



NCN: [2023] UKFTT 307 (GRC)

Case Reference: CA/2021/0021

First-tier Tribunal
(General Regulatory Chamber)
Charity

Heard in public at Bradford Hearing Centre on 6-8 September 2022

Decision given on: 14 February 2023

Before

TRIBUNAL JUDGE DAMIEN MCMAHON
TRIBUNAL MEMBER HELEN CARTER-SHAW
TRIBUNAL MEMBER A'ISHA KHAN

Between

MOHAMMAD BHAIYAT, As Trustee on behalf of OLIVE GROVE FOUNDATION

Applicant /Appellant

and

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Representation:

For the Applicant / Appellant: Mr. T. Khan, (a McKenzie Friend and representative).

For the Respondent: Mr. U. Roohani of counsel

Decision:

- 1. With the consent of the parties, the title of the Applicant / Appellant is amended, as recited in this Decision: Olive Grove Foundation, the Charity, as it is not a corporate body, cannot litigate in its own right.**
- 2. The Applicant's application for review of the decision of the Respondent to open a Statutory Inquiry into Olive Grove Foundation to direct the Respondent to end the Inquiry is dismissed.**
- 3. The Appellant's appeal against the making of an Order by the Respondent pursuant to section 76(3)(f) of the Charities Act 2011 ('the Act') is dismissed.**

REASONS

Background and Introduction

1. The subject of these proceedings brought by the Applicant / Appellant (hereinafter referred to only as 'the Applicant' for ease of reference) was two-fold: firstly, an application for review of a decision of the Respondent made on 06/07/2021 to institute a statutory inquiry into Olive Grove Foundation ('the Charity') pursuant to section 46 of the Charities Act 2011 ('the Inquiry') and an appeal against an Order of the Respondent ('the Order'), pursuant to section 76(3)(f), made pursuant to the institution of the Inquiry, restricting the Charity entering into certain specified transactions without the prior approval of the Respondent .
2. The Applicant appeared to prosecute his application and appeal. He was represented by Mr. T. Khan in the capacity of a McKenzie friend. Mr. Khan was not an authorised representative, pursuant to Rule 11(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Tribunal) Rules 2009 ('the Rules'). However, pursuant to Rule 11(5) of the Rules, the Tribunal, in ease of the Applicant , permitted Mr. Khan to act as the representative of the Applicant. A senior officer of the respondent, Mr. S. Roake, who had authorised the opening of the Inquiry, the only officer of the Respondent to make a written witness statement, attended and was tendered for cross-examination by Mr. Khan, at the request of the Respondent.
3. These proceedings had been the subject of a number of Directions Notices issued by the Tribunal and Case Management hearings, culminating in a Directions Notice being issued by Tribunal Judge Griffin, dated 31/08/2022. At the outset of the hearing, the contents of that Directions Notice were re-iterated to the parties and it was confirmed that this substantive hearing would proceed in accordance with those Directions. At the same time, the Tribunal confirmed that certain latitude was afforded to the Applicant since he was not legally represented.
4. The Respondent had requested the attendance of the Applicant .
5. The Applicant had furnished three witness statements, the last of which, with voluminous Exhibits, had been ruled inadmissible (subject to a qualification outlined in paragraph 6 below of this Decision), by Judge Griffin in her Directions Notice dated 31/08/2022, as it did not address the only two specific matters with which these proceedings were concerned. The Respondent had requested the attendance of another person, Mr. Rahil Mumtaz, another trustee of the charity, who had also furnished a

written witness statement, for cross-examination. However, Mr. Mumtaz did not appear. Accordingly, the Tribunal could attach little weight to that witness statement.

6. The Respondent did not request the attendance of any other person who had furnished written witness statements on behalf of the Charity. There were only two other such persons, Mr. Nur-E-Azom Choudhury and Mr. Muhammad Rabbani. Judge Griffin, in her Directions Notice dated 31/08/2022, had also ruled both of those witness statements to be inadmissible on the application of the Respondent as they did not address the issues before the Tribunal for determination that were within its remit. However, Judge Griffin, in her Directions Notice dated 31/08/2022, also ruled that Mr. Choudhury and Mr. Rabbani should be held on stand-by by the Applicant pending any decision of this Tribunal that might arise in the course of the hearing, that it may wish to hear from either or both of them. (Judge Griffin ultimately adopted a similar position in respect of the third statement, of the Applicant). However, at the outset, Mr. Khan, on behalf of the Applicant, confirmed that, contrary to the said Directions issued by a Tribunal Judge, neither Mr. Choudhury nor Mr. Rabbani had been requested by the Applicant to be on stand-by. Accordingly, the Tribunal could attach little weight to those witness statements and the qualification directed by Judge Griffin in her Directions Notice dated 31/08/2022 regarding the admissibility of their witness statements, did not, ultimately, fall for consideration by the Tribunal.
7. Finally, Judge Griffin, in her Directions Notice dated 31/08/2022, ruled the large volume of documentary and film material submitted on behalf of the Charity to be inadmissible for a number of reasons, including that its admission into evidence would not be in accordance with the overriding objective imposed on the Tribunal pursuant to Rule 2 of the Rules.
8. By email dated 29/08/2022, copied to the Respondent, the Applicant made application to have an audio-recording of one of Compliance Visit and Inspection ('CVI') meetings between the Respondent and the Applicant, admitted in evidence on the basis that this showed that the trustees of the Charity did not make false statements as allegedly stated by the Respondent. The Applicant advised that a written transcript of the audio-recording was being prepared and would be forwarded to the Tribunal. This audio-recording was made without the knowledge or consent of the Respondent. It raised, therefore, at the very least, GDPR concerns, quite apart from being non-compliant with Tribunal Directions. It was also an application raised very late in the day and was not by way of a formal application as required by Tribunal Directions. However, in an email dated 31/08/2022, the Respondent did not object to the admission of this late evidence subject to a transcript, if obtained, being furnished by 10.00am on 05/09/2022, with reference to short, identified time periods within the audio-recording that the Applicant considered relevant to these proceedings and explain, by way of a brief submission, to which ground of the application and/or appeal each short passage of the audio-recording related and why it was maintained that the application / appeal was supported on that ground.
9. The Applicant complied with those requirements and produced to the hearing a transcript identifying the relevant parts of the audio-recording. On this basis, the document was admitted late by the Tribunal
10. The Tribunal directed that, in accordance with normal practice in the Charity Tribunal, the Respondent would present its opening submissions, followed by the Applicant his

opening submission. followed by any cross-examination of the Respondent's witness by the Applicant, followed by any re-examination. This would be followed by any cross-examination of the Applicant by the Respondent, then oral submissions by the Respondent, followed by oral submissions by the Applicant, then any replying oral submissions by the Respondent. It was explained to the parties that this hearing procedural practice has always been found to be of advantage to a non-legally represented Applicant and was adopted in ease of such Applicant.

11. The representative of the Applicant furnished a written closing submission to the Tribunal and the Respondent but only immediately in advance of his making oral closing submissions.
12. At the Direction of the Tribunal at the hearing, the Respondent produced the actual Decision Log relating to the opening of the Inquiry dated 06/07/2022 authorised by Mr. S. Roake (the bundle having only contained a Decision Log dated 29/06/2021 that purported to authorise the opening of the Inquiry by another officer of the Respondent who did not have the necessary authority to do so – a most regrettable and unsatisfactory occurrence on the part of the Respondent).

Issues

13. (1) Whether it was appropriate that the Commission should have instituted an Inquiry into the Applicant on 06/07/2021;

and, if so,

(2) whether it was appropriate that the Respondent should have made the Order, pursuant to sections 76(3)(f) and 319(2) of the Act also on 06/07/2021.
14. If the Tribunal found for the Applicant on the first issue and directed the Respondent to end the Inquiry, then the Applicant would, *ipso facto*, succeed in his appeal on the second issue. However, if the Tribunal found against the Applicant on the first issue, it could proceed to consider the second issue.
15. A strong element of the case made on behalf of the Applicant was that both the institution of the Inquiry and the making of the Order by the Respondent were motivated by factors such as prejudice, bias and improper motives against the Applicant and against Muslim charities generally operating in certain parts of the world. Indeed, such was the concern of the Applicant in that regard that he sought, in writing, to be permitted to approve the judge, alone, assigned to hear these substantive proceedings (even though the substantive application and appeal fell to be determined collectively by all three members of the Tribunal), and to ascertain certain information concerning the judge, alone, and individual officers of the Respondent in pursuit of that request. Such a request was entirely inappropriate and simply not acceptable, having regard to the immutable constitutional principle of the separation of powers and judicial independence. This was emphatically ruled to be the case by both Judge Griffin and by the judge at the outset of the substantive hearing. In any event, the Tribunal was not the appropriate forum to pursue such assertions: such matters may properly be for determination by the High Court on an application for judicial review – possibly as a class action by Muslim charities. The issues for determination by the Tribunal were confined solely to the two issues stated at paragraph 13 herein.

Law

16. The institution of an Inquiry is governed by sections 46 and 322 of the Act. For the purposes of this Decision, it is section 46 that is the more relevant provision. This provides that the Respondent may institute an Inquiry into a charity whether generally or for particular purposes and may either conduct the Inquiry itself or appoint a person to conduct it and report to the Respondent. This empowering provision is framed in very broad terms.
17. The Tribunal is obliged to determine an application for *review* challenging the institution of an Inquiry on the basis of judicial review principles confined, in this context, to the narrow question of whether, at the date the Inquiry was instituted, the decision to do so was one that no reasonable decision-maker could have made at that date. The Tribunal had no role in looking afresh at that decision or to determine that issue on the basis of fresh evidence, if any: it could only consider the facts and evidence as they existed *at the date of the decision*. The Tribunal had no role either in determining whether the Respondent's stated concerns to open the Inquiry were correct at that date; indeed, the opening of an Inquiry is nothing more than placing an *investigation* into a charity onto a formal footing.
18. The making of the Order in this case, subject to an Inquiry having been lawfully opened, is governed by sections 319(2) and 76(3)(f) of the Act. Again, for the purposes of this Decision it is section 76(3)(f) of the Act that is the more relevant provision. This provides that the Respondent may, at any time after it has instituted an Inquiry, and is satisfied that the grounds under section 76(1)(a) and/or (b) of the Act have been met, make an Order restricting the transactions the Charity may enter into, or the nature and amount of the payments which it may make in the administration of the charity with or without the approval of the Commission in order to protect the Charity and its property.
19. A challenge to the making of such Order is an *appeal*, rather than an application for review. Accordingly, the Tribunal, in determining the appeal, looks at that matter entirely afresh and makes its own decision. In doing so, the Tribunal can consider evidence, if any, that was not available to the Respondent at the date the Order was made.
20. Even if an application to review the opening of Inquiry were to be refused, the making of an Order, and its terms, pursuant to the opening of an Inquiry, can still be examined afresh by the Tribunal and a Decision made on whether the making of the Order should be upheld or dismissed.

The Respondent's Case

21. In its Response to the Notice of Appeal, the Respondent opposed both the application and the appeal brought by the Applicant.
22. The Respondent submitted that the Applicant was confined, pursuant to Rule 22(2) of the Rules to relying on its furnished Grounds of Appeal dated 09/08/2021 (albeit entitled 'Preliminary Grounds of Appeal') and could not further rely on what was described as 'Addendum to Grounds of Appeal' dated 29/08/2021. In any event, it was

submitted, the latter document did not, in fact, advance any further grounds of appeal and amounted only to voluminous disclosure requests.

23. The Respondent submitted that the Inquiry was properly opened due to a number of concerns it had about the Charity, following two CVI reports from December 2018 and June 2020. The Respondent summarised these concerns as:

- internal financial management and the transfer of the Charity's funds to or through a personal bank account of one of its trustees and that this raised evidence of misconduct and/or mismanagement in the administration of the Charity and should cease;
- the Charity's due diligence into the end use of its funds and their application by its overseas partners;
- the Charity making a bail payment to HMCTS in respect of an individual arrested for breach of bail conditions and whether such payment was within the Charity's Objects and/or in breach of trust;
- potential conflicts of interest and the need to ensure that the Charity acted only within its Objects in the context of its association with a partner organisation known as 'I Love Al-Aqsa';
- the general governance of the Charity including whether that was sufficiently robust for a charity of its size and the nature of its activities and 'risks' thereby encountered.

24. The Respondent submitted that the only authority on whether an Inquiry was opened appropriately was that of the Upper Tribunal, upholding a decision of the First-tier Tribunal, in *Regentford Limited v. The Charity Commission for England and Wales and Her Majesty's Attorney G l* [2014] UKUT 0364 (TCC). It submitted that the Applicant did not advance any grounds upon which the legal test, as set out in paragraph 17 of this Decision, was satisfied and that the application should, therefore, be dismissed.

25. The Respondent submitted that the making of the Order was appropriate and proportionate in view of the regulatory concerns that arose for investigation as, it submitted, the bail payment to HMCTS was actual misconduct or mismanagement in the administration of the Charity and, in addition, the making of the Order was necessary or desirable to protect the Charity's funds in view of the transfer of such funds to a personal bank account. However, the making of the Order, it was submitted, did not *require* a finding by the Respondent (or, on appeal, the Tribunal) of misconduct and/or mismanagement. The Respondent further submitted that the making of the Order did not prevent the Charity continuing to function while investigations into regulatory concerns were considered. Rather, it protected the Charity and its funds while such investigations were carried out. The Respondent submitted, finally, that the grounds of appeal and witness evidence advanced by and on behalf of the Applicant did not advance any sustainable ground to allow the appeal against the making of the Order.

26. In his oral evidence under cross-examination by the representative of the Applicant, Mr. Roake, the Respondent's Director of Investigations and Inquiries, who had made a written statement, addressed the issue of why there were two documents in the papers purporting to authorise the opening of the Inquiry. He stated that the earlier document dated 29/06/2021, had not been issued in accordance with correct procedures and that the opening of the Inquiry was properly authorised by himself in the document dated 06/07/2021. He confirmed that the Respondent *now* had no issue with the Charity sending funds to Turkey to the organisation known as 'IHH Humanitarian Relief Organisation (hereafter 'IHH'), the largest NGO in Turkey, in all the circumstances. He emphasised that a number of factors, cumulatively, led to the decision to open the Inquiry. These included a transfer of funds to the personal bank account of Mr. Bhaiyat, a practice that subsequently significantly increased; that this was a risk to funds of the Charity, that was not recommended practice and was against advice of the Respondent; that in the Commission's view certain activities of the Applicant were not in accordance with the Charity's Objects (such as its association with the 'I Love Al-Aqsa' organisation); that the payment of bail monies to HMCTS represented a risk to funds of the Charity done without proper consideration; that there were general governance concerns, a lack of due diligence, monitoring and a lack of accountability for the end use of funds. He stated that no one element of concern was of greater concern than others and that the concerns had a cumulative effect that led to the decision to open an Inquiry. Mr. Roake confirmed he had no personal dealings with the Charity but that he was satisfied it was not compliant with its regulatory obligations giving rise to the said concerns. He denied that the contents of page 68 of the bundle, setting out financial transactions on behalf of the Charity and the 'I Love Al-Aqsa' organisation showed that there was compliance and relied on the contents of the two CVI reports, correspondence from the trustees of the Charity and other sources. He expressly referred to a concern that the Charity was making payments out of funds of the Charity via personal bank accounts contrary to previous advice but that the concerns were not solely in respect of IHH. Following the first CVI interview, Mr. Roake confirmed that the Respondent decided that the risk was not high enough to warrant the opening of an Inquiry but that advice and guidance was issued to the Charity. He stated that there was a duty on the trustees of the Charity to comply with their obligations as trustees. Mr. Roake noted that in respect of paragraph 21 at page 66 of the bundle, the Charity had paid money but that the Respondent did not know the source of that payment, being concerned if those monies were funds of the Charity, and that there could be further costs. He agreed, however, that he thought he had seen a reference to those monies coming through fundraising for that particular purpose and was aware that the funds had been returned to the Charity. Mr. Roake accepted that, in respect of use of a personal bank account, there was no suggestion of personal appropriation of funds of the Charity, nor evidence that the Charity's credit rating had improved. He confirmed that he was aware that Muslim charities, including the Charity here, had difficulties using UK bank accounts and that he had no knowledge of any involvement by the Charity in terrorism. Mr. Roake stated that he had not seen the Minutes of the CVI meetings but had discussed the concerns with colleagues who worked for the Respondent. He expressed concern at the contents of the Charity's policies; albeit some original concerns – such as there being no policies - had been resolved. He confirmed that the Respondent could allow use of some personal bank accounts if there were no other options available and extenuating circumstances existed. He accepted there was no impropriety involved in this case in this context. He continued to maintain, however, that the absence of an adequate 'end user' audit trail,

at the date of the opening of the Inquiry, was of concern. Mr. Roake accepted that any campaign to raise funds, in the context of the ‘I Love Al-Asqa’ issue had, potentially, an educational aspect, but not solely educational. He disagreed, however, that this issue was humanitarian as opposed to educational based on correspondence from Mr. Bhaiyat. He denied that the Respondent liaised with UK banks as appropriate. Mr. Roake confirmed, in the context of the making of the Order by the Respondent, that it was open to the trustees of the Charity to apply to the Respondent to use funds of the Charity in a particular fashion. He explained that the same level of authorisation was not required for the making of the Order as was required for the decision to open the Inquiry. Mr. Roake accepted that if the Charity had not acted as bailee, and if the person in custody had not received bail as a result, his family may have been left in poverty. He confirmed that the correct Decision Log dated 06/07/2021, had not been sent to the Applicant and that that Decision Log did not correct his own rank within the Respondent.

27. Closing Oral Submissions (Respondent)

28. Opening of Inquiry

In oral submissions on behalf of the Respondent, counsel submitted that the Tribunal had to consider the position of the Respondent on 06/07/2021 when the Respondent decided to open the Inquiry. He referred to the *Regentford* decision as the only authority setting out the test for the opening of an Inquiry. He emphasised that the Tribunal was not required to conduct a full-blown judicial review. He submitted, too, that there was no evidence before the Tribunal to justify the discharge of the Order. He submitted that the case put forward by the Applicant was one of ‘unfairness’ on the part of the Respondent or that the Respondent had failed to take account of all relevant factors or had taken into account irrelevant factors in deciding to open the Inquiry. However, he submitted, the opening of an Inquiry represents the Respondent merely putting a fact-finding process on a formal footing, but that once opened, the Respondent could make further decisions to protect the Charity. It was submitted that the opening of an Inquiry did not represent any conclusion or finding by the Respondent of wrongdoing by the Charity and to the extent that this was the argument of the Applicant, this was wrong in principle and that it did not matter if the Respondent’s concerns were correct or not. Counsel submitted that, in order for the Applicant to successfully challenge the opening of the Inquiry, he had to show substantial and credible evidence to show significant irrationality or unfairness. Counsel submitted that the Applicant accepted that channelling funds of the Charity through a personal bank account was a matter of concern (as found by a Tribunal in the *Soloman* decision); that a personal bank account had been used again subsequently without advising the Respondent; that guidance given by the Respondent following the first CVI had not been implemented by the Applicant by the date of the second CVI; that a conflict of interest arose arising out of this and his duties as a trustee of the Charity; that substantial sums were involved and that this might well be an issue of concern to the Respondent. Counsel submitted that it was an appropriate, proportionate step to open the Inquiry in those circumstances. It was further submitted that the trustees of the Charity had refused to engage with the Respondent on the issue of using a personal bank account. Further, while the Applicant had given evidence that since information was not requested by the Respondent in various aspects, there had to be several reports similar to the ‘good’ report. However, counsel submitted, this

contention was not before the Respondent in July 2021 and, it was submitted, in the context of the challenge to the opening of the Inquiry, the Tribunal had to look at that question from the perspective of the Respondent on 06/07/2021 when the Inquiry was opened. Counsel submitted that the Charity had no 'End Use' policy in place despite operating in high-risk geographical areas. It was submitted that the making of bail payments were not within the Objects of the Charity or, alternatively, there were no obvious links to the Objects, and the fact that the Charity sought legal advice on this issue, as stated in evidence, was, in itself, a sufficient ground to open an Inquiry, having regard to the position on 06/07/2021. It was submitted that similar considerations arose in the context of the Charity's association with the 'I Love Al-Aqsa' organisation (albeit accepting the undoubted complexities arising in that context). It was submitted that questions still remained after two CVIs. It was further submitted that it was accepted on behalf of the Applicant that, in the context of general governance concerns, the Charity's financial management policy was not fit for purpose, but nothing had been done to address that issue and that there was no policy to ensure proper reports were available. It was submitted that the Applicant accepted in evidence that if the Respondent had no knowledge of decision-making of the Charity's trustees that this, too, was a matter of concern. It was also submitted that the acceptance by the Applicant that the absence of any policy concerning the use of cash was a high-risk concern. Finally, it was submitted, in the context of the opening of the Inquiry, that, even now, even though concerns were now less, there remained grounds to open an Inquiry. However, if the Tribunal did direct the Inquiry to end, then the Order, made pursuant a valid opening of the Inquiry, would fall.

29. Section 76 Order

Counsel submitted that the basis of the appeal against the making of a Section 76 Order by the Respondent was unclear but submitted that it had to be on the basis of misconduct or mismanagement by trustees of the Charity or in order to protect the funds of the Charity. In that regard, counsel referred to the concerns regarding use of a personal bank account and 'end use' issues. It was submitted that since regulatory concerns remained, the Order should not be discharged. It was emphasised that, in any event, the existence of the Order did not prevent the Charity operating – with the consent of the Respondent in respect of actions the subject of the Order. But no application had been made by the Charity. Counsel submitted that alleged difficulties experienced by Muslim charities with banks were not relevant to the appeal against the Order. It was submitted that if the Charity had made a request to the Respondent in the context of the Order, and that request was refused, that, in itself, would provide appeal rights to the Tribunal at the instance of the Charity. In any event, the appropriateness of the Order had been reviewed twice by the Respondent.

30. Decision Logs

Counsel submitted that there were a number of minor changes between the decision Log dated 29/06/2021 and that dated 06/07/2021, but without there being any prejudice to the Applicant who had been notified of the error which only lasted one week. In any event, it was submitted there was no proper authority in place to make a purported decision to open an Inquiry on 29/06/2021: effectively, the Inquiry was opened pursuant to a decision made on 06/07/2021. It was submitted that it would be perverse,

and, therefore, an error of law, if the Tribunal were to direct the ending of the Inquiry of the basis of such an error.

31. Reply to Closing Submissions of Applicant

Counsel submitted that it was not the case that the Respondent went straight from issuing an advisory letter to the Applicant to the opening of the Inquiry: there were two CVI meetings and reports and a period of reflection and discussion with the Respondent intervening. The Decision Log dated 06/07/2021 was not fabricated having regard to the evidence under oath from Mr. Roake, albeit there was a minor error in that some boxes had been left unticked. The officer of the Respondent who conducted the CVI meetings and prepared the reports of those meetings had no authority to either open the Inquiry or to make the Order and did not do so. The regulatory concerns of the Respondent remain.

The Applicant's Case

32. The Applicant's case was set out in its Grounds of Appeal dated 09/08/2021 (albeit entitled 'Preliminary Grounds of Appeal'). A document entitled 'Addendum Grounds of Appeal' was furnished on 25/09/2021.

33. It was submitted in the grounds of appeal that there was no reliable evidence to properly open the Inquiry; that the grounds to make the Order were not satisfied; that the Respondent gave no reason why the Decision to open the Inquiry should be dated 29/06/2021 and, later, 06/07/2021. (The challenge, however, to the opening of the Inquiry was stated to relate to the Decision dated 06/07/2021); that the Charity was not liable for future costs in putting up bail for a certain individual (on the advice of that individual's solicitor – not a solicitor acting for the Charity – that had been relayed to the Respondent); that any question of 'liberty' did not require to be in the Objects of a charity; that the bail monies were raised and given to the Charity by donations from individuals to be used by the Charity for this purpose; that the Respondent was unsure on a number of key issues relied upon by it to open the Inquiry; that the Respondent did not request relevant documents from the Charity; that the Charity supplied all documents requested of it by the Respondent and answered all the Respondent's requests for information.; that the terms of the Order interfered with the provisions of the Human Rights Act and the Equality Act in that they were racist and anti-Muslim; that the Respondent was an incompetent regulatory body, having been criticised by the National Audit Office and the DCMS Select Committee in Parliament, the latter body stating that the Respondent did not understand charity law in respect of opening an Inquiry and that the making of the Order was not proportionate as it impedes the growth of the Charity.

34. The case of the Applicant was also set out in other documents, including a note dated 08/03/2022, *inter alia*, disputing that there was any evidence of any allegations against him to justify the opening of the Inquiry, and his written skeleton argument, essentially repeating the assertion that there was insufficient evidence to justify the opening of the Inquiry; that this was in error; was frivolous; showed a lack of understanding; was misleading and was being pursued for ulterior motives and that the fact that there were two differently-dated Decision Logs purporting to authorise the opening of the Inquiry rendered that action null and void.

35. In the oral evidence of Mr. Bhaiyat, the Applicant, under cross-examination by counsel for the Respondent, having made a written statement, confirmed the Charity had been given certain regulatory advice, confirmed in writing, by the Respondent after the first CVI meeting. He accepted that use of a personal bank account for funds of the Charity would always be of serious concern. He accepted he was aware there would be a second CVI meeting for which the Charity would need to prepare. He accepted, however, that the Charity, through him, continued to transfer funds of the Charity through his personal bank account but did later use alternative means. He denied ever having stated that it was okay to use his personal bank account but never sought advice from the Respondent upon experiencing difficulties with UK banks that withdrew banking facilities from the Charity, whereupon he, on behalf of the Charity, reverted to using a personal bank account. He agreed that this was not ideal but maintained it was not prohibited by the Respondent. Mr. Bhaiyat accepted that the second CVI meeting was to monitor compliance with the Respondent's guidance after the first CVI meeting. He accepted that the Charity remained non-compliant and that the Respondent's concerns remained. He emphasised that it had never been alleged that he had benefited personally by this process. He confessed to being unsure whether there was any conflict of interest but an audit of the various transactions all reconciled and there was no greater risk in transactions being broken down into smaller amounts, a process that was necessary due to banking transfer limits. He accepted that 'end use' was an important issue in the context of due diligence, transparency and accountability as advised by the Respondent. Mr. Bhaiyat stated that the trustees had received advice (other than from the Respondent) that it was preferable to continue in this way and had a detailed discussion with the Respondent regarding the difficulties being experienced with UK banks and sought guidance from it. Mr. Bhaiyat did not fully agree with the proposition from the Respondent regarding the 'end use' issue: he argued that the person conducting the CVI meetings was concerned in the context of Annual Reports, but accepted that shortcomings had been identified. He accepted, too, that more risk arose in respect of funds of the Charity where the end users were located abroad. However, he stated that he had personally travelled to many of the end user projects. He accepted that these were in higher-risk areas, such as Syria and Palestine and that, therefore, there was a greater need to monitor end use. He stated his belief that most reports submitted by the Charity were satisfactory and that in those cases where reports had not been submitted that this was due to corruption of hard drive discs. He accepted a need for a policy to monitor end use and maintained that proper due diligence had been implemented after the first CVI meeting. Mr. Bhaiyat maintained that he did understand the law relating to charities and maintained, in the context of the bail issue, that all charities were obliged to operate under the requirements of Article 5 of the European Convention on Human Rights. He stated the Charity had got involved in that project due to the risk of hardship to a person's family, that is, to address an issue of 'relief of poverty' – a charitable object. He confirmed that he did not have Minutes of meetings of the trustees of the Charity in respect of every project, but that documents had been provided to the Respondent. He agreed that the Respondent was required to be concerned that activities undertaken by the Charity were within the Charity's Objects. Mr. Bhaiyat explained the process undertaken concerning raising the bail money and that this was discussed with the officer of the Respondent who conducted the CVI meetings. He maintained that no issue had been raised by the Respondent at this being outside the Charity's Objects. He agreed, however, that the Charity had not gone back to the Respondent having taken legal advice from the bailee's legal adviser

(who was not the Charity's legal adviser). He agreed there the Charity's Objects did not refer to the advancement of education and that the Objects had not been changed to include this in the Objects. Mr. Bhaiyat accepted that since the Charity did fund projects in Palestine, the Respondent may properly have wished to investigate. He further accepted that there was a need to have a suitable policy in place to monitor end use and maintained that due diligence processes were implemented after the first CVI meeting. He maintained that there was an educational aspect to the 'I Love Al-Asqa' project and explained the nature of the Charity's involvement in that project. He accepted that the Charity did not have a policy in place at 06/07/2021 to monitor projects and that the Charity often recorded decisions made but not why they were made. Mr. Bhaiyat confirmed that Gift Aid receipts and restricted donations were used by the Charity for its running costs.

36. Mr. Bhaiyat confirmed that he was aware that the Order restricted financial transactions of the Charity but that this was qualified to requiring the Charity to seek prior approval from the Respondent. However, he maintained that the Charity did not enter into any transactions that required such approval. He then stated that the Order stopped the Charity from funding projects overseas. He confirmed that the Charity made no application to the Respondent for approval of expenditure as, he stated, the Respondent had made it clear that approval would not be given.
37. He confirmed that there was no implementation of the Respondent's guidance, following the first CVI meeting, to put in place a policy concerning cash donations to the Charity but that a process, involving two persons had been put in place and explained in the second CVI meeting. He accepted that cash raised risks.
38. On re-examination, Mr. Bhaiyat explained that he had been banned from what he described as 'the occupied territories' in Palestine. He stated that he had been awaiting requests from the Respondent for reports; that COVID had had an impact on the Charity; that he was doing the 'lion's share' of the work of the Charity; that he did not consider there was any point in seeking approval for expenditure from the Respondent; that the Charity would be in the same position even if the appeal was allowed as he could not use his personal bank account to transfer funds of the Charity; that he had provided the Respondent with all of the Charity's policies following the two CVI meetings before the opening of the Inquiry; that the Respondent had been informed that the Charity's accounts with HSBC and Santander had been closed by those banks; that no assistance had been given by the Respondent and its advice was of no benefit.

39. Closing Submissions (Applicant)

In written and oral submissions on behalf of the Applicant, his representative stated, as a fact, that the Decision Log dated 06/07/2021 was fabricated and asserted that it had not been looked at by Mr. Roake, pointing to errors and changes in that document. He asserted that the Decision Log dated 06/07/2021 did not really exist and, therefore, the Order did not exist. He submitted that the Charity found it impossible to send money abroad and the Respondent would not have given permission to use a personal bank account for that purpose. Nevertheless, it was submitted, this was done, in order to have a paper trail. He submitted that the Charity had effectively been closed down by the making of the Order in that its accounts had been frozen. It was submitted that there was significance in only two letters having been received by the Charity from the

Respondent in the 12 months to the opening of the Inquiry. He submitted that if the banking situation could not be resolved, the Charity may 'go under'. It was submitted that there were indeed serious concerns but that there was no *actus reus* present. It was submitted that there were no merits in the Respondent's submissions in respect of the making of the Order. He also expressed concern that the Respondent had contacted the media expressing serious concern at the Charity and submitted that this showed that the Respondent was not engaged in a mere fact-finding exercise. He submitted that if the Tribunal accepted the argument of the Applicant on the opening of the Inquiry, then the appeal in respect of the Order had to succeed. It was submitted that the Respondent acted, in terms, out of personal animosity against the Charity while also criticising the Respondent for delay in opening the Inquiry. It was further submitted that the Respondent had failed to prove its case on the use of a personal bank account.; that the Respondent accepted that the Charity was fully compliant and had offered all information to the Respondent. It was submitted that the process of opening the Inquiry was deliberately flawed and that certain documents of the Charity were not taken by the Respondent as the Respondent clearly decided that the risk factor was not high. It was submitted that the Respondent only put at issue two of the Charity's policies as the Respondent only had an issue with these two policies. In respect of the bail concern, it was submitted that the Charity was only involved on a limited basis and it had not been involved there would have been a cost to the taxpayer as well as poverty issues arising. It was submitted that there was no conflict of interest by reason of the Charity relying on the bailee's legal adviser's advice but, it was submitted the Charity subsequently got its own legal advice that confirmed the advice of the bailee's legal adviser. In any event, it was submitted there did not need to be provision in the Charity's Objects to allow the Charity to engage in such activity. It was submitted that, rather than open an Inquiry, the Respondent should have dealt with its concerns by way of an advisory letter to the Charity. It was submitted that the Charity was fully compliant with its regulatory obligations and there simply were no serious concerns. Finally, it was submitted that the 'I Love Al-Aqsa' project was not purely educational.

Analysis and Conclusion

40. The document entitled 'Addendum Grounds of Appeal' submitted by the Applicant on 25/09/2021 entitled 'Addendum Grounds of Appeal' was not permissible pursuant to the GRC Rules and could not be regarded as an addition to the grounds of appeal specified in the Notice of Appeal dated 09/08/2021. In any event, this latter document did not, in fact, advance any further grounds of appeal and amounted only to voluminous disclosure demands.
41. The Tribunal was generally, but not without some reservation, impressed with the frankness; candour, credibility and non-confrontational approach of the Applicant in his oral evidence under cross-examination, distinctly lacking, to his credit, of any hint of a 'conspiracy' scenario - the latter being the case, essentially, put forward by his representative. To a very significant degree, the Applicant agreed with the propositions put to him in cross-examination by counsel for the Respondent.
42. On the balance of probabilities, while the Tribunal found some evidence of mismanagement on the part of the Applicant, it did not find overwhelming evidence of misconduct or mismanagement on his part as a trustee of the Charity. However, the

Tribunal declined, on the balance of probabilities, to accept his oral evidence given on re-examination by his representative.

43. The Applicant, on the balance of probabilities, tried his best to be transparent in his dealings with the Respondent and in his evidence to the Tribunal.
44. The Tribunal, in determining these proceedings had no role in addressing any general difficulties faced by Muslim charities in respect of banking facilities or otherwise: its role was solely confined to determination of the two matters at issue in these proceedings.
45. The Respondent had, over time, attempted to address its concerns with the Charity through guidance and advice and only took the step of investigating its concerns, on a more formal footing by opening the Inquiry, at a later date.
46. The Charity was not ‘fully compliant’ with its regulatory obligations as at 06/07/2021 (although there may well have been greater compliance subsequently).
47. The Applicant through one of its trustees, Mr. Bhaiyat, had no alternative, in practical terms, but to use his personal bank account to transfer funds of the Charity. However, Mr. Bhaiyat accrued no personal benefit either in monetary terms or in respect of his credit rating. The Respondent, in its ‘Toolkit’, recognised that extenuating circumstances could exist permitting such practice. By the date the Inquiry opened on 06/07/2021, there was no need for the Respondent to investigate this concern further: the Respondent was already aware of this issue in detail. Mr. Bhaiyat did not wish to proceed in this manner but had no alternative.
48. On the question of authorised signatories on behalf of the Charity, one was an *ex*-trustee – something not permitted in the Charity’s governing documents.
49. The Tribunal found that up to 80% of the concerns of the Respondent identified in the witness statement of Mr. Roake were not of legitimate concern.
50. On the ‘end use’ concern, that of alleged failure to monitor end use, only two reports, of twelve, were identified at the second CVI as being of concern, that is not to the standard required by the Respondent as they were regarded as high-risk activities. This showed a high degree of transparency on the part of the Charity (but still was of concern to the Tribunal). Of the nine acceptable reports, one was regarded by the Respondent as a good example of practice while nine were regarded as tolerable. It was the case, however, that a policy document in this regard, as recommended by the Respondent following the first CVI had still not been put in place by the Charity by the date of the second CVI to a standard regarded as acceptable by the Respondent.
51. A lot of the submissions made on behalf of the Applicant referred to the position that pertained *after* the opening of the Inquiry: the Tribunal was confined to considering the position at the date the Inquiry was opened.
52. The Tribunal did not accept the submission of the Applicant that the Decision Log dated 06/07/2021 was ‘fabricated’. The Tribunal accepted, indeed, that this Decision Log was clear evidence that the Inquiry had been lawfully opened on that date.

53. The submission made on behalf of the Applicant that the opening of the Inquiry was ‘deliberately flawed’ and that certain documents of the Charity were not taken into the Respondent’s possession ‘because the risk factor was not high’ were not contentions put to Mr. Roake in cross-examination. Those submissions were rejected by the Tribunal.
54. On the bail payment concern, the Applicant purported to rely on the advice of the bailee’s solicitor, rather than any advice from a solicitor acting on behalf of the Charity. This was not sufficient and raised a clear conflict of interest and, in any event, that advice was not discussed by the Charity with the Respondent. Further, even if it could be argued that, in the circumstances, the Charity putting up bail money could be within its Objects, other funds of the Charity might have been put at risk. There was, therefore, a legitimate concern, but, on the balance of probabilities, this did not represent a ‘tipping point’ concern. The submission towards the end of the hearing that the Charity had subsequently got its own legal advice that corresponded with the bailee’s legal advice was a fresh assertion unsupported by evidence. Accordingly, this submission was rejected. In any event, it was difficult to see how this, if correct, would have altered the position as at 06/07/2021.
55. On the ‘I Love Al-Aqsa’ concern, the Charity took this project on board as their own to use as core funding. While the advancement of education was not in the Charity’s Objects, there must inevitably, always be an educational aspect to any fundraising by a charity. Further, in the Decision Log of 06/07/2021, at paragraph 24, referring to the second CVI report, the Respondent accepted that this activity was not outside the Objects of the Charity and that there was no conflict of interest. The Respondent had all necessary information in respect of this project by the date of the second CVI meeting. The ‘I love Al-Asqa’ project was not for the Al-Asqa mosque itself but to raise profile among people who identified sympathetically with the mosque. The Tribunal rejected this issue as being a valid regulatory concern.
56. On the governance concern, the Decision Log, strangely, did not list the fact of late filing of accounts of the Charity by the trustees under this area of concern. However, this represented a clear governance concern and represented non-compliance by the trustees of the Charity with a basic legal duty. There was no satisfactory explanation given on behalf of the Charity why the dates for filing the Charity’s accounts were missed in four successive years, accounts being filed on time only in respect of the following year, that is, the 2020 accounts, filed on 05/12/2020 - a fact not noted in the Decision Log dated 06/07/2021 authorising the opening of the Inquiry. The first CVI took place in 2018 and the second in 2020. Accordingly, at the date the Inquiry was opened, 06/07/2021, there had existed a poor history, over an extended period of years, of the Charity failing to comply with a basic legal duty imposed on charities, namely, to file annual accounts on time. The Commission would have been well aware of this. This, in itself, justified the opening of the Inquiry, having regard to the law in respect of the opening of an Inquiry, as set out in paragraphs 16-17 of this Decision and the making of the Order. The statutory threshold to justify the opening of an Inquiry is a low threshold. The Tribunal was more than satisfied that the requisite threshold had been met and did not consider that the opening of this Inquiry was something that no reasonable decision-maker, acting reasonably, would have done on 06/07/2021.

57. On the 'due diligence' area of concern, there was no evidence presented by the Respondent as to why it did not point out to the trustees of the Charity the poor quality of its governing documents to the trustees of the Charity, despite that issue being raised as a matter of concern at the hearing. It is difficult to know why this was not pointed out by the Respondent to the Charity. It may have been that behind this issue was a question of Gift Aid being used for administrative expenses. If so, the Charity should not use restricted funds pending receipt of Gift Aid. However, while this, if that were the real issue, is not good practice, the funds of the Charity may not have been at risk.
58. The Tribunal was also concerned at Charity funds being raised by cash collections without adequate accountability processes being in place.
59. While there were certain factual inaccuracies in the Respondent's processes, these were of no material significance.
60. The Tribunal attached no significance to the fact that the Inquiry was purportedly opened on 29/06/2021. It had not, in fact, been opened on that date as the opening of the Inquiry had to be authorised by an officer of the Respondent of a particular rank: this did not occur until 06/07/2021.
61. The Tribunal, having regard to the entirety of the written and oral evidence and submissions rejected, on the balance of probabilities, the essential case put by the Applicant as encapsulated, in particular, in his skeleton argument.
62. The Tribunal found that the submission of the representative of the Applicant to there being no *actus reus* (a criminal law concept of no application in these proceedings) as being a rational basis, if it were of any relevance, to obviate and eliminate the 'serious concerns' admitted by him to exist, to be fanciful in the extreme. This submission was rejected by the Tribunal.
63. While the grounds advanced by the Respondent to justify the making of the Order were not supported in many respects on the evidence, the Tribunal found that, ultimately, the making of the Order was necessary in order to protect the funds of the Charity, a lawful Inquiry having been opened. The making of the Order did not prevent the Applicant, on behalf of the Charity, continuing the work and activities of the Charity, subject to seeking approval for certain expenditure of funds of the Charity from the Respondent and did not, or would not, have impeded the growth of the Charity: the Applicant decided not to seek any such approval - making an assumption that approval would not be granted - even though a right of appeal to the Tribunal would accrue if approval was refused.

Note: A right of appeal, on a point of law only, lies to the Upper Tribunal against this decision. Any person seeking permission to appeal must make application in writing to this Tribunal for permission to appeal no later than 28 days after this decision is issued, identifying the alleged error of law and state the result the person making the application is seeking.

Signed: Judge Damien McMahon

Date: 14 February 2023