



Neutral Citation: [2023] UKUT 307 (TCC)

Case Number: UT/2022-000009

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Hearing Venue: **The Rolls Building,**
Fetter Lane, London EC4A 1NL

Value Added Tax, Exemptions, Item 1(e) of Group 9 of Schedule 9 Value Added Tax Act 1994, Article 132(1)(l) Council Directive 2006/112/EC – whether FTT failed to give reasons for rejecting part of Appellant’s case – yes – whether aim to provide Relief to Freemasons and their dependents is philanthropic – no

Heard on: 24 and 25 April 2023
Judgment date: 19 December 2023

Before

JUDGE PHYLLIS RAMSHAW
JUDGE KEVIN POOLE

Between

UNITED GRAND LODGE OF ENGLAND

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Owain Thomas KC, counsel, instructed by KPMG Law, KPMG LLP
For the Respondents: Howard Watkinson, counsel, instructed by the General Counsel and Solicitor to His Majesty’s Revenue and Customs

DECISION

INTRODUCTION

1. This appeal concerns an exemption from Value Added Tax (“VAT”) that would otherwise be chargeable on supplies made by the Appellant to its members in return for subscription fees. The Appellant is referred to as “UGLE” by the FTT and was also referred to as such in two previous decisions. We refer throughout this decision to the parties as “the Appellant” and “HMRC” respectively.

2. The Appellant appeals against a decision of the First Tier Tribunal (Tax Chamber) (“the FTT”) released on 1 September 2021 ([2021] UKFTT 308 (TC) (“the FTT decision”). The FTT dismissed the Appellant’s appeal against HMRC’s decision to reject two claims for repayment of VAT that the Appellant had accounted for. The claims were made on the basis that the Appellant’s supplies to its members in relation to subscription fees ought to have been treated as exempt from VAT under Article 132(1)(l) of Council Directive 2006/112/VAT (the “PVD”), applying to certain organisations with “aims of a... philosophical, philanthropic or civic nature”.

3. The FTT held that if an organisation had more than one aim, its eligibility for the relief would depend on its main (or primary) aim, and if it had multiple main aims, it would only qualify for the relief if all its main aims fell within the list in Article 132(1)(l) of the PVD. If it had a number of aims which were all equally important (i.e. if it had no main aim), then all those aims would have to fall within the list to enable the organisation to qualify for exemption. There is no appeal against this aspect of the FTT Decision.

4. The FTT decided that the Appellant had a philosophical aim that was a central or main aim but that it also had another main aim of at least equal importance to the philosophical aim, namely the provision of “Relief” in two forms: donations to good causes unconnected with Freemasonry (which it regarded as philanthropic) and supporting Freemasons and their dependents in distress (which it regarded as “self-insurance” rather than philanthropic in nature). It considered that each of these two elements was, in its own right, a main aim, but the support of Freemasons and their dependents in distress was the more important of the two elements during the relevant period. It went on to say that:

It does not matter whether the provision of Relief is regarded as two aims, one philanthropic and one non-philanthropic, or, alternatively, a single aim which is a mixture of philanthropic and non-philanthropic activities. In either case, I find that UGLE had a main aim which was not ‘philanthropic’ within Art 132(1)(l).

5. The FTT therefore concluded that the services supplied by the Appellant were not exempt from VAT.

6. The FTT also decided that the Appellant does not have a civic aim – no appeal against that aspect of the FTT’s decision has been made.

7. The FTT rejected HMRC's submission that, in addition to falling within the list at Article 132(1)(l) of the PVD, an organisation's aim (or main aim/s) must also be in the public interest before it would qualify for the exemption. There is no appeal against that conclusion.

8. Permission to appeal was granted by the Upper Tribunal on two specific grounds. The grounds of appeal are set out below.

9. All references to paragraph numbers in this decision are to paragraphs in the FTT decision unless otherwise indicated.

BACKGROUND

10. The factual background is not in dispute. The Appellant is the governing body for the majority of Freemasons in England and Wales. There are other forms of Freemasonry whose practitioners do not belong to the Appellant.

11. The FTT set out the following factual background:

76. UGLE was founded in 1717 and is the oldest Grand Lodge of Freemasons in the world. It is the representative body of Freemasonry in England, Wales and the Channel Islands and its headquarters are at Freemasons' Hall, Great Queen Street, London. Freemasons' Hall is used for a number of meetings and also houses the two largest Masonic charities.

77. UGLE is an unincorporated association. It has approximately 175,000 members who, in turn, are members of some 6,500 local Lodges. Some members belong to more than one Lodge. Mr Humberstone said (and I accept) that it is the largest secular fraternal and charitable organisation in the UK.

78. The Lodges are grouped into Provinces. There are 48 Provinces which broadly correspond to the counties of England and Wales plus London. The Provinces report to UGLE as do five Lodges which report to UGLE directly rather than through a Province.

79. UGLE has control over the Lodges and the practice of Freemasonry and the activities of Freemasons.

80. UGLE has annual income of around £13m including £9m from Provinces/Lodges (membership dues, fees and room rentals) and some £3m investment income. It has net assets of £70m. It is managed by an executive team who are supervised by its Board, and it employs some 90 people. It operates as a not-for-profit organisation and does not distribute any monies to its members.

12. In 2014 and 2018 the Appellant made two claims for repayment of VAT accounted for in VAT periods 06/10–03/18. The VAT had been charged on membership subscription fees. The total amount claimed was £2.83m. The basis of the claim for repayment was that, in the period April 2010 to March 2018, its supplies to its members were exempt under art 132(1)(l) of the PVD and Item 1(e) of Group 9 of Sch 9 to the VAT Act 1994 (“VATA”) because its main aims were of a philosophical, philanthropic or civic nature.

13. A number of matters are agreed between the parties, namely that the Appellant's supplies are to its members in return for a subscription, those supplies are single supplies, and that the Appellant is a non-profit making organisation.

14. As recorded by the FTT this is not the first time that the FTT and Upper Tribunal (“Upper Tribunal”) have considered whether the Appellant has aims of a philosophical, philanthropic or civic nature. In *United Grand Lodge of England v Revenue and Customs Comrs* [2014] UKFTT 164 (TC) (“*UGLE 1 FTT*”), the FTT set out various findings and dismissed the appeal. The FTT found that the aims of the Appellant included aims of a philosophical nature, not all of UGLE's promotion of charitable giving could be treated as having a philanthropic aim and only a small part, at most, of UGLE's aims were civic in nature. The FTT also found that the aims of Freemasonry were not limited to philosophical, philanthropic and civic aims but also included social aims, self-improvement and, in some part, the promotion of Masonic ritual and ceremony. The FTT's decision in *UGLE 1 FTT* was upheld by the Upper Tribunal in [2015] UKUT 589, [2016] STC 888 (“*UGLE 1 UT*”). In *UGLE 1 UT* it was held that the FTT had been entitled, on the evidence, to reach the conclusion that the aims which fell outside the categories of exemption were not ancillary or subordinate to the qualifying aims but were of ‘sufficient magnitude’ to cause the Appellant to fall outside the exemption altogether.

RELEVANT LEGISLATIVE PROVISIONS

15. Article 132(1) PVD provides:

Exemptions for certain activities in the public interest

Article 132

Member States shall exempt the following transactions:

...

(l) the supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature provided that this exemption is not likely to cause distortion of competition;

...

(o) the supply of services and goods, by organisations whose activities are exempt pursuant to points ... (l), ... in connection with fund-raising events organised exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition;

...

16. The exemption was implemented in the United Kingdom by Section 31 and Item 1(e) of Group 9 of Schedule 9 to VATA. Group 9 is headed “Subscriptions to trade unions, professional and other public interest bodies” and exempts:

1. The supply to its members of such services and, in connection with those services, of such goods as are both referable only to its aims and available without payment other than a membership subscription by any of the following non-profit making organisations –

...

(e) a body which has objects which are in the public domain and are of a political, religious, patriotic, philosophical, philanthropic or civic nature.

17. There is no issue in this appeal regarding the effective implementation of the exemption into domestic law.

THE GROUNDS OF APPEAL

18. Permission to appeal was granted on the following grounds:

(1) The FTT failed to address or give reasons for rejecting the Appellant’s case that it had one main philosophical aim and that its activities in support of the Masonic charities were in service of the philosophy of Freemasonry, in particular the third of the three Grand Principles, Relief, and thus fell within its philosophical aim.

(2) Even if its activities related to the Appellant’s charities could be treated as an aim which was not in service of its main philosophical aim, the activities of the Appellant in support of the Masonic charities fall within the ordinary meaning of the word “philanthropic”. The FTT misdirected itself in law by failing to apply the ordinary meaning of the word and instead adopted a meaning of “philanthropic” which is too narrow.

19. We consider these grounds in turn.

GROUND 1

Appellant's submissions

20. Mr Thomas submitted that the Appellant's primary case before the FTT was that its philosophical aim was its main aim and that all of its activities should be understood as being in service of that aim as recorded by the FTT at [6] and [94]. Reference was made to [90] and [91] of the FTT decision where the FTT recorded the evidence of Mr Humberstone and at [92] the FTT accepted that the promotion of a particular code of conduct derived from the Three Degrees and the Grand Principles could fairly be described as a philosophical aim. Although the FTT accepted at [101] that the philosophical aim was a central or main aim, the FTT failed to address the primary case that all other activities or aims must be regarded as in service of that philosophical aim; nor therefore did it give reasons for rejecting that argument. The FTT did not consider why philanthropy is not just part of the philosophy of Freemasonry. He argued that at [94]-[101] charity is repeatedly referred to as inherent in the idea of giving being a manifestation of the principle of Relief.

21. Mr Thomas argued that the FTT also failed to address what he referred to as "the related point that there was no need for all activities referable to the practice of Freemasonry to themselves separately qualify as aims within the exemption". He argued that an organisation may have elements of a philosophy which were not "civic" or "philanthropic" and still fall within the scope of the exemption if the philosophical aim satisfied the conditions. As an example, he argued that an organisation with a philosophical aim which seeks to uphold a misanthropic or atheist philosophy would nonetheless qualify for the exemption. He argued that, by accepting the evidence at [91] to the effect that the promotion of charitable activity is a manifestation of the philosophy of Freemasonry, the FTT had implicitly accepted that there was no need for that activity to be further analysed (in order to decide whether each and every element of it is also an aim, if so, whether it is a main aim and if so, a main aim which corresponds to one of the other aims listed in the exemption). In short, the FTT's findings on the principle of "Relief" were such that it was bound to decide that the charitable activity was not separate from, but instead a manifestation of, the philosophy of Freemasonry.

22. Mr Thomas argued that where an organisation has a main aim which qualifies for the exemption, for any non-qualifying aim to be considered as a main aim, that aim must be outwith the qualifying main aim. Where, as here, such other aims as the Appellant had were pursued as part and parcel of its (qualifying) philosophical aim, the exemption should apply. In response to the suggestion that there should be a separation between the philosophical aim and the activities putting that aim into practice, he argued that there was no support in the case law for separating out the practical pursuit or application of a qualifying aim from the qualifying aim itself; indeed he argued that the approach in *Institute of the Motor Industry v CCE* (Case C-149/97) [1998] STC 1219 ("*Motor Industry*") says the opposite, namely that the way to test whether an organisation has a qualifying aim is to look to see what it does in practice.

23. Referring to *UGLE 1 UT* he highlighted that the appeal proceeded on the basis that it was common ground there were multiple aims (see [62] of *UGLE 1 UT*) and the UT confined itself to arguments on that basis.

24. In short, he argued there was no finding by the FTT that the charitable activities were separate from the philosophy of Freemasonry and pursued independently of that philosophy. The finding at paragraph [122] that the provision of "Relief" was of "at least equal importance" to the philosophical aim failed to recognise that Relief is an integral part of the philosophical aim. The FTT had not articulated any basis for concluding that the charitable activities were separate from the Grand Principle of Relief, and any such conclusion would be wrong in law.

HMRC's Submissions

25. Mr Watkinson submitted that the Appellant's arguments, whilst nominally advanced as a challenge based on supposedly inadequate reasons, were in effect a new argument (not advanced before the FTT), intertwined with a challenge to the FTT's evaluation of the facts that it had found. The new argument being advanced, he said, was the supposed "principle" of law that where an organisation has a main aim which qualified for exemption, any non-qualifying aim could only be considered as a main aim if it fell "outwith the qualifying main aim".

26. He made reference to relevant caselaw on the approach an appellate court should take to a "reasons" challenge and to an *Edwards v Bairstow* challenge. He argued that there was no dispute that the Appellant had multiple aims - see the FTT decision at [29]. It was therefore impossible for the Appellant to assert that the FTT was constrained to find that it had only one main aim. The real issue before the FTT was whether one aim was more important than the others, i.e. whether the latter was "in service" of the former. The aims were not clearly set out anywhere (see [89]); the FTT had to find them (see [92]). Although the Appellant asserted in its skeleton argument before the FTT that its philosophical aim was more important than any other that was an assertion of fact, not an assertion of law. The pleaded case in its re-amended Grounds of Appeal was the opposite: it conjunctively had philosophical, philanthropic and civic aims, and "*the Appellant's philosophical aim also serves its philanthropic and civic aims.*".

27. He argued that the Appellant does not criticise the FTT's legal analysis of Article 132 (1)(1) PVD set out at [26]-[27]. The FTT found at [92] that it could derive from the three Grand Principles both a philanthropic aim and a philosophical aim. It was entitled to conclude on the evidence that these were two separate aims. The FTT at [122] found that the actual provision of "Relief" was both a main aim and of at least equal importance to its philosophical aim. Mr Watkinson argued that this is (i) a clear finding that the actual provision of Relief was a separate aim from its "philosophical" aim, (ii) a clear rejection of the factual assertion that the sole aim was philosophical, and (iii) a clear rejection of the assertion that the actual provision of relief was subservient to the philosophical aim. Moreover, it was amply apparent from both the FTT decision and its decision refusing permission to appeal how it had reached that view.

Discussion

28. Ground 1 contains challenges based on supposed failures both to give adequate reasons and to address aspects of the Appellant's arguments. The Appellant argues that Ground 1 does not seek to challenge the findings of fact made by the FTT but rather it is the FTT's failure to address what it asserts was its primary argument that led it into error. Had the FTT properly addressed the argument advanced it was bound to decide that the charitable activities were a manifestation of the philosophy of Freemasonry and not a separate aim. Whilst we recognise the distinction drawn by the Appellant, nevertheless, the factual findings on these issues made by the FTT are relevant to deciding whether or not the FTT erred. In our view, the "reasons" challenge and the "failure to address arguments" challenge are inextricably linked and we consider them together below.

The approach to be taken by the Upper Tribunal

29. The general approach to be taken by the Upper Tribunal to challenges to a FTT decision on the basis of failure to address arguments and inadequacy of reasons has been established by a number of authorities. The general principles to be applied are not in dispute.

30. Whilst it is incumbent on a FTT to deal with the main arguments advanced it is not required to deal with every argument made to it. In *Fage UK Ltd & Anor v Chobani UK Ltd & Anor* [2014] EWCA Civ 5 (“*Fage*”) at [115] Lewison, LJ. said:

...There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury.

31. In *HMRC v Beigebell Ltd* [2020] UKUT (TCC) the UT, after acknowledging that the FTT was not obliged to set out every submission or argument raised, held at [29]:

...However, a necessary component of explaining to HMRC why they had lost involved demonstrating that HMRC’s case had been addressed... (*emphasis in original*)

32. When considering an appeal on the basis of inadequacy of reasons the UT will exercise restraint. In *Byrne v General Medical Council* [2021] EWHC 2237 (Admin) at [27] it was held:

...an appeal court will not allow an appeal on grounds of inadequacy of reasons, unless, even with the benefit of knowledge of the evidence and submissions made below, it is not possible for the appeal court to understand why the judge below had reached the decision it did reach. It is appropriate for the appeal court to look at the underlying material before the judge to seek to understand the judge’s reasoning and to “identify reasons for the judge’s conclusions which cogently justify” the judge’s decision, even if the judge did not himself clearly identify all those reasons...

33. In *R (Jones) v First-tier Tribunal (Social Entitlement Chamber) (Rev 1)* [2013] UKSC [2013] 2 AC 48, Lord Hope said at [25]:

It is well established, as an aspect of tribunal law and practice, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. The appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it.

34. We have adopted the approach as set out in *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605 (“*English*”) at [26] :

26. Where permission is granted to appeal on the grounds that the judgment does not contain adequate reasons, the appellate court should first review the judgment, in the context of the material evidence and submissions at the trial, in order to determine whether, when all of these are considered, it is apparent why the Judge reached the decision that he did. If satisfied that the reason is apparent and that it is a valid basis for the judgment, the appeal will be dismissed...

Review of the FTT decision – its identification of the issues and the arguments advanced before it.

35. In accordance with the above authorities, in order to determine if the FTT erred in law by failing to address arguments made and/or give adequate reasons as set out in Ground 1, it is necessary to consider the issues as identified by the FTT and to consider the case that was advanced before it. We review the FTT decision below in light of the written arguments which include the FTT’s recording of the arguments and the issues it identified, the grounds of appeal, the skeleton arguments and the Notes on the Evidence.

36. There was no dispute as to the FTT’s adoption of the dictionary definitions of “philosophy” and “philosophical” as set out in [45] – [47].

FTT's identification of the issues to be decided.

37. The FTT referred to the issues it had to decide in a number of paragraphs:

6. Mr Owain Thomas QC, who appeared for UGLE, submitted that, throughout the relevant period:

(1) UGLE's sole main aim was philosophical in nature; or, in the alternative,

(2) UGLE's main aims, taken together, were of a philosophical, philanthropic or civic nature and it did not have any other main aims...

...

7. The only issue in the appeal is whether, between June 2010 and March 2018, UGLE had aims of a philosophical, philanthropic or civic nature which were, separately or together, its main aim or aims...

...

68. The only issue for determination in this appeal is whether, between April 2010 and March 2018, UGLE's philosophical, philanthropic and civic aims constitute a single primary aim or, taken together, are its only main aims. If so then UGLE's appeal must be allowed. If UGLE has another aim or other aims of equal or greater importance then the appeal will fail.

...

88. The issue in this appeal is not whether UGLE has aims of a philosophical, philanthropic and civic nature but whether those aims, or any one of them, are UGLE's main or primary aim to the exclusion of any other main aims. It is necessary, therefore, to identify UGLE's aims as an organisation and then determine which of them are its main or primary aims.

...

92. I consider that the BoC and Emulation Ritual are constitutional documents but they do not explicitly state the aims of UGLE. I accept that it is possible to infer the aims of UGLE from the Three Grand Principles but they seem little more than a general exhortation to Freemasons to behave considerately, charitably and with integrity. I can derive from the Grand Principles that Freemasonry (and, therefore, UGLE) has a charitable, ie philanthropic, aim. Further, the promotion of a particular code of conduct or way of living derived from the Three Degrees and the Grand Principles can, in my view, fairly be described as a philosophical aim. For reasons set out below at [124] and [125], I do not consider that UGLE has a civic aim.

93. The question remains whether UGLE's philosophical and philanthropic aims are a main aim or main aims of Freemasonry.

...

101. Accordingly, I have concluded that UGLE had a philosophical aim during the period from April 2010 to March 2018 and that this philosophical aim was a central or main aim of UGLE. This does not determine the appeal and I must now consider whether UGLE had other aims that were equally important and, if so, whether they fall outside Article 132(1)(l) PVD.

102. If I do not accept that UGLE had a philosophical aim as its only main aim, UGLE's alternative case is that taken together, its main aims during the period were solely of a philosophical, philanthropic and civic nature...

FTT's summary of the arguments advanced in relation to Ground 1

38. The FTT summarised the arguments advanced before it in relation to the above issues in a number of paragraphs:

29. UGLE accepts that it had multiple aims during the period under consideration in this appeal. Mr Thomas submitted that all that is necessary is for UGLE's main aim or aims to be philosophical, philanthropic and/or civic in order to qualify for the exemption. He contended that 'main' aims are those which are principal, primary or predominant and subsidiary aims of a different nature are not relevant. In particular, activities which are designed to facilitate the achievement of other aims are by their nature subsidiary and are unlikely to amount to aims in themselves. Even if they do, if they facilitate the achievement of qualifying aims those activities do not prevent the exemption from applying.

...

54 In submitting that UGLE had a philanthropic aim, Mr Thomas relied on the fact that charitable giving by Freemasons through the Lodges and the Masonic charities for the benefit of people and causes unconnected with Freemasonry had increased over the years and was now substantial. He also submitted that the relief of need of Freemasons had been consistently recognised as charitable, eg by the Charity Commission, and is inherently Philanthropic.

...

Philosophical aim as a main aim

94. UGLE's primary case is that, throughout the period April 2010 to March 2018, it had a philosophical aim and that was its main aim. Mr Thomas said that UGLE's primary function is to act as the governing body for Freemasonry in England and Wales. In that role, UGLE leads, advises on, promotes and upholds all aspects of the practice of Freemasonry and, accordingly, UGLE has objects or aims of a philosophical nature. That is because Freemasonry itself consists of a series of principles and practices which together amount to a system of rules for life and all of its activities should be understood as being in service of that aim.

...

103 There was no dispute that UGLE had a philanthropic aim during the relevant period. Mr Thomas submitted that charity in all its forms lies at the heart of Freemasonry...

Relevant aspects of the written arguments

39. We do not accept that the arguments presented before the FTT were solely focused in the manner described in the appeal before us. We consider that the case advanced before the FTT was less clear. The arguments included:

- (1) The Appellant accepted that it had multiple aims.
- (2) At paragraph [17] of the Appellant's skeleton argument before the FTT the case was put on the basis that the evidence would show that its aims are of a philosophical and/or philanthropic and/or civic nature.
- (3) Paragraph [6] of the re-amended grounds of appeal asserted that the evidence would show that the Appellant's philosophical aim also serves its philanthropic and civic aims and at paragraph [8] that the aims of the Appellant are philanthropic in nature and at [9] that the aims are also civic in nature.

(4) At paragraph [20] of its skeleton argument before the FTT it was contended that insofar as the FTT in *UGLE 1 FTT* found that it had aims of a philosophical, philanthropic and civic nature it was right to do so.

(5) Paragraphs [38]-[39] of the Appellant's FTT skeleton set out the argument:

38. UGLE sets out its case below as to its objects. Its overall object is to act as the custodian and promoter of Freemasonry. UGLE's case is that its objects are philosophical on the basis that Freemasonry itself amounts to a distinct philosophy, incorporating a system of beliefs and principles derived from Enlightenment principles and ultimately from Aristotle. The practice of Freemasonry ultimately requires a commitment to those principles and to acting on them in life.

39. Thus everything which UGLE does is in service of that philosophical aim. To the extent that there are other aims, those aims are philanthropic and/or civic and there are no other aims which are unconnected with or not directly in service of UGLE's philosophical, philanthropic and/or civic aims.

(6) We note that the skeleton argument then included a heading "Philosophical aims". At [40]-[52] in the paragraphs setting out the beliefs and practices of Freemasonry we note that there was not a particular stress in those paragraphs on Relief.

(7) The skeleton argument then included a heading "Philanthropy" – we note there was no argument set out prior to the philanthropy heading which stated the Appellant's case that its philanthropic aim cannot be considered to be separate to the philosophical aim or that it was argued on the basis that it was an alternative to the sole philosophical aim argument.

(8) Paragraphs [53]-[64] of the skeleton argument under the heading "philanthropy", in contrast to paragraphs [40]-[52], stressed the extent of the charitable activities.

40. It has not been argued that the FTT failed to accurately record the arguments advanced or incorrectly identified the issues it had to decide. We accept that the argument was advanced that the Appellant had a philosophical aim that was its main aim, and that Freemasonry consists as a series of principles and practices and all its activities should be understood as being in service of that aim. We do not accept that the case was advanced on the basis that the provision of Relief **cannot** be an aim (whether a main aim or not) separate from the philosophical aim. An argument that all the activities were in service of the philosophical main aim does not equate to an argument that Relief **cannot** be a separate aim (whether a main aim or not). Further, there was no submission that we can see before the FTT that to found a separate aim any such aim must be outwith the main aim. This was not in the grounds of appeal to the UT upon which permission to appeal was granted and no application to amend the grounds of appeal was made.

41. The task the FTT was required to undertake, as it correctly identified at [88], was to identify the aims of the Appellant and to determine which of them were its primary or main aim/s. The Appellant had argued (see [29]) that main aims "are those which are principal, primary or predominant and subsidiary aims of a different nature are not relevant. In particular, activities which are designed to facilitate the achievement of other aims are by their nature subsidiary and are unlikely to amount to aims in themselves."

The FTT's findings on the scope of the philosophical aim considered

42. We now turn to the FTT's findings on the scope of the philosophical aim and consider its findings in the context of the issues it identified, the arguments advanced before it and in light of the arguments advanced before us.

43. The FTT was unable to refer to any constitutional documents which clearly set out the aims of the Appellant. It was required to infer from the documents and evidence what those aims were. Paragraph [92] of the FTT decision contains findings of the FTT on the evidence regarding the Three Degrees and the Grand Principles. The FTT found, firstly, that it could derive from the three Grand Principles that Freemasonry (and, therefore, the Appellant) had a philanthropic aim. Secondly, it considered that the promotion of a particular code of conduct or way of living derived from the Three Degrees and the Grand principles could be described as a philosophical aim. It then set out at [93] that the question remained whether the Appellant's philosophical and philanthropic aims were a main aim or main aims of Freemasonry.

44. In essence the FTT discerned from the evidence that the promotion of Freemasonry revealed aims of a philanthropic/charitable **and** philosophical nature. It had been argued both that the philosophical aim served its philanthropic/charitable aim and vice versa. We do not accept Mr Thomas's argument that on the facts found by the FTT the pursuit of charitable activity was not separate from but was simply a manifestation of the philosophy of Freemasonry so that there was no need for that activity to be further analysed in order to decide whether each and every element of that activity was also an aim. He argued that the aims of an organisation must be tested against what happens in reality – in this case he argued that the pursuit of charitable activities was a practical manifestation of the philosophical aim.

45. In support Mr Thomas relied on *Motor Industry*, in which the CJEU held at [21]:

Thus, a non-profit-making organisation whose main object is to defend and represent the collective interests of its members satisfies the criterion of exercising an activity in the public interest... in so far as it provides its members with a representative voice and strength in negotiations with third parties.

46. He argued that any activities which the appellant in that case undertook in order to defend and represent the collective interests of its members would have fallen within that main aim and could not properly be seen as amounting to aims in themselves. We do not accept that the CJEU was laying down a general proposition that applies to all other types of qualifying aims/objects. Paragraph [21] of *Motor Industry* must be read in light of the facts of that case, the particularity of the specific objects and paragraph [19] in which the CJEU held that an organisation which aims to promote the interests of its members by defending and representing collective interests **cannot** be regarded as having objects of a trade-union nature unless the object is put into practice. In that case the aim/object was to defend and represent members, so it was **required** to actually carry out the act of so doing. In other words, undertaking the practical activity was an inherent aspect of the aim. That is very different to the situation where the aim is philosophical. The general proposition to be derived from *Motor Industry*, as found by Lewison J in *British Association for Shooting and Conservation Limited v Revenue and Customs Comrs* [2009] EWHC 399 (Ch) STC 1421 (“*BASC*”), that the professed aims must be tested against what happens in reality must be considered in light of the character of the professed aim. As can be seen from the definitions of “philosophy” and “philosophical” set out by the FTT at [45]-[47], philosophy is concerned with matters such as knowledge, learning, enquiry, a system of ideas or beliefs relating to existence, a personal rule of life, etc. These may be described as abstract concepts. What the FTT found at [92] was that the promotion of a particular code of conduct or way of living derived from the Three Degrees and the Grand Principles could be fairly described as a philosophical aim and at [96] it said this:

I accept the evidence of the witnesses for UGLE that the ritual is at the heart of Freemasonry. The Three Degrees of Freemasonry are achieved by the learning and performance of a series of ritual dramas. It is through the Three Degrees – i.e. the three rituals – that the three Grand Principles are explained and taught. The three Grand Principles are Brotherly Love, Relief and Truth. The Emulation Ritual is the

central and most important part of the Lodge meetings. UGLE requires Lodges to perform the Ritual at their meetings. The Ritual is not simply performed at the Lodge but must be learned by heart by each Freemason in his own time. I accept that the Emulation Ritual is primarily intended to teach the values and principles, ie the philosophy, of Freemasonry. It seems to me that the emphasis placed on the learning and performance of the Ritual and the fact that it embodies and instils the values and principles of Freemasonry show that the philosophy is a main aim of the organisation.

47. What the Appellant does in practice is to teach, instil and promote the values and principles of Freemasonry, this being the philosophical aim. Applying the ratio of *Motor Industry* to the instant case this is what happens in reality and is what must be considered when testing the professed aim. Such teaching, instilling and promotion of the values and principles of Freemasonry (as the FTT found) is sufficient to achieve the philosophical aim. An organisation with a philosophical aim does not require, **in addition**, a practical physical manifestation of any or all of the philosophical principles it promotes and teaches in order to achieve the philosophical aim.

48. Therefore, the practical provision of Relief, whilst it may be regarded as being motivated by the philosophy of Freemasonry (and in some sense therefore a manifestation of that philosophy) cannot fairly be regarded as **an inherent part of** the philosophical aim of Freemasonry (and, accordingly, of the Appellant). We do not accept that the FTT found that Relief was a manifestation of the philosophy of Freemasonry such that it was **bound** to decide that the charitable activities are not separate from but instead an indispensable element of the philosophical aim of Freemasonry (and therefore of the Appellant). The FTT at [91] simply set out what the Grand Principles were, at [92] found that the promotion of a particular code of conduct or way of living derived from the Three Degrees and the Grand Principles (including Relief) could fairly be described as a philosophical aim; and then at [96] found that “the emphasis placed on the learning and performance of the Ritual and the fact that it embodies and instils the values and principles of Freemasonry show that the philosophy is a **main aim of the organisation**” (*Emphasis added*).

49. For the above reasons we conclude, like the FTT implicitly did, that the practical provision of Relief is not, as argued by Mr Thomas, just part and parcel of the philosophy of Freemasonry so that it **must** be regarded as being in service of that philosophical aim and incapable of being regarded as a main aim in its own right. In principle, charitable activity is certainly an activity that is capable of being a subsidiary aim in service of a main aim but can also be a separate main aim. It follows that we reject the argument that had the FTT properly addressed the Appellant’s case it was bound to conclude that the provision of Relief was subsumed in the philosophical aim.

50. We now move to consider the FTT’s findings on the provision of Relief as a main aim.

The FTT’s findings on provision of Relief as a main aim considered

51. The FTT referred to *BASC* and the approach to be taken as set out at paragraphs [41] and [43] of that case. The Appellant does not dispute the FTT’s legal analysis at [26] – [27]:

26. My view is that it is clear from the language of art 132(1)(l) and the guidance given by Lewison J in *BASC* that an organisation which has more than one main aim can still come within the exemption if those aims are all listed and described in art 132(1)(l). The fact that the organisation has other aims which are not described in art 132(1)(l) does not mean that its services to members are not exempt provided that those other aims are not main aims. If, however, the organisation has a number of aims, all equally important, some of which are described in art 132(1)(l) and some

of which are not then the services supplied by the organisation to its members are wholly outside the exemption.

27. Accordingly, in this appeal, if UGLE has an aim which is more important than its other aims, i.e., a single primary aim, and that aim is one which is described in art 132(1)(l) then UGLE's supplies of services to its members are exempt. Also, if UGLE has several aims that are all equally important and are all described in art 132(1)(l), and no other main aims, then UGLE's supplies of services to its members are exempt. If, on the other hand, UGLE has philosophical, philanthropic and civic aims but they are not its main aims or it has other main aims in addition then its services to its members are not exempt.

52. The FTT, having identified the correct approach, set out the task as requiring it "*to identify UGLE's aims as an organisation and then determine which of them are its main or primary aims*" [88]. This is entirely consistent with the approach set out in the authorities referred to.

53. Having found at [101] that the Appellant had a philosophical aim and that this was a main aim, the FTT concluded that this did not determine the appeal and that it was now required to "*consider whether UGLE had other aims that were equally important, and if so, whether they fall outside Article 132(1)(l) PVD.*"

54. In light of the case advanced, features of which we have set out above, and the requirement for the Tribunal to make findings as to the main aim/s, we consider that the FTT was correct in its approach. As contended by the Appellant before the FTT, if other aims are equally important (i.e., main aims), any such aims are distinguishable from subsidiary aims. As recognised by the Appellant, activities which are designed to facilitate the achievement of other aims are by their nature subsidiary and are unlikely to amount to aims in themselves. It was also argued that even if they do, if they facilitate the achievement of qualifying aims those activities do not prevent the exemption from applying. In our view, this is an important point. An aim that is found to be of at least equal importance to another aim (whether or not that other aim is a main aim) cannot be said to be subsidiary to it and therefore is unlikely to simply facilitate the achievement of (or be in service of) that other aim. As we set out above, the practical provision of Relief as an aim does not, and is not required in order to, facilitate the achievement of the philosophical aim.

55. The difficulty faced by the Appellant is that the FTT made a finding of fact that the Appellant had two main aims when identifying (as it was required to do) what the main aims were – Relief was found at [122] to be of "at least equal importance" to the Appellant's philosophical aim. In *UGLE 1 UT*, it is worth noting in passing that the Upper Tribunal upheld the FTT's findings that the Appellant had multiple primary aims.

56. The FTT evaluated the evidence in considerable detail at paragraphs [103]– [119] before reaching its finding of fact on this issue. We can see no basis upon which to interfere with the FTT's factual finding. It is a finding that was open to it on the evidence. As held in *Fage*:

114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them.

57. In light of the FTT's finding that the provision of Relief is a main aim of at least equal importance to the Appellant's philosophical aim we conclude that as such it is distinguishable from subsidiary aims, it is not subservient to the philosophical aim, and it does not simply facilitate the achievement of the philosophical aim.

58. For the reasons we have given above we reject the Appellant’s arguments that there was one main philosophical aim, and all of its activities should be understood as being in service of that aim. The FTT’s finding that the provision of Relief was a separate main aim of at least equal importance to the philosophical aim is, in our view, unimpeachable.

59. However, we consider that the FTT failed to provide adequate reasons as to why it did not accept the Appellant’s argument that there was one main philosophical aim, and everything was done in pursuance of that aim. HMRC argue that it is implicit in the FTT’s decision, when read as a whole, that in finding that Relief was a main aim of at least equal importance to the philosophical aim, this was a rejection of the factual assertion that the sole aim was philosophical and all other aims were in service of that aim or subservient to it.

60. The FTT concluded at [101] having found that the Appellant had a philosophical aim that was a central or main aim:

...This does not determine the appeal and I must now consider whether UGLE had other aims that were equally important and, if so, whether they fall outside Article 132(1)(l) PVD

61. We can see no explicit explanation as to why that did not determine the appeal, given the Appellant’s argument that it had one sole main philosophical aim throughout the relevant period, the provision of Relief being a mere manifestation of that aim. We consider that such an explanation was required in order to address the Appellant’s argument.

62. It is possible to discern by inference from [102] where the FTT stated “*If I do not accept that UGLE had a philosophical aim as its only main aim...*” and what follows that the FTT implicitly rejected the Appellant’s case to that effect. We could speculate as to what the reasons were but there is simply no explanation set out as to how and why it reached its conclusion. We reject HMRC’s submission that reading the decision as a whole it is possible to discern the reasons for the conclusion reached. In the present case, and with due respect to the FTT which in all other respects provided a thorough and detailed decision, our view is that this is not a situation in which the FTT has simply failed to set out every step of its reasoning, rather, the FTT has not given reasons for rejecting an important aspect of the Appellant’s case. We find that the FTT therefore erred in law. Our own reasons for rejecting this aspect of the Appellant’s case are set out above.

63. We deal with the consequences of this finding at the conclusion of this decision following consideration of Ground 2.

GROUND 2

Appellant’s Submissions

64. Mr Thomas argued that when considering the nature of the Appellant’s activities pursuant to the Grand Principle of Relief, the FTT applied a meaning of “philanthropic” which was too narrow. Charity on a large scale is a central example of what amounts to philanthropy. He submitted that the distinction between benefiting people who are members of society at large and only those who have contributed to the organisation referred to by the FTT at [59] is not supported by the ordinary meaning of “philanthropy”. The giving by Freemasons amounts to practical benevolence for the benefit of those in need. The funding and support of the Masonic charities promotes activities which are charitable and in the public interest. The Masonic charities are all charities for the purposes of sections 1 to 4 Charities Act 2011 and fulfil the public benefit criterion in that legislation. In *Attorney General v Charity Commission for England and Wales and others* [2012] UKUT 420 (“*AG v Charity Commission*”) the reference was brought to clarify the application of the public benefit criterion in which “*the potential beneficiaries are connected by a family relationship to the founder, common employment or*

former employment, or their membership of an unincorporated association". For the purposes of charity law, the activities of the Masonic charities not only have solely charitable objects but they are also for the public benefit. The provisions of VAT law and charity law are closely aligned - *The Game Conservancy Trust v CCE (Decision 17394)* ("*Game Conservancy Trust*") at paragraph [64].

65. Mr Thomas referred to *Rotary International v CCE [1991] VATTR 177* ("*Rotary International*") arguing the activities of the Appellant's charities are inherently philanthropic in the sense used in "benevolent", "humane", "actuated by love of one's fellow men" etc. Their objects are the relief of need, ill health and the promotion of young people's education. The FTT erred in finding that this activity did not qualify as being philanthropic.

66. He submitted that the meaning of philanthropic is wider than the meaning of charitable purposes, referring to *Rotary International* and *Re Macduff* [1896] 2 Ch 451 ("*Re Macduff*"). On the FTT's approach, a body can pursue exclusively charitable objects but yet still not be philanthropic in its aim. This is starkly at odds with the ordinary meaning of "philanthropic" and introduces a misalignment between the meaning of that concept under VAT law and charity law, contrary to the approach taken in *Game Conservancy Trust* at paragraph [63] and in *Hallé Concerts Society v RCC* [2016] UKFTT 294 (TC) ("*Hallé Concerts Society*") at paragraphs [117]-[119].

67. Mr Thomas contended that there is nothing in the fact that a significant proportion of the charitable funds are applied for the relief of Freemasons or their dependents in need which calls into question the philanthropic nature of the charities. The fact that the person giving is a Freemason and some of those in receipt are either Freemasons or their dependants is irrelevant. He gave the example of a barrister who gave money to the Barristers Benevolent Association. The act of giving for those in need of charitable assistance does not lose its philanthropic character by dint of the recipients having something in common with the donor of the funds or from the members potentially standing to gain if their personal circumstances change if the main activities are nonetheless for the public benefit – *Game Conservancy Trust* at paragraph [70] and *Hallé Concerts Society* at [25]-[28] and [38]. He argued that the FTT erred by referring to the motives of those donating – it is the motives of the organisation that are relevant.

68. It was submitted by Mr Thomas that the FTT recognised correctly that it is possible for a philanthropic organisation to meet the needs of a certain class of person (e.g., former members of the armed forces) and still be philanthropic. A beneficiary of such an organisation would only be eligible for support if they had contributed to, or served in, the armed forces. Similarly, the fact that Freemasons or former Freemasons in need have themselves previously given money to those same causes makes no difference for the reasons identified by the FTT in paragraph [58], namely that "*society at large benefits from such aims because its members know that others, or they themselves, may be beneficiaries of the benevolence if they are unfortunate enough to need it*".

HMRC's Submissions

69. Mr Watkinson submitted that there was no dispute as to the meaning of "philanthropic". He stated that the Appellant's argument must be that "philanthropic" encompasses the act of giving in the knowledge or expectation that as a donor you will receive some benefit back. A fundamental problem for that argument is that the UT has already approved similar reasoning to that of the instant FTT in *UGLE 1 UT*. Out of comity this Tribunal should follow the previous *UGLE UT* unless convinced that it was wrong.

70. He argued self-insurance does not fall within the ordinary meaning of “philanthropic”. The element of self-insurance deprives the word “philanthropic” of the altruism at the heart of its definition: loving one’s fellow men, benevolent.

71. Mr Watkinson submitted the conflation of “philanthropic” and “charitable” does not assist. The Appellant seeks to erect a principle whereby once a body pursues exclusively charitable objects it must be “philanthropic”. There is no requirement for VAT and Charity law to be aligned.

72. The analogy of a barrister giving to the Barristers Benevolent Association is not apt. That donor is not subject to a system of rules requiring that he prefer a fellow barrister in all things, but especially in relief.

73. He argued that the FTT did not make “speculative assumptions” about the basis on which monies were given by Freemasons. It rooted its analysis in the evidence that showed that a Freemason’s duty was to prefer a fellow Freemason in need, and that the charities under the Appellant’s administration distributed funds in accordance with that duty ([109] – [122]). This is the same *Edwards v Bairstow* challenge that was advanced and rejected in *UGLE 1 UT* at [34] – [36], and rejected at [69], based on very similar evidence. It should fail again.

Discussion

74. As acknowledged by Mr Thomas there have now been three decisions adverse to the Appellant on this issue. The decision in *UGLE 1 UT* is considered below. We commence with the FTT’s decision in this appeal. The FTT considered the following definition and principles:

“49. There was no disagreement between the parties about the meaning of ‘philanthropic’ in art 132(1)(l) PVD which has been the subject of a number of tribunal decisions.

50. The *COED* defines ‘philanthropy’ and ‘philanthropic’ as follows:

‘Philanthropy ... *n.* 1 a love of mankind. 2 practical benevolence, esp. charity on a large scale.’

‘Philanthropic ... *adj.* loving one’s fellow men; benevolent.’”

75. The FTT referred to *Rotary International* and *Game Conservancy* at [64] citing the application of the definition of philanthropic in those cases.

76. The FTT then referred to the definition and conclusion reached in *UGLE 1 FTT*:

“53. In *UGLE No 1*, the FTT defined ‘philanthropy’ and ‘philanthropic’ at [145] by reference to the *Shorter Oxford Dictionary* and concluded at [146] that:

‘It seems to us that, particularly in view of the requirement that the exemption have a public interest, that acts which are intended to benefit only a defined class rather than mankind in general may not be, or be wholly, philanthropic, particularly if that class is small.’”

77. At [56] the FTT indicated that if the FTT in *UGLE 1* intended to say that a philanthropic aim can only be exempt if it meets a public interest test then it disagreed with the above paragraph to that extent.

78. Having briefly summarised the parties’ submissions at [54] and [55] the FTT then reached the following conclusion:

57. I adopt the definitions of ‘philanthropy’ and ‘philanthropic’ set out above and as applied in *Rotary International* and *Game Conservancy*. I would, however, describe philanthropy in slightly different terms as promoting the well-being of people and society by doing good.

58. I do not accept the FTT's conclusion in [146] of *UGLE No 1* that acts which only benefit a defined class of person cannot be 'philanthropic'. I consider that an aim of benefitting a group of persons with specified characteristics, eg orphans or former members of the armed services, can properly be regarded as promoting the well-being of people and society. It seems to me that society at large benefits from such aims because its members know that others, or they themselves, may be beneficiaries of the benevolence if they are unfortunate enough to need it.

59. I consider, however, that there is a distinction between benefiting people, even if only few in number, who are members of society at large and benefiting only those (or their dependants) who have contributed to the organisation providing the benefits. The latter would not be philanthropy but self-insurance. Accordingly, I conclude that the giving by Freemasons through UGLE and the Masonic charities for the benefit of other Freemasons or their dependants is not philanthropy. If UGLE has the relief of Freemasons and their dependants as one of its aims then that is not a 'philanthropic' aim for the purposes of art 132(1)(l) PVD.

79. From paragraph [102] the FTT considered whether or not the provision of Relief for Freemasons and their dependants was a main aim having already concluded that such an aim was not philanthropic. No dispute is taken by the Appellant with the analysis of the evidence in the subsequent paragraphs. We do need to refer to some of the conclusions reached.

80. The FTT noted (and it was accepted by HMRC) that funding was provided to organisations and individuals unrelated to Freemasonry/Freemasons and as such could be considered philanthropic. That issue is not in dispute in this appeal. The FTT considered in detail the aims of the charities:

[109] In the earlier part of the period under consideration in this appeal, the principal charitable activities of Freemasonry were undertaken by four central Masonic Charities: the Grand Charity, the Royal Masonic Trust for Girls and Boys, the Royal Masonic Benevolent Institution and the Masonic Samaritan Fund. The four charities focused on young people, ill people, old people (including 19 residential care homes/facilities), and vulnerable people. The charities also preferred beneficiaries who were Freemasons or dependants of Freemasons, either living or deceased over those with no Masonic connections. For example, only an active Freemason or, if deceased, his widow and dependants may be considered for a grant of financial assistance from the Masonic Relief Grants Committee of the Grand Charity. The first object of the Royal Masonic Trust for Girls and Boys is the relief of poverty and the advancement of education of the children of Freemasons and then only if and to the extent that the Trust's resources are not used for that purpose can they be used for assisting children who are not the children of Freemasons. The object of the Royal Masonic Benevolent Institution is to provide financial assistance and accommodation to relieve the need, suffering and distress of the beneficiaries. Beneficiary is defined in the bye-laws of the Institution as Freemasons or the dependants of living or deceased Freemasons of limited means and in need. The same byelaws provide that the Trustees are empowered to admit non-Masons into the Institution's accommodation 'on the basis that no eligible Masonic "beneficiary" is disadvantaged by the occupation'. The objects of the Masonic Samaritan Fund are to advance health and relieve those in need by reason of their ill-health or disability by the provision of medical assistance, support, treatment, care or advice to beneficiaries. Again, beneficiaries is defined as Freemasons and the wives or widows, children, dependants or partners of Freemasons (living or deceased).

81. Changes to the structure of the charities from 2015 when the Masonic Charitable Foundation was set up (to streamline the administration of the charities and to have wider charitable objects) was considered and the FTT noted that Mr Humberstone's evidence was

that between 2017-2018 approximately 50% of charitable giving was to Freemasons and their dependents or entities with Masonic connections.

82. Having considered the evidence in detail the FTT concluded:

114. The importance of providing support for Freemasons and their dependants who are in need is a central tenet of Freemasonry. It is made clear in the First Lecture.

...

117. The duty to provide relief to fellow Freemasons in need is also contained in the BoC as one of the 'Charges of a Freemason'. The sixth section of the Charges concerns the behaviour expected of a Freemason in certain circumstances and includes the following in relation to 'a strange brother':

'But if you discover him to be a true and genuine brother, you are to respect him accordingly; and if he is in want you must relieve him if you can, or else direct him how he may be relieved. You must employ him some days, or else recommend him to be employed. But you are not charged to do beyond your ability; only to prefer a poor brother that is a good man and true before any other poor people in the same circumstances.'

118. Mr Humberstone emphasised, and I accept, that a Freemason cannot receive support in respect of need that arose before the person became a Freemason. Further, all giving in relief of need is subject to a strict means test for financial support. While I accept that this is so, it does not transform the nature of the support given by UGLE or Freemasons into a philanthropic act. The provision of 'Relief' remains a benefit bestowed on a person who has contributed to the organisation in the knowledge if not the expectation that such benevolence would be bestowed on him or his dependants if the need arose.

...

120. There is no dispute that UGLE has a philanthropic aim. UGLE undoubtedly supports charitable causes which are not related to Freemasonry and encourages Freemasons to donate money and time to such activities. However, it is a central tenet of Freemasonry that Freemasons should provide 'Relief' to other Freemasons and their dependants. The duty to help other Freemasons is clearly set out in the Lectures and the BoC and in the objects of the four central Masonic Charities. Those documents show that the provision of relief for Freemasons and their dependants is one of the main aims of Freemasonry and thus UGLE.

...

122. On the basis of the evidence set out above, I consider that the provision of 'Relief' was a main aim of UGLE and of at least equal importance to its philosophic aim. The provision of 'Relief' took two forms: donations to good causes unconnected with Freemasonry and supporting Freemasons and their dependants in distress. As I have already decided (see [59] above), the latter is not a philanthropic aim for the purposes of art 132(1)(l) PVD. I consider that the two elements of 'Relief' were important to UGLE and thus main aims, but the evidence shows that the provision of Relief to Freemasons and their dependants was the more important of the two elements throughout the period 2010 to 2018. It does not matter whether the provision of Relief is regarded as two aims, one philanthropic and one non-philanthropic, or, alternatively, a single aim which is a mix of philanthropic and non-philanthropic activities. In either case, I find that UGLE had a main aim which was not 'philanthropic' within art 132(1)(l). It follows, for reasons given at [26] and [27] above, that the services supplied by UGLE to its members are not exempt.

83. The FTT found that the provision of Relief was a main aim of at least equal importance to its philosophical aim. As set out above in relation to Ground 1 we find no error in the FTT's

decision on that issue and the Appellant does not challenge that finding of fact in respect of Ground 2. The issue on Ground 2 is whether an aim of providing Relief to Freemasons and their dependents is philanthropic or not. We are not here concerned with the provision of Relief to non-masonic individuals and charities. The FTT drew a distinction between “*benefiting people, even if only few in number, who are members of society at large and benefiting only those (or their dependants) who have contributed to the organisation providing the benefits*” [59].

84. The Appellant has taken issue with that distinction and with the results that arise from the FTT’s conclusions.

85. In respect of the argument that the FTT erred by misaligning VAT and Charity law we do not accept that VAT and Charity law are aligned to the extent that Charity law can determine VAT treatment unless an express provision is included in the legislation which requires it. For example, Group 12 of Part II of Schedule 9 to the VATA refers to charities. Although charity law and VAT law may be closely allied (as held by the FTT in *Game Conservancy Trust*) it does not follow that simply because a body is considered to fall within the definition of “charity” in the Charities Act that it satisfies this specific VAT exemption. We have noted the general findings in *AG v Charity Commission*, but do not consider that they take the matter any further. We note that the Appellant is not a charity and also that the public benefit criteria in the Charities Act is not synonymous with public interest. Philanthropy, we accept, is wider than charity, as held by the Court of Appeal in *Re MacDuff*, but we do not consider that the Court, by concluding that it could suggest purposes which might be philanthropic and not charitable, held that everything that could be considered to be charitable is automatically to be considered philanthropic. Clearly the existence of charitable status was not determinative of whether the activities were philanthropic in *Game Conservancy Trust* and *Hallé Concerts Society*.

86. Mr Thomas argued that the fact that the person giving the money is a Freemason and that those in receipt are Freemasons or their dependents is irrelevant. We do not agree. Our view is that where an organisation collects (or requires the collection of) monies from its members for the purpose of re-distribution in the form of Relief to members and their dependents when a need arises, that is not philanthropic as it is inward looking, lacking benevolence towards mankind at large or in general. In *Game Conservancy Trust* (relied on by the Appellant) the FTT set out from *Re MacDuff* the observation of Lindley LJ that “*an act cannot be said to be philanthropic unless it indicates goodwill to mankind at large*”. The example of a barrister donating to a fund that benefits other barristers is not apt. We have no information as to whether or not, or on what basis, the aims of such an organisation may or may not fall within the exemption as being philanthropic in nature.

87. Mr Thomas argued that the FTT erred in placing emphasis on the motives of those providing the donations by referring to self-insurance and that the FTT had assumed for itself what those motives were. We agree that the individual motives of those making the contributions are not relevant. We also consider that the reference to the intentions or expectations of those giving by the FTT may have been infelicitous. This does not mean that the purpose for which the donations/contributions were elicited is irrelevant. The motive of the Appellant or its purpose in requiring contributions, encouraging donations and gathering such monies cannot be dissociated from the intended application of the funds. It is clear that the FTT, as set out in the paragraphs above, was referring extensively to the motive/purpose of the Appellant derived from the central tenet which was for Relief to be provided foremost to Freemasons and their dependants.

88. Although the facts considered in *UGLE No 1* were a little different we do not consider such difference material to the consideration of this issue.

89. In *UGLE 1 UT* the UT upheld the FTT's conclusion that not all of the Appellant's charitable giving was philanthropic. At [69] *UGLE 1 UT the Upper Tribunal said this*:

...in relation to charitable giving, I can see no error in the way in which the FTT inferred from the way in which charitable donations were applied that not all of UGLE's promotion of charitable giving has a philanthropic aim.

90. Out of comity we would follow the Upper Tribunal's conclusion, particularly in a case that involves the same Appellant and very similar facts. We discuss further below the reasons for reaching our conclusion which is in accordance with the Upper Tribunal's conclusion, although we do not agree with certain aspects of the FTT's reasoning in *UGLE 1 FTT*. The FTT in that case found:

154... To the extent monies were paid with the hope or expectation of self-insurance their payment does not seem to us to be an act of philanthropy, and the aim of encouraging such giving does not appear to be a philanthropic aim.

91. We disagree with the first part of the above sentence as the motive of the individual paying the money is not relevant. We do agree with the second part of the sentence. As we set out above the motive/purpose of the Appellant in the collection of the funds is directly related to the application of the funds.

92. We have considered the authorities and cases referred to by Mr Thomas but have not found any great assistance on the point we have to decide. Central to the FTT's conclusion, as we set out above, was the distinction it drew in relation to benefiting only those who have contributed to the organisation providing the benefits (or their dependants).

93. Mr Thomas relied on *Game Conservancy Trust* and *Hallé Concerts Society*, arguing that the fact that members of an organisation potentially stand to benefit from their membership does not of itself prevent the organisation from being philanthropic.

94. In *Game Conservancy Trust* at [70] the VAT and Duties Tribunal accepted that the Trust's members obtained real benefits, being sporting and economic benefit. Also, the Trust's prescriptions and advice were largely taken up by its membership. However, the Tribunal considered that the activities should be considered from the standpoint of game management. The Trust's mission was to promote game conservation and the conservation mission could only be achieved if the landowners (78% of farmland being privately owned) could be persuaded of the benefits. If the Trust did not target those, its wider objects would be frustrated [70]-[71]. The Tribunal concluded:

73. Reverting to the Commissioners' argument that the self-interest of its members is the benefit that the Trust seeks to promote, we think this is based on a misunderstanding of what the Trust really does...its real function is to carry out the objects of conservation and game and associated species through research and education...

...

77...Taking an overall view of the whole range of the Trust's objects and of the activities by which it furthers these, its aims can be fairly said to fall within the ambit of the promotion and well-being of mankind. Its activities are primarily directed at wildlife...and they serve to benefit the general community...

95. In our view this case is distinguishable on the facts. Although there were benefits to members, the Tribunal considered that those benefits only arose collaterally from the

objects/aims themselves, which were to benefit the general community. In this case the aim is specifically directed at the members and their dependents

96. We also consider that *Hallé Concerts* is distinguishable. The benefits considered were those supplied directly to the members in return for the subscriptions. In this case the benefits supplied in relation to the subscriptions paid has not been raised as an issue.

97. We accept that an aim may be considered to be philanthropic if an organisation aims to provide relief to specific categories of persons. However, we consider there is a qualitative difference between organisations which raise and distribute funds for identified groups of persons and an organisation that raises funds from within the members that constitute that organisation with the aim of essentially re-distributing a large part of the funds (by way of benefits procured by them) back to some of those members and members' dependents. That cannot be considered to be philanthropic in the sense of benevolence to the world at large, a love of mankind etc. We therefore reject the submission that the FTT applied too narrow an interpretation of philanthropic.

98. For the above reasons we find that there was no error of law in the FTT's decision on Ground 2.

DISPOSITION

99. The Appellant did not make submissions on the appropriate course of action if we found an error of law. HMRC submitted that the UT should remake the decision using the unchallenged findings of fact found by the FTT.

100. As indicated above, in relation to Ground 1, we find that the FTT failed to give adequate reasons for reaching one important aspect of its decision and this amounted to an error of law. We exercise our discretion and set aside the decision of the FTT. We have decided that we are able to and ought to remake the decision.

101. We accordingly remake the decision. For the reasons set out above the Appellant's appeal against HMRC's decision is dismissed.

**JUDGE PHYLLIS RAMSHAW
JUDGE KEVIN POOLE**

Release date: 20 December 2023