had been considered to her taking on the role, Ms Goodband explained that the Charity had undertaken extensive work in 2013-2015 to find suitably skilled individuals to take on the executive roles required by the Charity. Evidence that this activity had taken place and discussions had been conducted within the Charity was apparent from the documentation and from Ms Goodband's witness statement. Ms Goodband said that she was of the view that the alternative to her appointment had been the appointment of a chief executive who would have cost around £100,000 in salary and with additional costs would have cost the Charity in excess of £120,000 a year. She originally said that the other trustees had agreed with this, but under questioning had clarified that of the two other trustees at the time, one had been against the idea and the other had supported her plan.
56. Ms Goodband was unclear and at times evasive in relation to the specific process by which her fees had been negotiated and approved and the extensions to her consultancy contract had been entered into. She did not recognise that Mr Brooks role in relation to her consultancy contract created a conflict in the light of her role in selecting Mr Brooks as a paid consultant and deciding what work Mr Brooks would undertake for the Charity in that role. However, it was clear that on each occasion that there had been agreement to pay fees to Ms Goodband or to alter and extend the consultancy agreement and the fee rates, Mr Brooks, who was not a Trustee, had been present and other trustees had been involved in and had made the decisions.
57. Throughout her evidence it was clear that Ms Goodband had a very strong belief in the Charity's need to change its strategy and, if necessary its Objects, in order to pursue a wider healthcare role in the wider community. Ms Goodband's views on this were consistent and never wavered. She also had a deep rooted belief in her own ability to drive forward the change that was necessary to achieve this operational and strategic change. Ms Goodband also believed she had the potential skills to undertake a number of operational and management tasks e.g., the sophisticated trustee recruitment process, the detailed management of lease renewals, the negotiation with developers of the potential redevelopment of the Charity's property and that, were anyone else to be asked to do the role, they would either have been inferior to her in their capability, or equally expensive. Ms Goodband was dissatisfied with the property management company that had operated the Centre on behalf of the Charity during the first few years when she was the chair. She did not believe that the Charity could rely on surveyors or agents to manage the Centre and the sub-leases to tenants. Ms Goodband did not accept that the recruitment of trustees fell within the responsibility of the trustees and/or the chair of trustees in a charity and that this would be regarded as a normal part of a trustee's voluntary and unpaid duties. She had firm beliefs about the particular complexity and difficulty of the time consuming work required to find the right trustees for the Charity in order to pursue its new strategy.
58. The witness statement and evidence provided by Miss Butt on behalf of the Commission set out the conclusions on which the decision to make the Order had been made. Miss Butt provided helpful clarification on some aspects of the Commission's reasoning in issuing the order and the statement of reasons that accompanied it. Mr Buckley asked Miss Butt about the interviews and evidence provided from other trustees and from the representative from

RER. Miss Butt confirmed that the Commission had relied on this information. Mr Buckley asked the tribunal to take account of the fact that no witness statements had been provided by these individuals and that they had not been made available for cross examination.

Findings of Fact

59. Having considered all the evidence and all of the submissions from the parties, the tribunal has come to the following conclusions on the following matters of fact that are relevant to the outcome of this appeal:
- i. Ms Goodband's position as a trustee of the Charity and a consultant to the Charity created a clear conflict of interest. The terms of the consultancy created a significant personal benefit for Ms Goodband and this conflict must have been apparent to her. The conflict of interest therefore needed to be managed effectively by Ms Goodband and by the Charity.
 - ii. By early July 2016 three of the six trustees of the Charity were being remunerated by the Charity.
 - iii. Ms Goodband must have understood that the strategy she wished the Charity to pursue, and the Objects of the Charity were potentially in conflict. She had received sufficient legal advice or reports of legal advice to have understood this issue and she confirmed in her evidence that she was aware of the conflict. In order to avoid pursuing a strategy that was in breach of the Objects of the Charity, Ms Goodband and the Charity needed to take effective steps to alter one or the other in order to make sure they were aligned. The SGIS consultancy agreement expressly acknowledged the need to address this issue.
 - iv. Ms Goodband was aware that the development proposal from RER that might have yielded significant additional funds for the Charity was not going to proceed by late 2015/early 2016. It is not clear that Ms Goodband made the two other trustees of the Charity at that time aware that this was the case. She needed to do so.
 - v. Ms Goodband was the dominant force in the Charity during the period from at least 2013 to 2017. She was the only trustee who continued through this period. She decided that a change in the Charity's strategy was required and selected a new group of trustees in order to develop and pursue the strategy that she had devised.
 - vi. The positions in which Ms Goodband and Mr Brooks were placed in relation to the Charity and each other created a clear and obvious conflict of interest. Ms Goodband had recruited Mr Brooks with the consent of other trustees. She was aware of the terms of his consultancy arrangements. Together with other Trustees, she chose the role that he was to adopt within the Charity and the work that he was to undertake. Ms Goodband then proceeded on the basis that Mr Brooks would seek legal advice on behalf of the Charity about her appointment as a consultant, that he would manage the process by which the terms of her appointment were agreed by the trustees, that he would supervise or monitor the work that she undertook. Mr Brooks was then established as the chair of the subcommittee of the board that was to approve the work that Ms Goodband undertook and the payment she received for it, despite him not being a trustee. The conflict was obvious and the need to recognise and effectively manage it should have been obvious to any competent trustee.
 - vii. The Charity did not need to change its strategy. It could have achieved its Objects and provided a public benefit by carrying on largely in the manner it had done between 2009 and 2012. However, proactive and ambitious trustees are to be welcomed in the Charity sector and as long as trustees discharge their duties in a well thought out, realistic and legitimate manner, the Commission and this tribunal should not penalise them for radical thinking or ambition.

- viii. Ms Goodband gave little if any thought as to whether the work that she could do for the Charity at the cost that she proposed was in the best interest of the Charity. She also gave little if any thought as to whether the work that she wished to undertake for the Charity and to be paid for was proportionate and necessary to help the Charity achieve its Objects and charitable goals.
- ix. Ms Goodband was convinced that her approach to the strategic direction of the Charity was correct. She was similarly convinced that, only she could see through this change in strategy effectively. Ms Goodband believed that she needed to be involved in all strategic and operational matters. She gave no thought to the work being done more cheaply by others or not being done at all, or she dismissed this idea for subjective reasons. The tribunal finds that Ms Goodband could not see the wood for the trees when undertaking her role as a trustee of the Charity and a consultant, she was unable or unwilling to delegate and she lacked objectivity and sound judgement.
- x. The Charity expended the majority of its income on activities that Ms Goodband wished and thought necessary to pursue and that she wished to be paid for. However, the basic function of the Charity continued. The tribunal finds that the activities of the Charity and its ability to provide public benefit and to pursue its Objects were not enhanced by any of the work that Ms Goodband did under her consultancy agreement. The charitable funds expended under the consultancy agreement could have been used to further the Objects of the Charity.
- xi. On the balance of probability and based on the evidence, the tribunal finds that Ms Goodband did not lack integrity when carrying out her role as a trustee of the Charity and a consultant to the Charity. Ms Goodband did not deceive or mislead the other trustees. She sought legal advice on the steps she wished to take, and she insured that the other trustees were involved in making decisions in relation to the strategic direction of the Charity, the remuneration that she and Mr Brooks received and the operational matters on which she was working. However, the manner in which Ms Goodband involved the other trustees was unsatisfactory and at times arbitrary. They were not kept fully informed. Ms Goodband's primary purpose in being appointed as a consultant to the Charity and receiving remuneration for providing consultancy services was not to gain any personal benefit. However, it must have been entirely obvious to Ms Goodband that significant personal benefit would arise and that a conflict of interest existed that needed to be managed.
- xii. The tribunal finds that Ms Goodband was reckless in relation to creating and managing conflicts of interest that arose in respect of her simultaneous appointment as a trustee and a consultant. It also finds that she was reckless with regard to the risk that the work that she wished the Charity to undertake would be outside of the scope of the existing Objects of the Charity. The tribunal finds that Ms Goodband intended to manage this conflict by amending the Objects of the Charity. She was not prepared to change the strategy that she wished the Charity to pursue and she had no particular plan or timescale in which the required amendment to the Objects would take place. As a consequence, significant funds were expended on developing a strategy that was outside the Objects of the Charity. The tribunal finds that all of the work and expenditure that was incurred outside the objects of the Charity was preparatory work, so in practice, no change in the operational activity of the Charity was put into effect that would have meant that it was operating outside of its Objects.
- xiii. The tribunal accepts that, as a matter of fact, it must be the case that charities who are contemplating changing their objects must incur some expense, if only on seeking legal advice, in anticipation of effecting any change to their objects.

- xiv. Ms Goodband was misadvised in relation to the requirements of section 185 of the Act in relation to whether the majority of trustees had to be unremunerated.
- xv. The opportunity to profit from the development of the land housing the Island Health Centre did not require any change in the strategy of the Charity. The evidence that the tribunal has seen does not indicate that this opportunity required significant additional work to be carried out by the Charity, either by the trustees or consultants or staff. A highly paid full-time Chief Executive was not required in order to manage this opportunity.
- xvi. The remuneration paid to Ms Goodband by the Charity was excessive, unreasonable and disproportionate to any value that the Charity received.
- xvii. The overall expenditure on consultants and advisers by the Charity was excessive, unreasonable and disproportionate to any value that the Charity received. Ms Goodband worked on the renegotiation of leases for occupiers of the Centre alongside Mr Brookes and external surveyors and lawyers. The cumulative expense must have been apparent to Ms Goodband. Little, if anything, was achieved by this work. There is no reason to conclude that the Charity benefited from Ms Goodband's decision to involve herself in the operational requirements of the tenants of the Centre. On a similar basis, the range of skills that Ms Goodband concluded were required when recruiting trustees for the Charity was based on her perception of what was required to implement the new strategy that she wished the Charity to pursue and which would require a change in the Objects. In seeking such skills Ms Goodband decided that the Charity should pay for her time and for the service of an external recruitment agency. The Tribunal concluded that an objective and competent trustee would have concluded that the recruitment work that was required at the time did not require or justify the time and expense that Ms Goodband expended on this process and would not have incurred such expense. The Charity did not benefit from this expenditure.
- xviii. The initial daily rates paid to SGIS, Mr Brooks and the trustees who were remunerated were not subject to market testing or any value for money analysis.

Legal Issues

- 60. The tribunal has considered those issues of law that need to be decided in light of the conclusions in relation to the facts that are relevant to this appeal that are set out above. Not all matters on which it heard submissions and arguments from the representatives of Ms Goodband and the Commission need to be decided in order to determine the outcome of this appeal. The tribunal has considered all the relevant matters and comes to the following conclusions.
- 61. Ms Goodband was a trustee of the Charity at all relevant times.
- 62. While Ms Goodband was a trustee of the Charity there was misconduct or mismanagement of the Charity. The Charity failed to manage conflicts of interest arising from Ms Goodband's position as a trustee and a consultant and from Mr Brooks position as a consultant to the Charity. Mr Brooks' role and workload was in practical terms controlled by Ms Goodband, whilst he assumed or was given a role in relation to Ms Goodband's consultancy arrangement including a role chairing a subcommittee of the Charity trustees, despite not being a trustee himself. In addition, the Charity committed excessive and disproportionate expense in developing strategic changes and in managing relatively straightforward operational matters such as the renegotiating of leases with tenants of the Charity's main property. Most of the expense in undertaking such work was incurred in paying Ms Goodband and Mr Brookes. The Charity was in breach of section 185 of the Act

by early July 2016. The trustees, or some of the trustees, failed to act in the best interests of the Charity. Therefore, misconduct or mismanagement occurred during the period from 2015 to 2017.

63. Ms Goodband was a trustee of the Charity at the time when there was misconduct or mismanagement in the administration of the Charity.
64. Ms Goodband was responsible for misconduct or mismanagement in relation to the decision to commit manifestly excessive resources to issues that were not essential to the Charity, such as the work undertaken to develop changes to the strategic direction of the Charity and its Objects and the decision that she made to accept a role as a consultant receiving excessive remuneration.
65. Ms Goodband knew of actions and activities that amounted to misconduct or mismanagement and failed to take any reasonable steps to oppose them. This conclusion applies to her reckless disregard for managing the conflicts of interest arising from her appointment as a consultant and a reckless disregard to the possibility that the strategy she wished to pursue was not aligned with the Objects of the Charity and her failure to take effective steps to bring these two matters into alignment when she was aware of the conflict.
66. Ms Goodband contributed to or facilitated misconduct or mismanagement insofar as she failed in her role as chair of the trustees of the Charity to (i) create an effective system whereby trustees could identify and manage conflicts of interest, (ii) could decide how the Charity's resources were to be applied to the operational management of the Charity and the strategic direction of the Charity in advance of expenditure, and (iii) ensure that appropriate legal advice was taken, was made available to the trustees and was then acted upon, even when she had identified that this was necessary.
67. The tribunal makes no findings in relation to the conduct or competence of the other trustees of the Charity. It is not necessary to do so in order to determine this appeal.
68. Having determined that Ms Goodband was a trustee of the Charity at the time when misconduct or mismanagement in the administration of the Charity took place and that she was in part responsible for, knew of, failed to take any reasonable steps to oppose, or contributed to or facilitated such misconduct or mismanagement, the tribunal needs to decide if Ms Goodband is unfit to be a charity trustee or trustee for a charity. The tribunal has sought to recognise the position in which Ms Goodband found herself and the strong belief that she had that public benefit would arise from the actions that she wished to take to change the strategy and operations of the Charity. The tribunal found that Ms Goodband does not lack integrity. However, the tribunal finds that she acted in a reckless manner. It is the case that recklessness arises when an individual foresees a risk or problem but proceeds to take such risk, or fails to address the problem, without any effective plan to mitigate the potential harm. This can arise from thoughtlessness or from inadequate understanding or insight. In this case, the tribunal concludes that Ms Goodband had the competence and capability to understand the issues that needed to be addressed and to address those effectively. However, she was so blinded by her belief in her own judgement and competence that she failed to see the need to address any issue that would have prevented her from proceeding in the manner that she had convinced herself was appropriate and necessary. Given this conclusion, it is likely that were Ms Goodband to be appointed to another position as a charity trustee or a trustee for a charity that she may end up in the same position. Ms Goodband lacks the perspective and objectivity required to effectively discharge a role as a trustee of charity acting for the public benefit.

69. Therefore, the tribunal comes to the conclusion that Ms Goodband is unfit to be a charity trustee or trustee for a charity. The Tribunal has considered the effect that the Charity Commission investigation of Ms Goodband's conduct and the issue of the Order to her would have had upon her. These proceedings may also have served as an uncomfortable and effective reminder of how she might conduct herself in relation to any position as a charity trustee in the future. Ms Goodband's position in giving evidence to the tribunal suggested that she was not yet ready to acknowledge any fault on her part. However, the tribunal formed the view that Ms Goodband was now alive to the responsibilities that must be discharged by a charity trustee.
70. The tribunal concludes that Ms Goodband is unfit to be a charity trustee or trustee for a charity in relation to all charities at the present. This is the inevitable consequence of the findings of fact and of law set out above. Ms Goodband's recklessness and lack of judgement are relevant to her position with all charities.
71. However, Ms Goodband remains a highly competent and capable individual with considerable valuable experience. In an environment or structure where she can be effectively questioned and guided by others, Ms Goodband could still make a useful contribution to a charity or to the charitable sector. Therefore, the tribunal concludes that Ms Goodband should not be disqualified from holding an office or employment in a charity with a senior management function.
72. The tribunal needs to determine if the imposition of a disqualification order on Ms Goodband is in the public interest. The tribunal concludes that this is the case. The decisions that were taken by the Charity that amounted to misconduct or mismanagement were very damaging to the public reputation of the Charity as well as creating a drain on its resources. The position where over 60% of the income of a charity is spent paying the chair of the trustees is one which the public is unlikely to understand or accept. They would be right to distrust a charity that found itself in this position. The fact that further funds were spent on other consultants that would also have been regarded as excessive by the public and which produced no clear benefit to the Charity would also give rise to damage to the Charity's reputation. It is not necessary to conclude that the personal benefit Ms Goodband received arose from dishonesty for it to have given rise to obvious concern to the public and to those public bodies and other organisations that dealt with the Charity. The tribunal noted that at one point during discussions about the management of Ms Goodband's consultancy arrangements, Mr Brooks informed the trustees that savings of £4,500 per annum could be made if he stopped his role in monitoring and checking Ms Goodband's invoices for work that she had done and instead Ms Goodband was paid on a flat fee basis. The tribunal has great difficulty in understanding how Ms Goodband could have thought that paying £4,500 a year to manage the process of paying her for the consultancy work that she undertook for a charity where she was chair of trustees could be anything other than indefensible. The potential for damage to the Charity's reputation was obvious. Given the nature and seriousness of the misconduct and mismanagement for which Ms Goodband bears some responsibility, it is desirable in the public interest in order to protect public trust and confidence in charities generally that a disqualification order be made.

Duration of the Order

73. We turn to the question of the duration of the disqualification order. The order issued by the Commission imposed a disqualification period of 12 years on Ms Goodband. Mr Buckley on behalf of Ms Goodband argues that this would be disproportionate and that the Commission had contributed insufficient weight to their conclusion that Ms Goodband's conduct was not dishonest and to Ms Goodband's good character and that she had acted at all times in what she believed were the best interests of the Charity. Mr Buckley pointed us to a number of decisions of the first-tier tribunal in which shorter disqualification periods had been imposed for matters that he stated were of greater or equal significance to the alleged failures by Ms Goodband.
74. Mr Rechtman submitted that Ms Goodband's conduct falls into the higher range of seriousness and referred us to the guidance that the Commission has published and which it utilises in deciding how long a period of disqualification should apply.
75. The statutory regime for disqualifying trustees does not permit a disqualification order to have indefinite or permanent effect. Instead, section 181B of the 2011 Act provides that any disqualification order must be made for a period not exceeding 15 years. The Act also requires that the disqualification period must be proportionate. The guidance or explanatory statements issued by the Commission identifies three bands of duration which it will apply when imposing a disqualification order:-
- The upper band (over 10 years and up to 15 years). This band is reserved for particularly serious cases and an explanatory statement provides some clarification of the facts that denote seriousness. These include fraudulent and dishonest conduct and conduct giving rise to damage to a charity or charity's reputation that is significant. It also refers to "reckless or grossly negligent disregard for compliance with charity law or other laws as they apply to charities".
- The middle band (5 to 10 years) applies to serious cases and gives as example where the extent of any damage to a charity or charity's reputation caused by the conduct giving rise to the disqualification order is moderate and the person's conduct shows disregard to compliance with charity law and the duties of trustees and "other reckless, negligent or incompetent conduct".
- The lower band is less than five years.
76. We are satisfied the facts of this case are sufficiently serious that a disqualification for a period within the lower band would be inadequate (and would not be proportionate). The tribunal has had regard to the explanatory statements issued by the Commission, but is able to come to its own decision having taken account of such guidance. In our judgement the present case does not fall within the most serious of categories. We have concluded that Ms Goodband did not act dishonestly and that she was not primarily motivated by desire to make personal gain and that she did not lack integrity. However, the misconduct or mismanagement for which she was responsible or for which she failed to take adequate steps to avoid has caused significant damage to public trust and confidence in the Charity and has potential to have the same affect more widely on other charities. The circumstances in which it arose were obvious and avoidable and Ms Goodband's conduct was reckless. We have considered what aggravating or mitigating features we should take account in deciding upon the proportionate duration of the disqualification order. The tribunal notes that the Commission Order had a duration of 12 years starting from 2022. Ms Goodband resigned as a trustee of the Charity in 2018. The evidence provided by Ms Goodband, which was not challenged by the Commission, pointed to her having significant difficulties in taking up positions of trust and responsibility in both voluntary and commercial fields due to the ongoing action by the Commission that has resulted in the Order. The tribunal finds that, notwithstanding Ms Goodband's refusal to acknowledge any culpability or failing, or any

damage to the Charity, during the course of these proceedings, she is clearly aware of the conduct expected of trustees and she acknowledged that she is now much more aware of the standard that she should have met as a charity trustee.

77. In all of the circumstances of this case, the tribunal concludes that having taken account of the five year period that has elapsed since Ms Goodband ceased to be a trustee of a charity a disqualification for seven years from the date of this decision would be proportionate to the breaches and failures for which Ms Goodband is responsible and would be sufficient to protect charities. The tribunal is of the view that after such a period has elapsed it is unlikely that Ms Goodband would pose any threat to a charity that wished to appoint her as a trustee.

Decision

78. For all of the reasons set out above and having taken account of all of the evidence and submissions that are relevant to this appeal, the tribunal is satisfied that the statutory criteria are met for disqualifying Ms Goodband from being a charity trustee or trustee for a charity and we agree with the Commission's decisions to make a disqualification order against her in respect of charities generally. However, we consider that the proportionate disqualification period in this case is seven years starting from the date of this decision.
79. The appeal is allowed in part. We substitute the words "a period of seven years" for the words "a period of twelve years" in paragraph 2 of the Order.

Signed

Date: 18 January 2024

PETER HINCHLIFFE
Judge of the First-Tier Tribunal

26 January 2024: Corrections made to paragraph numbering in accordance with Rule 40 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.