



Charity Appeals

DECISION OF THE TRIBUNAL

Reference Number: CA3 01/19

Venue: George House, 126 George Street, Edinburgh EH2 4HH

**Held on: 29 April 2019 (Case Management Discussion by the Chair)
30 May 2019 (Deliberations by Tribunal on written submissions)
20 June 2019 (Additional written submissions considered by
email exchange)**

Appellant: Dr Sloan's Trust

Appellant's Representative: Ms Lisa Hainey [Thornton's Law LLP]

Respondent : Office of the Scottish Charity Regulator ['OSCR']

Respondent's Representative: Ms Moira Cathcart [OSCR]

TRIBUNAL:

Legal Member: Mr Joseph C Hughes [Chair]

Ordinary Members: Mrs Catriona Whitfield and Dr Neil K Dickson

1. THE APPEAL:

This is an Appeal raised at the instance of Dr Sloan's Trust ('the Appellant') against the review Decision of the Office of the Scottish Charity Regulator (OSCR) ('the Respondent') dated 20 December 2018 [RS/STA/18-0769] to refuse to enter the Appellant in the Scottish Charity Register maintained by the Respondent in terms of section 3 of the Charities and Trustee Investment (Scotland) Act 2005 ('the Act').

This is an Appeal in terms of section 76 of the Act.

2. SUMMARY OF DECISION:

The Tribunal QUASH the Decision of the Respondent to refuse to enter the Appellant in the Scottish Charity Register in terms of section 76(5) (b) of the Act.

The Tribunal DIRECT the Respondent to enter the Appellant in the said Register forthwith.

The Tribunal makes no order for expenses in terms of Rule 24 of The First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals Rules of Procedure 2018 ('the Rules').

The Decision of the Tribunal is unanimous.

3. PRELIMINARY MATTERS:

The Chair held a Case Management Discussion on 29 April 2019 within George House, Edinburgh. A Summary Note was thereafter issued. It was agreed by parties that the issues in dispute were focused and could be addressed by way of written submissions having regard to Rule 14 of the Rules. It was agreed that the principal issue of dispute between the parties focused upon the interpretation of the Trust Deed and in particular the Preamble.

Both Parties lodged productions within a joint common paginated Bundle.

Detailed written submissions were lodged by both Parties by 23 May 2019.

The Tribunal convened to commence their deliberations initially on 30 May 2019 at George House.

On 12 June 2019 the Tribunal sought further clarification from parties to ensure there was no dubiety in respect of the extent of dispute between the parties.

Further written submissions were thereafter lodged by parties on 19 June 2019.

The Tribunal considered these additional submissions by email exchange on 20 June 2019.

Throughout our deliberations the Tribunal had regard to the Overriding Objective in Rule 2 and 3 of the Rules.

4. LEGISLATIVE BACKGROUND:

The Register

The Respondent is obliged to maintain the Scottish Charity Register, which Register must contain a separate entry for each charity entered in the Register.

Each entry must contain prescribed information about the charity in terms of section 3(3) of the Charities and Trustee Investment (Scotland) Act 2005 ('the Act').

The Respondent may enter an applicant in the Register only if it considers that the applicant meets the charity test within section 5(1) of the Act.

If the applicant does meet the charity test its application may be refused only in the limited circumstances specified within section 5(2) of the Act. It is accepted by the parties that this is not an issue in this appeal.

The Charity Test

A body meets the charity test if:

- (a) Its purposes consist of one or more of the charitable purposes, and
- (b) It provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere, all in terms of section 7(1) of the Act.

Section 7(4) of the Act provides that:

'a body which falls within paragraphs (a) and (b) [of section 7 (1)] does not, despite that subsection, meet the charity test if (a) its constitution allows it to distribute or otherwise

apply any of its property (on being wound up or at any other time) for a purpose which is not a charitable purpose’.

Public Benefit

Section 8 of the Act provides that:

‘(1) No particular purpose is, for the purposes of establishing whether the charity test has been met, to be presumed to be for the public benefit;

(2) In determining whether a body provides or intends to provide public benefit, regard must be had to:

(a) how any-

(i) benefit gained or likely to be gained by members of the body or any other persons (other than as members of the public), and

(ii) disbenefit incurred or likely to be incurred by the public,

in consequence of the body exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence, and

(b) where benefit is, or is likely to be, provided to a section of the public only,

whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive’.

Meeting the Charity Test

Section 9 of the Act states that the Respondent must issue guidance on how it determines whether a body meets the charity test. Guidance has been published and is entitled ‘Meeting the Charity Test (‘MTCT’). This is helpfully included within the paginated joint bundle.

Where an application for entry in the Register is refused by the Respondent the applicant is entitled to seek a review of that refusal, all in terms of sections 72 and 74 of the Act.

Where a decision to refuse entry in the Register is confirmed in terms of section 74 of the Act, the applicant (namely the Appellant in this appeal) is entitled to appeal thereafter to the Tribunal in terms of section 76 of the Act.

Powers of the Tribunal

The Tribunal is empowered in this appeal by section 76(5) to:

- (i) **confirm** a decision appealed to it;
- (ii) **quash** a decision appealed to it and direct the Respondent to take such action, if any, as the Tribunal thinks fits, within such timescales specified by the Tribunal; and
- (iii) **remit** a decision back to the Respondent for reconsideration, providing reasons for so doing.

Notwithstanding the review Decision of the Respondent it is not in dispute by both parties that the Tribunal is entitled to effectively make a Decision of new following the case of ***St Margaret's Children and Family Care Society -v- OSCR*** [App 02/13, 31 January 2014].

The Tribunal is entitled to direct the Respondent to enter the Appellant in the Register only if the Tribunal is itself satisfied that the Appellant meets each element of the charity test prescribed by sections 7 and 8 of the Act and does not fall within any of the exceptions provided at section 7(4) of the Act. In this Appeal the only exception argued by the Respondent is section 7(4) (a) of the Act.

5. THE VIEW OF THE RESPONDENT:

Clarification of areas in dispute

1. The interpretation of the Preamble/Clause EIGHTH and whether the Trust's purposes consist only of one or more of the charitable purposes;
2. Whether the Trust's activities are in furtherance of charitable purposes and can be taken into account in an assessment of whether the Trust provides public benefit within the meaning of section 8 of the Act; and
3. Whether the Trust's 'secondary purpose' at Clause EIGHTH of the Trust Deed allows the Trustees to apply or otherwise distribute its property for a purpose which is not a charitable purpose [within the meaning of section 7(1)(a) of the Act] in terms of section 7(4) of the charity test and as a result fails the charity test.

There appears to be an acceptance by the Respondent that there is what the Tribunal considers to be a 'domino effect' namely that, if we take a different view from the Respondent in respect of point 1 above (interpretation of the Trust Deed), then that would have follow-on consequences in respect of points 2 and 3 above.

4. The Respondent therefore 'accept that issues 2 and 3 above flow from issue 1';
5. The Respondent refused registration on the basis of the aforesaid three disputed issues. They do not seek to argue any other issues. This is neatly summarised within the supplementary submissions by the Respondent [dated 19th June 2019] where they quote the decision maker's Review Letter dated 20 December 2018 at paragraphs 55-58:

'55. However, the primary purposes failed in 1986 and since then the Trustees have been exercising the power granted them by Clause EIGHTH of the Deed of Trust to lease the trust property and apply the income to another charity, St Andrews Welfare Trust. Clause EIGHTH provides for a secondary or alternative purpose in the event of the primary purpose failing. Clause EIGHTH is worded in broad terms that grant the Trustees absolute discretion to apply the trust property in any way they deem to be for the benefit of the community of St Andrews, regardless of whether that 'benefit' is public benefit in terms of the charity test.

56. I conclude that Clause EIGHTH is not a charitable purpose. Because Clause EIGHTH is not charitable, the Trust does not have wholly charitable purposes and does not meet the charity test under section 7 (1) (a) of the Act.

57. The Trust also fails the charity test under section 7(4) (a) of the Act because the Deed of Trust, at Clause EIGHTH, permits the trust property to be applied in ways that are not charitable.

58. Moreover, because Clause EIGHTH is not charitable, any benefit deriving from activities undertaken to further it cannot be taken into account in my assessment of whether the Trust provides public benefit. As the primary purposes have failed, the sole activity of the Trust is undertaken in furtherance of Clause EIGHTH. Therefore, I conclude that the Trust does not provide public benefit and fails the charity test under section 7(1)(b) of the Act.'

The Respondent further clarified in their updated submissions:

‘For clarity we can confirm that these are the sole reasons that we relied on to refuse status. Should the Tribunal find that the Trust has wholly charitable purposes the Trust would meet the section 7(1) (a) of the Act requirement, the section 7(4)(a) exception to the charitable status would no longer be applicable and the Tribunal would simply have to assess, in determining if the Trust met the charity test, whether it provides public benefit in terms of section 7(1)(b) of the Act. To this end in determining whether the Trust provides benefit to the public, in furtherance of these purposes in the Review Letter at paragraphs 41 and 42 OSCR did state that the current activities of the Trust are consistent with the Trust’s superseded ‘primary purposes’.

6. FINDINGS OF FACT and FINDINGS IN LAW:

[1] The Appellant was established by Deed of Trust dated 20 May 1921 and subsequent dates. It was thereafter registered in the Books of Council and Session on 30 May 1921;

[2] The Appellant was established to provide accommodation for the establishment of a centre in connection with maternity and child welfare, to provide accommodation for mothers and children requiring special attention, to provide accommodation and facilities for carrying on school clinics, nursery schools and any day nurseries and to provide a home where the nurses of the St Andrews Nursing Association may reside;

[3] The only asset held by the Appellant is the property known as and forming 66 North Street, St Andrews KY16 9JT (hereinafter referred to as ‘the House’);

[4] After the establishment of the National Health Service the St Andrews Nursing Association ceased operation but the House continued to be used as a mother and child clinic until 1986 when the clinic transferred to the new St Andrews Health Centre;

[5] In the 1960’s, as the St Andrews Nursing and Children Welfare Association had ceased to operate its Trustees, by means of petition to the Court of Session, created a new charity to which its assets were transferred. This charity is known as the St Andrews Welfare Trust and is registered by the Respondent under charity registration number SC008660;

[6] When the Mother and Child Welfare Clinic closed in 1986, the Appellant decided to lease the House on a commercial basis to the University of St Andrews and to pay over

the rental income to the said St Andrews Welfare Trust. This arrangement continues to be in place. The rental income is paid by the Appellant to St Andrews Welfare Trust as soon as it is received and forms the majority of the income received by the St Andrews Welfare Trust;

[7] The Appellant is seeking to apply for Charitable Status to minimise its tax liabilities, maximise the funds due to be paid to St Andrews Welfare Trust, and provide maximum charitable benefit;

[8] The stated intention of the Appellant, if they obtain Charitable Status, is to transfer the House to the St Andrews Welfare Trust and seek to wind up Dr Sloan's Trust. The Appellant believes this would provide a better income than investments in stocks and shares along with good capital growth. The Appellant has stated that transferring the House in this way would be preferable to the sale of the House;

[9] An application for Charitable Status dated 6 August 2018 was submitted by the Appellant to the Respondent. The Respondent issued a refusal of the application on 13 November 2018. A request for a review was submitted by the Appellant on 3 December 2018. A review decision of the Respondent dated 20 December 2018 upheld the decision to refuse to register the Appellant as a charity. A Notice of Appeal was lodged by the Appellant on 17 January 2019;

[10] The Respondent's stated reasons for refusal are that the Appellant does not meet the charity test because its purposes do not consist only of one or more charitable purposes laid out within section 7(1) of the Act and its constitution, namely the aforesaid Deed of Trust, allows it to distribute or otherwise apply its property for a purpose which is not a charitable purpose in breach of section 7(4) (a) of the Act.;

[11] The Appellant will not meet the charity test unless its purposes only consist of one or more of the charitable purposes in terms of section 7(1)(a) of the Act;

[12] The Appellant will not meet the charity test unless it provides (or intends to provide) public benefit in Scotland or elsewhere in terms of section 7(1)(b) of the Act;

[13] The Respondent has issued statutory guidance on how it determines whether an applicant, such as the Appellant, meets the Charity Test. The guidance is entitled 'Meeting the Charity Test' ('MTCT');

[14] MTCT confirms if the requirements within [11] and [12] are met then the body is entitled to be entered in the Register and to be a charity. Put simply the Respondent states:

'Charitable Purpose + Public Benefit = Charity';

[15] Section 7(2) of the Act lists all the charitable purposes which are acceptable to the Respondent;

[16] The Appellant stated within its original application for Charitable Status the following charitable purposes: (a) the prevention of relief of poverty; (d) the advancement of health; and (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage;

[17] The Respondent has consistently stated that Clauses FIRST to FOURTH of the Deed of Trust, as qualified by the Preamble, fall under section 7(2)(d) of the Act - The advancement of health; and under section 7(2)(n) - The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage;

[18] With the natural passage of time and changing social and economic circumstances, the aforesaid Clauses/purposes are no longer in operation. Accordingly the Appellant has had to alter the manner in which the House is used. It now operates under the terms of Clause EIGHTH of the Trust Deed, namely:

‘In the event of the objects of the Trust being met or superseded by State provision or of it being found that for any cause same no longer require to be provided for, the Trustees shall have power to use the said house or to sell the same and use the proceeds thereof for any other objects which they in their own absolute discretion may deem to be for the benefit of the community of St Andrews, and if necessary the Trustees may apply to the Court of Session to have a scheme for carrying out such other objects duly sanctioned’;

[19] The Respondent does not accept that Clause EIGHTH is a charitable purpose and therefore concluded that the Appellant does not meet the charity test under section 7(1)(a) of the Act;

[20] The Respondent further concluded that the Appellant fails the charity test under section 7(4)(a) of the Act because the Deed of Trust permits the trust property to be applied in ways that are not charitable;

[21] The Respondent having concluded that Clause EIGHTH is not charitable, they are unable to take into account any benefit deriving from activities undertaken to further its terms;

[22] The Appellant and Respondent are unable to agree in their interpretation of the Deed of Trust and in particular the interpretation of and effect of the Preamble of the Deed of Trust;

[23] The Respondent submits that a provision in the Preamble is divisible into two parts:

‘Declaring always that everything bearing directly or indirectly upon such uses, purposes and powers and the objects contemplated in the purchase of said house shall at all times be treated and construed according to the most liberal interpretation and in the broadest spirit of the time...’ (*referred to as Part A*); and

‘...and that it shall not be regarded as an infringement of the conditions of this Trust if anything is done which may appear not to fall within the scope of the work presently contemplated as herein set forth or referred to so long as the general health of the community and the amelioration of suffering in the Burgh of St Andrews are thereby furthered’ (*referred to as Part B*);

[24] The Respondent argues that Part A stipulates how the whole Deed of Trust should be interpreted. The Respondent further argues that Part B applies to ‘work presently contemplated’ at the time the Trust was created, as set out in Clauses FIRST to FOURTH, and does not qualify the clauses that follow ;

[25] The Respondent contends that Clause EIGHTH is effectively a ‘standalone’ provision. The Respondent argues that the ‘absolute discretion’ referred to in the Clause is unqualified by the Preamble. The Respondent argues that the Preamble only refers to Clauses FIRST to FOURTH and has no effect or directional meaning in respect of Clause EIGHTH;

[26] The Appellant argues that the Preamble should be looked at as a whole and regarded as a direction for the Appellant as to how the Trust Deed is to be operated. The Appellant submits that the Preamble governs the manner in which the Trust is to be operated;

[27] It is the finding of the Tribunal that the inclusion of Clause EIGHTH in the Deed of Trust means that it was work which was ‘presently contemplated’ at the time the Trust was established;

[28] At the time of the Trust’s inception, it was contemplated that changes to the use of the House would occur in the future such that there would be a need for the Trustees to be able to use their discretion in order to continue the work of the Trust and provide for/create an appropriate use for the House;

[29] The Deed of Trust has been drafted to ensure that the Trust purposes did not fail at a future date but that of itself does not mean that it was the intention of the Settlor for the Trust to abandon its charitable purposes if and when those circumstances arose,

nor that the restrictions or provisos attached to the Clauses simply fell away as circumstances changed;

[30] All the Clauses which follow the Preamble are qualified by the terms of the Preamble which stipulate that the Trust property, namely the House, must be used to further ‘the general health of the community and the amelioration of suffering in the Burgh of St Andrews’;

[31] The Preamble includes the words ‘for the uses and purposes following and with the powers and subject to the provisions and declarations aftermentioned declaring **always** [our emphasis] that **everything** [our emphasis] bearing directly or indirectly upon such uses, purposes and powers and the objects contemplated in the purchase of the house shall **at all times** [our emphasis] be treated and construed according to liberal interpretation....’. The Preamble governs all Clauses the Appellant is operating under **at all times** [our emphasis]. There is no justification to conclude that the Preamble should be divided into Parts A and B;

[32] The Trustees whilst having ‘absolute discretion’ in the manner in which the House is used, this is - **at all times** - subject to the overriding charitable purpose contained within the Preamble;

[33] Clause EIGHTH is governed by the Preamble, which has a clear link to a charitable purpose. Clause EIGHTH should not be interpreted as a ‘stand-alone’ Clause. The Preamble within the Deed of Trust applies to all Clauses. Clause EIGHTH is not a self-sufficient Clause. It is not appropriate to interpret Clause EIGHTH in isolation of the Preamble;

[34] The Respondent has stated that the terms of the Deed of Trust, as qualified by the Preamble, has a clear link to the charitable purposes defined in sub sections 7(2) (d): The advancement of health and 7(2)(n): The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage of the Act;

[35] Clause EIGHTH therefore meets the charitable purpose requirement of the charity test because it is qualified by the limitation set out in the Preamble in that it is subject to the requirement that ‘the general health of the community and the amelioration of suffering in the Burgh of St Andrews’....thereby further’ ;

[36] The Appellant is unable to use or dispose of the House for any other purpose other than a charitable purpose and therefore the terms of section 7(4) of the Act (the exceptions) do not apply to the Appellant;

[37] As stated before in order for the Appellant to meet the charity test, it not only has to have charitable purposes but provide Public Benefit in Scotland or elsewhere;

[38] The Respondent's position is that passing the income generated from the commercial leasing of the House to the St Andrew's Welfare Trust is consistent with the advancement of health and the relief of those in need in St Andrews and the neighbouring area;

[39] The Appellant provides benefit to persons as members of the public;

[40] There is no private benefit to any individual, connected or unconnected to the Appellant, resulting from the Appellant's activities;

[41] The Respondent is unable to identify any potential disbenefit arising from the Appellant's activities;

[42] There are no unduly restrictive conditions imposed by the Appellant on the public obtaining benefit;

[43] The only potentially restrictive condition imposed on the Appellant's charitable purposes and connected activities is the geographical restriction on the use of the assets/income generated by the assets to the St Andrews area. However the Respondent states in MTCT that the limitations of a charity's activities to a country or a specific area within a country will 'be reasonable because the charity's purposes are to meet a need in that particular area, or because limits on its resources allow it only to help people in a small area'. Consequently the geographical restriction imposed by the Appellant is not an unduly restrictive condition;

[44] The Appellant meets the Public Benefit Test as laid down within section 8 of the Act;

[45] The Appellant's purposes, including the purpose under which it currently operates, are exclusively charitable, which means that the Appellant meets the first part of the Charity Test;

[46] The Appellant further meets all the requirements of the second part of the Charity Test : the Public Benefit Test;

[47] The Appellant does not fall under any of the exceptions contained within section 7(4) of the Act;

[48] The issues of Tax Liability and raising proceedings within the Court of Session are not relevant considerations when assessing whether the Appellant meets the charity test;

[49] Accordingly, the Appellant is entitled to be entered in the Scottish Charity Register.

7. ANALYSIS, REASONS and COMMENTARY:

The parties and the Tribunal are agreed that the function of the Tribunal is to make a decision 'of new' as to the entry in the Register, in light of the presented facts and circumstances.

The Tribunal must therefore look at all the circumstances and come to our own independent view after appropriate scrutiny and deliberation.

The Tribunal was mindful throughout that we must apply charity law to the facts of this Appeal.

The Preamble and Charitable Purposes

Critical in this appeal is the interpretation of the Preamble. A Preamble expresses a trust's purpose. The Tribunal considers the Preamble is of significant importance in the overall interpretation of the Deed of Trust. It sets out important principles. The wording within the Preamble may be seen as providing general guidance for the whole Trust Deed at any moment in time and place. The Preamble in this case seeks to permanently provide guidance and governance no matter the circumstances which may prevail at any moment in time. It uses language such as 'declaring always', 'everything', 'shall at all times', 'and in the broadest spirit of the time'. The Preamble is worded in such a way as to become future proof and cover unseen changes in the future of societal circumstances and needs.

The Preamble provides directional guidance and governance for Clauses FIRST to NINTH inclusive. There is, in the opinion of the Tribunal, always an overarching requirement for the Trustees to operate within their powers. They cannot contravene the law or exceed the powers within the Trust Deed. The Preamble sets out important principles for the interpretation of the *whole* Trust Deed. Each and every Clause is impacted upon by the terms of the Preamble. No Clauses should be interpreted outwith the Preamble. Clause EIGHTH should never be regarded as a 'stand-alone' Clause. The Preamble in this case recognises that things may indeed change and develop in the future, for example where it refers to 'anything done which may appear not to fall within the scope of the work *presently contemplated*'.

The Tribunal do not accept the appropriateness of the analysis by the Respondent of 'primary purposes' and 'secondary purposes'. The Respondent suggest that Clauses FIRST to FOURTH should be classified as 'primary purposes' and Clause EIGHTH as 'secondary purposes'. The Respondent submit that the Preamble only applies when the 'primary purpose' fails. They further suggest that the Preamble only applies to the 'primary purposes'.

The Tribunal does not accept the Respondent's interpretation of the Preamble.

The Tribunal considers the Preamble applies throughout all the Clauses. We reject the suggestion that Clause EIGHTH is a standalone provision and that the 'absolute discretion' referred to in this Clause is effectively unqualified by the Preamble. The Respondent argues that the use of the word 'absolute' is not consistent with this Clause being bound by the earlier restrictions or provisos. We do not accept that simply by using the word 'absolute' the Appellant is able to act outwith the overarching principles set out in the Preamble.

The Tribunal do not find the concept of 'primary purposes' and 'secondary purposes' helpful. The Tribunal considered it more appropriate to think of initial purposes and what to do when these are no longer appropriate. The Tribunal considers that the language of 'primary' and 'secondary' is confusing and inappropriate, as these are more associated with charitable trading. In the opinion of the Tribunal when the settlors of the Trust refer to 'presently contemplated purposes' they mean initial purposes set out in the clauses FIRST to FOURTH and potential future purposes set out in clause EIGHTH.

The Tribunal agree with the Appellant's submission that the use of the word 'and' (which links Parts A and B as referred to by the Respondent's analysis of the Preamble) confirms and indeed consolidates the interpretation and intention that the Preamble, as a whole, is a direction for the Appellant as to how the Trust is to be operated at all times, present and future.

The Respondent argues that the terms of Clause EIGHTH do not fall under the definition of 'work presently contemplated' as stated within the Preamble. The Tribunal

do not accept this argument. We agree with the Appellant that the very inclusion of Clause EIGHTH means that it was work which was 'presently contemplated' at the time the Trust was initially established.

We accept the Appellant's submission that, at the time the Trust was established, it was contemplated that changes to the use of the House would occur in the future such that there would be a need for the Trustees to be able to use their discretion in order to continue the work of the Trust and provide for, and or, create an appropriate use for the House.

As previously stated the Deed of Trust has been drafted to ensure that the Trust's purposes did not fall at a future date. We accept the submission of the Appellant that 'of itself does not mean that it was the intention of the Settlor for the Trust to abandon its charitable purposes if and when those circumstances arose, nor, as the Respondent's suggest, that the restrictions or provisos attached to the Clauses simply fall away as circumstances change.'

The Tribunal accepts the Appellant's submissions that Clause EIGHTH (and indeed all the Clauses within the Deed of Trust) are qualified by the terms of the Preamble which stipulate that the House must be used to further 'the general health of the community and the amelioration of suffering in the Burgh of St Andrews'.

The Tribunal find that the very careful wording utilised within the Preamble, such phrases as: 'always, everything, at all times', indicates that the Preamble **continuously** applies no matter which Clause the Appellant is operating.

We accept the Trustees have 'absolute discretion' in the manner in which the House is used, but any such discretion is fettered by the overriding charitable purposes contained with the whole Preamble.

Public Benefit

In respect of Public Benefit the Respondent states in its Review Decision dated 20 December 2018 at page 10, paragraph 42 'the present application of income from the trust property is broadly consistent with the Trust's primary purposes' but not the

'secondary purposes' of Clause EIGHTH which the Respondent does not accept as a charitable purpose.

In light of the Tribunal's interpretation of the Deed of Trust and in particular interpreting Clause EIGHTH as being subject to the provisions of the Preamble, we find Clause EIGHTH does have a charitable purpose and therefore provides benefit to persons as members of the public.

Private Benefit and Disbenefit

The Respondent in its Review Letter did not identify any private benefit that derives from the Trust's activities to any individual, connected or unconnected to the Appellant. The Tribunal agrees that the Appellant meets this aspect of the Public Benefit test.

The Respondent in its Review Letter did not consider that the Trust's activities would result in any potential disbenefit to the public at large. The Tribunal agrees that the Appellant meets this aspect of the Public Benefit test.

Undue Restriction

The Tribunal had regard to Undue Restriction. We find that there are no relevant restrictive conditions to take into consideration. We accept the approach adopted by the Respondent to undue restriction as set out in MTCT which states that the limitations of the charity's activities to a country or a specific area within a country will 'be reasonable because the charity's purposes are to meet a need in that particular area, or because limits on its resources allow it only to help people in a small area'. Considering this guidance it is clear that there are no unduly restrictive conditions imposed by the Appellant.

The Tribunal whilst noting the submissions of both parties to the issues of Tax Liability and raising proceedings within the Court of Session agree with the Respondent that these are not relevant considerations when assessing whether the Appellant meets the charity test.

8. SUMMARY:

The Respondent has interpreted the Deed of Trust which constitutes the Appellant, in a manner which means the Appellant does not comply with the statutory requirements as, in the Respondent's view, the Appellant is not operating under a charitable purpose. The Tribunal does not accept the Respondent's interpretation of the terms of the Deed of Trust. The Tribunal consider the Preamble should be interpreted to have directional meaning and purpose for all of the Clauses within the Appellant's Deed of Trust. Clause EIGHTH is not to be interpreted as a 'stand-alone' Clause.

(i)The Tribunal is of the view that the Appellant's purposes, including the purpose under which it currently operates, are exclusively charitable purposes and accordingly the Appellant meets the first part of the Charity Test;

(ii)The Tribunal is of the view that the Appellant meets all of the requirements of the second part of the Charity Test: the Public Benefit test; and

(iii)Since the Appellant does not fall under any of the exceptions contained in section 7(4) of the Act, the Appellant is entitled to be entered in the Scottish Charity Register.

9. EXPENSES:

The Tribunal having regard to Rule 24 the Tribunal of its own initiative, makes no order for expenses.

10. PUBLICATION:

Neither Party invited the Tribunal in their submissions to make any order that evidence or other matters be excluded from publication (Rule 26) or from inspection in the Register (Rule 27), all in terms of Rule 25(7) of the Rules.

The Tribunal therefore makes no order.

The Tribunal wishes to express their appreciation to both parties' Representatives for their assistance and professionalism in presenting this Appeal.



Chairman

‘Joseph C Hughes’
Legal Member/Chairman
First-tier Tribunal for Scotland
General Regulatory Chamber
[Charity Appeals]

16th July 2019