



**Neutral Citation: [2025] UKFTT 0448 (GRC)**

**Case Reference: FT/CA/2024/0014**

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

**Heard remotely 7 March 2025 by CVP**

**Decision given on: 30 April 2025**

**Before**

**TRIBUNAL JUDGE MCMAHON  
TRIBUNAL MEMBER DUGGAL  
TRIBUNAL MEMBER CONWAY**

**Between**

**THE INTERNATIONAL FOUNDATION FOR THERAPUTIC AND  
COUNSELLING CHOICE**

Appellant

**-and-**

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**

Respondent

**Representation:**

For the Appellant: Mr. P. Diamond of counsel, instructed by the Appellant.

For the Respondent: Mr. A. Ustych of counsel, instructed by the Respondent

**Decision: The appeal is Dismissed. The application of the Appellant to be registered as a charity is refused.**

## **REASONS**

### ***Introduction and Background***

1. This appeal, dated 4 September 2024 - pages 14-20 of the Hearing Bundle (hereafter the 'HB'), was against a decision of the Respondent dated 25 July 2024 to refuse to constitute and register a Community Interest Organisation ('CIO'), known as The International Foundation for Therapeutic and Counselling Choice ('the Appellant') as a charity, following an application for the same on 6 December 2023, pursuant to s.208 of the Charities Act 2011 ('the Act') on the grounds that the purposes or Objects of the Appellant were not exclusively charitable nor for the public benefit (HB 60-71). The Response of the Respondent was filed on 21 October 2024 (HB 23-34). A Reply thereto was filed on behalf of, the Appellant on 19/11/2024. (HB 56-59). Both parties very helpfully filed Skeleton Arguments.
2. This hearing commenced at 10.00am. The usual Directions concerning Witness Statements being regarded as that witness's evidence in chief and the witness only being permitted to give oral evidence, if requested, for cross-examination, by the other party, were not issued in advance of the hearing. The Appellant had three persons present, one of whom attended remotely from the United States of America, each of whom had made Witness Statements. Another person had made a Witness Statement on behalf of the Appellant, but he was not present. All of these Witness Statements were included in the HB and stood as the evidence in chief of those witnesses. No person had made a Witness Statement on behalf of the Respondent.
3. In accordance with convention in this Tribunal, the Respondent was invited to present its case first. Counsel for the Respondent indicated that he only wished to cross-examine Dr. Michael Davidson, Chief Executive Officer of the Appellant, who was present. The Tribunal decided that this should be done at the outset. Counsel for the Appellant offered no

objection to this and so Dr. Davidson was tendered by the Appellant for cross-examination by counsel for the Respondent.

### **Issues**

4. The issues to be decided in this appeal which were mutually agreed by the parties (and accepted by the Tribunal), were as follows:
  - what were the purposes (Objects) of the Appellant?
  - in the context of this appeal, were those purposes exclusively charitable; that is, did they fall within the 13 descriptions of charitable purposes set out in s.3 of the Act into which a purpose must fall if it is to be charitable in law and, in addition, for the public benefit as that term is understood in charity law in England and Wales?
5. The Appellant, however, submitted that there were two further issues that fell for determination, namely:
  - whether, in making the decision under appeal, the Respondent had complied with a number of provisions of the European Convention on Human Rights ('ECHR') (incorporated into domestic law by the Human Rights Act 1998), in particular Article 8 (right to respect for private and family life, home and correspondence) and Article 9 (right to freedom of thought, conscience and religion)?
  - whether disparity of treatment between the Appellant and the institution known as 'Stonewall' in respect of registration for charitable status by the Respondent would allow the decision being appealed to be set aside?
6. The Appellant's Skeleton Argument stated that the Appellant was registered as a charity in Northern Ireland. However, when challenged, Counsel for the Appellant accepted that this was an error and that the date of charitable registration and charity number in Northern Ireland, quoted in the Skeleton Argument, was in respect of another institution known as Core Issues Trust, an institution that, the Tribunal was advised, had a close connection to the Appellant. It was of concern, however, and highly regrettable, that it was stated by the Appellant, in writing, as a fact, that the Charity Commission for Northern Ireland had registered the Appellant as a charity in Northern Ireland as this may well have given pause for thought as to why, if true, the same Appellant should not be registered as a charity in England and Wales.

### ***Nature of Appeal***

7. These proceedings were not a review of the Respondent's decision-making process. The role of the Tribunal was, standing in the shoes of the Respondent, to consider the Appellant's application *de novo*, but to which regard had to be taken of the views of the Respondent as the statutory authority tasked by Parliament to make decisions such as that made in this case, it being central to the Respondent's statutory objectives, functions and duties in the exercise of its statutory power to register, or not, an institution as a charity.
8. The burden of proof that the Appellant's purposes were exclusively charitable and for the public benefit rested with the Appellant: Hipkiss v Charity Commission (CA/2017/0014).
9. Since the Tribunal, in deciding this appeal, was obliged to 'stand in the shoes of the Respondent, it too, had to have regard, in deciding this appeal, to the statutory objectives, functions and general duties placed upon the Respondent in carrying out its functions, pursuant to ss.14-16, respectively, of the Act.
10. The Respondent and, therefore, the Tribunal, on appeal, must, pursuant to s. 208 of the Act, refuse an application from an institution for constitution as a, the Appellant in this case, if it is not satisfied that the institution, being a CIO would be a charity at the time of registration or, the proposed constitution of the CIO does not comply with one or more of the requirements set out in s.206 of the Act and any Regulations made thereunder. (The latter matter does not arise in this appeal).

### ***Purposes (Objects) of Appellant***

#### ***Exclusively Charitable***

#### ***Public Benefit***

11. The Appellant's purposes or Objects were stated to be as follows:
  - to advance education in the field of human sexuality and Christian ethics;
  - to promote health and the saving of lives;
  - to promote equality and diversity;
  - to advance Christianity... and to equip the church in the discharge of its ministry;

- to advance such charitable purposes as the trustees see fit from time to time.

12.The Decision of the Upper Tribunal in *Independent School's Council v. Charity Commission* [2011] UKUT 421 (TCC) (hereafter 'the ISC Decision'), a decision that is binding on the Tribunal, ruled that the 'particular purpose(s)' of the institution (the Appellant in this case) in the context of the institution's constitution must be identified, that is, 'what it is that the institution was set up to do, not how it would achieve its objects or whether its subsequent activities are in accordance with what it was set up to do', while construing the institution's declared purposes in accordance with the accepted rules of construction.

13.This concept inevitably strays into consideration of whether the institutions purposes or Objects are exclusively charitable and, even if so, whether they are for the public benefit and not, therefore, be further considered separately.

14.The Upper Tribunal in *Helena Partnerships Limited v. Revenue and Customs Commissioners* [2011] S.T.C 1307, another Decision that is also binding on the Tribunal, identified principles in determining when extrinsic evidence and relevant factual background information may be taken into account in, *inter alia*, ascertaining the purposes of an institution, namely, where there is a doubt or ambiguity in assessing whether the implementation of an institution's purposes or objects would achieve a charitable end result, by examining the activities of an institution, relying on the High Court decision in *Incorporated Society of Law Reporting for England and Wales v. Attorney-General* [1972] Ch 73. This authority was concerned not with the motives and intentions of the founders of the institution, matters that were held to be irrelevant, but that it might well be necessary, in the case of an institution established to promote the Christian religion (therefore a *prima facie* charitable purpose), but if established to propagate a particular doctrine, to consider whether such propagation would be a charitable activity. The Appellant accepted this statement as the correct approach in law

15.Specifically, on the question of whether an institution's activities, purposes or Objects are capable of being, and will actually be, for the public benefit, judicial authorities such as the decision of the First-tier Tribunal in *Full Fact v. Charity Commission* (Ref. CA/2011/000), while not binding on the Tribunal, confirmed that considering the activities of an institution may be relevant to a proper understanding of its true purposes in assessing that question.

- 16.S.4 of the Act provides that there can be no presumption that a purpose of an institution of any particular description is for the public benefit: any reference to 'public benefit' is a reference to how that term is understood for the purposes relating to charity law in England and Wales. This then relates back to the *ISC* Decision. What is clear, however, is that an institution's 'particular purpose' is charitable only if it falls within one or more of the categories listed in s.3(1) of the Act and is for the public benefit pursuant to s.4 of the Act and that what is for the public benefit is not fixed but may change over time and can vary between the different categories of 'charitable purpose'.
- 17.The Tribunal found that a significant part of the overall submission of the Appellant was centred on the advancement of education for the public benefit, a purpose that is presumed to be for the public benefit. However, a distinction must be drawn between the advancement of education, *simpliciter*, and promoting a particular point of view: if the purpose of providing information, to use the Appellant's terms, is to persuade people to form specific conclusions, that is not 'education' in charity law. Put another way, raising people's awareness of an issue to build support for a campaign is not educating them about the issue in question as the aim is to garner their support.
- 18.When deciding whether the Appellant's particular purpose is beneficial to the public, the Tribunal must weigh any benefit that will result from the pursuit of the purpose against any detriment. For example, the House of Lords decision in *National Anti-vivisection Society v. IRC* [1948] AC 31, held that the question whether the promotion of a change in the law to abolish vivisection was a charitable purpose was not concluded by the assertion of the moral benefits that would flow from the cessation of vivisection, but required a comparison of those benefits with the practical benefits that were proved to flow from the practice of vivisection.
- 19.The Appellant did not dispute the relevance of any of the authorities referred to in the previous paragraphs as being the correct approach in the determination of this appeal.
- 20.This appeal inevitably raised the question as to whether the Appellant's purposes were political purposes as that phrase is understood in charity law. Even if the Appellant's particular purpose(s) did appear to fall within s.3(1) of the Act, a political purpose is not regarded as being for the public benefit, that is, if a direct or principal purpose of the Appellant is either to

further the interests of a particular political party [a circumstance that does not arise here] or to procure changes in the laws of England and Wales or those of other countries or, to procure a reversal of government policy or, of particular decisions of governmental authorities in England and Wales or other countries or, to procure a reversal of government policy in this or other countries. This is because, for example, the Tribunal does not have the means to determine whether changes in the law, or policy, are beneficial and, in any event, that is a matter for Parliament to determine.

21. The evidence, particularly his oral evidence in cross-examination, from Dr. Davidson for the Appellant, most certainly raised this political purposes concern.

### **ECHR**

22. In addition to submitting that its purposes or Objects were exclusively charitable and for the public benefit, the Appellant also submitted that it had to be constituted by the Respondent and registered as a charity on the basis that to fail to do so would offend its rights under a number of provisions of the ECHR, with particular reference to Article 8 and Article 9. It was submitted that decisions of the Respondent (and decisions of the Tribunal on appeal), are subject to the provisions of the ECHR. This is correct in law. However, this does not mean that the Appellant is not required to prove, on the balance of probabilities, that its purposes or Objects are exclusively charitable and for the public benefit in accordance the provisions of charity law and this assertion is firmly rejected as being erroneous in law.
23. In any event, the Tribunal accepts the submission made on behalf of the Respondent that the decision under appeal does not unlawfully interfere with any protected rights and is consistent with charity law. Further, the Tribunal accepted the submission of the Respondent that the decision under appeal, even if an ECHR article was engaged, is not unlawful interference with such right. The Appellant relied, in support of this submission on the authority of the Court of Appeal decision in *Core Issues Trust v. Transport for London* [2014] EWCA Civ 34. (Core Issues Trust, of course, is a charitable institution stated by the Appellant to be closely connected to it). However, this issue (the rejection by the High Court of an Article 9, ECHR challenge) was not, in fact, determined by the Court of Appeal one way or another.

24. Accordingly, the Tribunal did not attach any weight, in determining this appeal, was not persuaded by the Appellant's ECHR submissions.

### ***Parity***

25. The Appellant made a strong case that this appeal should be allowed and the Appellant constituted as a CIO and registered as charitable because other institutions, holding directly contrary purposes to those of the Appellant on the same subject matter had been so registered. However, the Tribunal accepts the Respondent's submission that each appeal must turn on its own facts and, further, that a review of registration decisions for other institutions, notwithstanding that the details of which are not before the Tribunal, are not relevant in deciding this appeal. This submission is, therefore, rejected by the Tribunal as having no substance in law.

### ***Conclusions***

26. The findings of the Tribunal in respect of the Appellant's ECHR and 'parity' submissions, set out in preceding paragraphs, are repeated.

27. The case presented by the Appellant, having regard to written and oral evidence and submissions was somewhat 'muddled' in distinguishing between factors that are relevant in deciding the appeal and those that are not. The Appellant failed to address, and overcome, the Tribunal's concerns that there was a substantial risk that the Appellant, if this appeal were allowed, would engage in non-charitable activity (mixed in with some charitable activity). The Tribunal also needed to be satisfied by the Appellant that its purposes or Objects were not only exclusively charitable but, in addition, were for the public benefit.

28. If, for example, the Tribunal in determining this appeal (or the Respondent in the future) could be sufficiently satisfied that the particular purposes of the Appellant were confined, for example, to 'education' or the 'advancement of health', so long as the requisite public benefit criterion was also satisfied, there may well be scope to constitute the Appellant as a CIO with charitable status in law. The Tribunal considered and accepted that it may well be appropriate to offer a service such as that which the Appellant proposes to offer, but the Appellant had to ensure that all of its purposes or objects were exclusively charitable and for the public benefit; that was not the case presented to the Tribunal.



29. There can be no doubt that, on the case presented to the Tribunal, the Appellant has a political purpose and, as a result, cannot be said to have exclusively charitable purposes.
30. This appeal could not be allowed by reference to a 'detriment' argument: the crucial issue here being compliance with charity law as set out in the statutory system governing the regulation of charities.
31. It was clear, and perfectly understandable, that benefit in the form of gift aid and having unimpeded banking facilities, together with endorsement by the state, all of which would flow from the Appellant being constituted as a CIO and having charitable status, were hugely important to the Appellant, quite apart from its view that its stated purposes were of great importance.
32. The most important of the Appellant's stated purposes or Objects was that of advancement of education within a defined field. Dr. Davidson, in his eloquent oral evidence, stated that it was not a question of the Appellant imposing certain views but rather opening a discussion, making the point that the decision under appeal resulted in the public not being allowed to see a position contrary to the position advocated by LGBT advocates. However, the Tribunal, on balance, decided that by inviting persons to sign a Declaration document, that the Tribunal decided was designed to ensure a particular doctrinal alignment, undermined the stated 'advancement of education' purpose asserted by the Appellant: there was a presumption of alignment within the Declaration, such that it was not purely 'education'.
33. The Respondent did not appear to dispute that the stated second purpose or Object of the Appellant was capable of being charitable in principle and, indeed, there were two Witness Statements adduced by the Appellant to apparently show that this purpose was 'exclusively charitable' and for the public benefit. However, the Tribunal decided that this purpose was to be achieved by counsellors of the Appellant being unequivocally aligned to the beliefs of the Appellant which, the Tribunal decided, raised a risk of coercion and, therefore, failed the public benefit test through being heavily promotional of a set of beliefs and having a political dimension.
34. Having found that the Appellant undoubtedly had a political purpose, the only conclusion the Tribunal could arrive at was that the Appellant failed to meet the test to attract charitable status. However, there were other failings which are dealt with below.

35. In respect of the third stated purpose or Object of the Appellant, it is difficult to see how this fits into any of the prescribed descriptions of purposes set out in s.3 of the Act.
36. The Tribunal has decided that the fourth stated purpose or Object of the appellant does meet the test of a charitable purpose.
37. The fifth stated purpose or Object of the Appellant is admitted by it to be a 'catch all clause'. The Tribunal is not satisfied that, in itself, it is exclusively charitable and for the public benefit, although this, in itself, is not determinative unless all of the purposes or Objects of the Appellant meet the relevant tests.
38. The Appellant undoubtedly had a political purpose to the extent that, for that reason alone, but not exclusively, it could not meet the tests to attract charitable status.
39. Of the said statutory objectives, functions and duties placed upon the Respondent (and the Tribunal on appeal) in exercising its powers, the Tribunal considered that the public confidence objective, that is, to increase public trust and confidence in charities, was a crucial consideration in determining this appeal. The Tribunal decided that in order to meet this objective, this appeal had to be dismissed.
40. The appeal must be dismissed since the Tribunal found that one or more of the stated purposes or Objects of the Appellant are not exclusively charitable. This is a separate issue from the question of whether the public benefit test is met in respect of the Appellants' purposes or Objects that are, or could be, construed as exclusively charitable. For completeness, the Tribunal decided that the Appellant did not establish that the public benefit test was met in respect of its purposes or Objects.
41. This appeal is dismissed and the decision of the Respondent dated 25 July 2025 is confirmed.

**Signed: *Damien McMahon***  
**Tribunal Judge**

**Date: 23 April 2025**

