



DECISION OF LORD TYRE

in appeal by

NEW LANARK TRADING LIMITED

Appellant

and

OFFICE OF THE SCOTTISH CHARITY REGULATOR

Respondent

FTT Case Reference CA207/08

**Calum MacNeill QC (instructed by Turcan Connell) for the Appellant (New Lanark Trading Limited).  
Christine O'Neill, solicitor advocate (instructed by Brodies) for the Respondent (OSCR).**

**DECISION**

**Introduction**

[1] This is one of two appeals by companies whose income is donated by gift aid to New Lanark Trust (“NLT”), the body responsible for managing the UNESCO World Heritage Site at New Lanark. The two appeals have proceeded in tandem and raise the same issue for decision, although the facts are not identical.

[2] By a decision dated 27 November 2019 ([2019] UT 62), reached after an oral hearing, I allowed an appeal by the appellant (“Trading”) against a decision of the General Regulatory Chamber of the First-tier Tribunal for Scotland (“the FTT”), exercising its charitable jurisdiction. The FTT had dismissed an appeal by Trading against a refusal by the

respondent (“OSCR”) to enter Trading in the Scottish Charity Register. The ground of appeal to this Tribunal was that the FTT had failed to provide proper, adequate and intelligible reasons for its decision. At the close of the hearing of the appeal, both parties invited me, in the event that the FTT decision were to be quashed, to exercise the power in section 47(2)(a) of the Tribunals (Scotland) Act 2014 to re-make the decision, rather than remit the case to the FTT in terms of section 47(2)(b). I acceded to that invitation, but invited parties to make any further written submissions that they would wish to make on the substantive issue that had been raised in the appeal to the FTT. Both parties submitted brief additional submissions for which I am grateful.

[3] The appellant (“Trading”) is a company limited by shares which is wholly owned by NLT. Its principal activity is the operation of a visitor attraction in New Lanark village with related trading activities, including hydro-electric power and textile production, a retail shop (“the mill shop”), a café, and production and sale of ice cream. On 8 December 2017, Trading applied to OSCR to be entered in the Register. By letter dated 26 April 2018, OSCR refused the application, on the ground that Trading did not provide public benefit and accordingly failed to meet the charity test. Following review, the decision to refuse registration was maintained in a decision dated 7 June 2018. That refusal was the subject of the appeal to the FTT which resulted in the decision that is now being re-made.

### **The power to re-make the FTT’s decision**

[4] Section 47 of the 2014 Act provides *inter alia* as follows:

“(1) In an appeal under section 46 [ie against a decision of the FTT], the Upper Tribunal may uphold or quash the decision on the point of law in question.

(2) If the Upper Tribunal quashes the decision, it may –  
 (a) re-make the decision...

- (3) In re-making the decision, the Upper Tribunal may –
- (a) do anything that the First-tier Tribunal could do if re-making the decision,
  - (b) reach such findings in fact as the Upper Tribunal considers appropriate.”

[5] It is common ground between the parties that the task of the Upper Tribunal when re-making a decision is to approach the substantive issue *de novo* and reach its own view on it, as opposed to, for example, carrying out a judicial review of the reasonableness of either the decision by OSCR or the decision of the FTT.

[6] Despite the powers conferred by section 47(3), it is however clear that the Upper Tribunal’s powers in relation to findings in fact are not unlimited. In *Sarkar v Secretary of State for the Home Department* [2014] EWCA Civ 195, at paragraph 15, Moore-Bick LJ described the power to re-make as involving “no more than substituting the tribunal’s own decision for that of the tribunal below”. In *YZ v Secretary of State for the Home Department* [2017] CSIH 41, Lord Glennie, delivering the opinion of the court, made the following observations at paragraph 42 in the context of the equivalent statutory provisions for tribunals with UK-wide jurisdiction:

“[Counsel for the Secretary of State] accepted before us that the UT was only entitled to interfere with findings in fact made by the FTT if those findings were infected by some error of law or where the FTT made an error of law in reaching those findings in fact. He was correct to make this concession. An appeal from the FTT to the UT lies on a point of law: section 11(1) of the [Tribunals, Courts and Enforcement Act 2007]. There is no appeal against the FTT’s findings in fact. It is important to understand this point.... Another situation, perhaps closer to this case, is where the FTT has erred in law, and the UT takes it upon itself to re-make the decision, as it is entitled to do under section 12(2)(b)(ii) of the 2007 Act. It may in so doing ‘make such findings of fact as it considers appropriate’: section 12(4)(b). But while in that situation the UT has the power to make additional supplementary findings, it does not have the power to overturn findings of ‘pure’ fact made by the FTT which are not undermined or otherwise infected by that or any other error of law.”

[7] Applying these observations to the present case, I consider that this tribunal must proceed on the basis of the findings in fact made by the FTT. I do, however, consider it appropriate, in exercise of the power in section 47(3)(b) of the 2014 Act, to make certain

additional findings in fact which are based upon evidence led before the FTT and not in any way inconsistent with the FTT's findings.

[8] The FTT recorded its findings in a chapter headed "Findings of Fact". It is not disputed that this chapter contains a significant amount of material which does not consist of findings in fact. The following paragraphs of this decision set out those findings by the FTT which are properly to be characterised as findings in fact.

### **Findings in fact**

[9] Trading is a company limited by shares, incorporated in 1970.

[10] Trading's articles of association were updated in July 2018 for the purposes of its application for charitable status. There was no change in the activities carried out by Trading.

[11] Trading's principal activity is the operation of a visitor attraction with related trading activities, including hydro-electric power and textile production, the mill shop, café and ice cream production.

[12] Trading's activities for which payment is required by visitors are the Visitor Centre's exhibits and interpretation of New Lanark, periodic exhibitions about New Lanark-related themes as well as external events and goods and services sold from the café and shop.

[13] Trading's turnover represents entry to the Visitor Centre, hydro-electric power income, textile sales and spinning commission, retail shop sales, and the manufacture and wholesale of ice cream [though see also paragraph 27 regarding retail sales of ice cream]. Some income is also derived from tours offered by Trading.

[14] Trading is a commercial enterprise.

[15] Trading's turnover and any profit before taxation are attributable to the activities described in paragraphs 12 and 13.

[16] All net profits from Trading are donated to NLT by gift aid.

[17] South Lanarkshire Council has withdrawn rates relief from Trading.

[18] Trading is currently trading profitably.

[19] Trading occupies, as tenant, buildings owned by NLT under a lease entered into in 2001. Trading pays NLT an annual rent together with an additional sum based upon a percentage of annual turnover.

[20] The lease stipulates that Trading is responsible for making payment to NLT of a proportion of the cost of repair and maintenance of the foundations, structural walls, roof and other common parts of certain of the buildings it occupies. Trading is also responsible for the repair and maintenance of the interior of its premises.

[21] NLT is responsible for the capital expenditure programme for properties owned by the trust, including the original refurbishment of the Visitor Centre and other buildings occupied by Trading.

[22] Trading contributes to some repair and maintenance of the buildings it occupies. It was not possible to determine or quantify the extent of this contribution.

[23] Trading is in control of (a) exploration of the village, to the extent that leaflets, signage and interpretation are within its control; (b) access to the historic interiors of buildings; (c) digital access to the New Lanark website to the extent that information relating to Trading forms part of the website content; (d) bespoke requests in terms of providing tours; and (e) the provision of three of the five sets of public toilets.

[24] Trading's purposes are charitable, being purposes which fall within the advancement of education and the advancement of the arts, heritage, culture or science.

[25] The mill shop engages in trading that is directed towards raising funds for NLT. The shop is engaged in the provision of goods in return for payment. The shop's activities go beyond New Lanark-related merchandise. The shop sells a range of products that have no connection with New Lanark. The shop has accommodated retail fashion franchises having no connection with New Lanark's charitable activities.

[26] The café provides the catering service. It engages in trading that is directed towards raising funds for NLT. The café is engaged in the provision of goods and services in return for payment. The café is typical of eateries associated with heritage sites.

[27] Trading's ice cream production is engaged in trading that is directed towards raising funds for NLT. The ice cream is sold to visitors to New Lanark, available for purchase in the café, and sold to hotels and restaurants at a distance from New Lanark.

[28] The commercial nature of Trading's activities, including the mill shop, café and ice cream production, primarily contributes to the funds of NLT.

[29] The revivification of New Lanark as a living and working community, and the identification of suitable uses for all the buildings, is primarily an achievement of NLT rather than Trading.

### **Additional findings in fact**

[30] Evidence was led before the FTT (by Trading) from Mr Scott McCauley, chief executive of NLT and managing director of Trading, from Mr Alistair Duncan, a trustee of NLT and lead trustee in the matter of obtaining recognition of Trading as a charity, and (by OSCR) from Ms Laura Anderson, OSCR's head of professional advice and intelligence. The FTT made no express finding regarding the credibility or reliability of these witnesses, but there is nothing in the FTT's decision to suggest that any of them was treated as other than

credible and reliable. All three provided detailed witness statements covering both appeals. Ms Anderson's statement consisted largely of narrating the procedure followed by OSCR in reaching its decision to refuse to register Trading as a charity. The statements of Mr McCauley and Mr Duncan included a detailed description of New Lanark generally, and of the roles played by NLT and Trading respectively. It is fair to say that some of the material in these statements is best described as argument in support of charitable status, but on the basis of Mr Duncan's statement I make the following additional findings in fact which are relevant to the point at issue:

- New Lanark is offered to the public as an inhabited, economically active settlement, with facilities for visitors.
- Trading's activities of providing a café and shop, spinning woollen yarn, generating electricity, making ice cream and operating a Visitor Centre (all within the original mill buildings) contribute to the objectives of maintaining the village as a living entity and to satisfying the needs and expectations of visitors.
- The ice-cream making facility incorporates a glazed screen, enabling visitors to see the ice-cream making without prejudicing food hygiene. The intention is to enable visitors, including school trips, to see how local agricultural produce (milk) can be used locally.
- Provision of facilities for visitors is necessitated by the nature and size of the site, its relatively remote location, and the average duration of ordinary visits.

### **Joint minute of agreement**

[31] For the purposes of the appeal to the FTT, the parties agreed the following matters by joint minute:

- (1) Trading's purposes are charitable as defined under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act"), specifically the advancement of education, and the advancement of arts, heritage, culture or science.
- (2) The exhibitions, events and tours, as well as the preservation and maintenance of buildings and exhibits, are all activities which OSCR are content are in furtherance of Trading's charitable purposes.
- (3) The production of woollen yarn, hydro-electric power and attractions of the visitor centre, other events and exhibitions are consistent with charitable purposes.
- (4) OSCR determined in its assessment of the charity test that there was no private benefit arising from Trading's activities.
- (5) No question arises under section 7(4) of the 2005 Act as to distribution of assets, ministerial control or political activity.

### **Statutory requirements for registration as a Scottish charity**

[32] In terms of section 5(1) of the 2005 Act, OSCR may enter an applicant in the Register only if it considers that the applicant meets the charity test. Under section 7(1), a body meets the charity test if (a) its purposes consist only of one or more charitable purposes, and (b) it provides or intends to provide public benefit in Scotland or elsewhere. As already mentioned, it is not in dispute in the present case that Trading's purposes consist of one or more charitable purposes. The issue is whether it provides public benefit.

[33] Section 8 of the Act contains some limited guidance on the expression "public benefit", stating as follows:



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

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

(a) how any—

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

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

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

(b) where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.”

[34] So far as I am aware, there has not yet been any judicial consideration of the expression “provides... public benefit” that would be of assistance in the circumstances of these appeals. It appears to have been parties’ common understanding that a body would not pass the public benefit test simply by demonstrating that it did not fall foul of any of the disqualifications implicit in section 8(2). I agree with that interpretation. In the present case OSCR do not contend that Trading fails the public benefit test because either (a) there is private benefit; (b) there is public disbenefit; or (c) there are unduly restrictive conditions on the obtaining of public benefit. But that does not resolve the matter in favour of Trading. The question whether a body can be said to be providing public benefit requires a broader inquiry into the whole of its activities.

[35] Section 9 of the Act requires OSCR, after consulting representatives of the charitable sector and such other persons as it thinks fit, to issue guidance on how it determines whether a body meets the charity test. That guidance is contained in a document entitled “Meeting the Charity Test”, a version of which published in January 2018 was produced. In

its written submissions to the FTT, OSCR drew attention to certain passages at pages 74-77 of the guidance dealing with the meaning of public benefit, and argued that the FTT should adopt an approach that was consistent with it. OSCR also made reference to another of its publications, entitled “Charities and Trading Guide”, a version of which published in March 2018 was produced. It is clearly desirable for OSCR to publish guidance as to its understanding of the statutory requirements and of the duties of charity trustees, but such guidance has no statutory force of its own. If a tribunal were to decide an appeal (whether in favour of or against an appellant) according to whether or not it considered that the terms of the published guidance had been satisfied, it would commit an error of law. For that reason I do not regard it as useful to narrate any passages from OSCR’s guidance. If there is anything in this decision that is not consistent with it, then the appropriate course of action would be to amend the guidance.

### **OSCR’s decision**

[36] The reason given by OSCR in its letter dated 26 April 2018 for refusing to enter Trading in the Register was that the company would be carrying out a significant level of activity which was not in furtherance of its charitable purposes, and therefore that the body as a whole did not provide public benefit. In arriving at this decision, OSCR drew a distinction between (a) activities which directly advance charitable purposes and (b) activities undertaken with the aim of generating profits to be applied for charitable purposes. The activities of the mill shop and café, and the manufacture of ice cream, were considered not to be activities that advanced the charitable purposes which could be inferred from Trading’s objects. OSCR concluded:

“In deciding whether the body provides public benefit, we have to take into account **all** of the day to day activities carried out by [Trading]. OSCR accepts that if an organisation is carrying out small-scale incidental activities which do NOT provide benefit related to its stated charitable purposes, this will not automatically mean it fails the public benefit part of the charity test...

However, the Mill Shop, Mill Café and Ice Cream Manufacturing do not fall into this category. These are significant activities with a combined turnover of £889,456 in the year to January 2017 – nearly 49% of [Trading’s] total income.

Overall, we recognize that [Trading] is undertaking some activities which advance its charitable purposes and which provide benefit to the public and that it will also contribute to the public benefit provided by New Lanark Trust.

However, we do not regard the Mill Shop, Mill Café, or Ice Cream Manufacturing as activities which are in furtherance of the organisation’s charitable purposes and nor do we regard them as being incidental (a by-product of its main activities).”

### **Trading’s appeal to the FTT against OSCR’s decision**

[37] The substance of Trading’s appeal against OSCR’s decision was contained in the following two paragraphs in the reasons appended to Trading’s Notice of Appeal:

“The Mill 3 shop, the original village shop and café are housed in original buildings. They contribute to the vitality of the community. They are responsible for the maintenance of the buildings in which they operate, all in keeping with the strictures of their WHS status. A visit to the shops or café is part of the visitor experience of the revitalised New Lanark which is an essential part of its charitable purposes. The village shop lays claim to be the ‘seed’ and inspiration from which the Co-op Movement grew (the Rochdale Pioneers) which again enhances the visitor experience, and is included as part of the Visitor Centre which visitors pay to enter.

OSCR did not take cognisance of this when describing the activities of the shops, café and ice-cream manufacture as ‘not charitable and ... undertaken with the aim of generating profits to be applied for charitable purposes’... OSCR erred in its distinction between the two categories of activity as identified in paragraph 46 of its decision letter.”

Trading also took issue with OSCR’s use of turnover figures to support its view.

**The issue for determination**

[38] Trading accepts that it cannot pass the charity test on the basis that it donates its surplus to NLT to be used for charitable purposes. It also accepts that activities carried on by NLT cannot be attributed to Trading, and that the question whether Trading meets the charity test must be determined by reference to Trading's own activities. The issue is whether Trading, when carrying on its commercial activities, is providing public benefit.

**Argument for Trading**

[39] On behalf of Trading it was submitted that the tribunal should quash OSCR's decision and direct OSCR to enter Trading in the Register. Its activities were not merely commercial activities to provide an income stream for NLT. They had to be seen in the context of the work of the aim of the trust to revivify the village as a living entity. The occupation and use of buildings in a way sympathetic to the story of New Lanark provided public benefit. The advancement of heritage was achieved not only by restoring, conserving and maintaining the historic village, but also by offering it to the public as an inhabited, economically active settlement with facilities for visitors. The activities of providing a café and shop, spinning woollen yarn, generating electricity with water power, making ice cream and operating a visitor centre, all within original mill buildings, contributed to the foregoing objectives. The activities had value in themselves regardless of whether they made a profit. The focus should not be on profitability but on the nature of the activities themselves.

[40] With regard to ice cream production, a substantial proportion of the ice cream produced was consumed in the village. The ice cream facility was designed to allow visitors to witness the use to which locally produced milk was put. There was an analogy with the production of yarn from locally produced wool. The shop did not sell products of retail

franchises but had allowed them to carry on business in return for payment of rent or a concession fee. That did not detract from Trading's own activities. Even if some of Trading's activities could not be regarded as providing public benefit, they did not form a substantial amount of those activities. Data from annual financial statements regarding turnover and staff numbers did not afford an appropriate measure of the extent to which Trading's activities provided public benefit.

[41] In conclusion, OSCR's reasoning was flawed by its failure to consider the application further than noting that Trading was a company engaged in commercial activities. There was more to the activities than making money, albeit the fact that they made money was helpful to the project and allowed NLT to offer the public an interpretation of the historic village largely at no cost to them.

### **Argument for OSCR**

[42] On behalf of OSCR, it was submitted that the tribunal should confirm the decision to refuse to enter Trading in the Register. OSCR had been correct to conclude that certain of Trading's activities did not further its charitable purposes, notwithstanding the fact that they were carried out within historic buildings owned by NLT. Any contribution made by Trading's activities to the charitable purpose of advancement of heritage was subsidiary to their commercial nature and to the importance of generating funds for the trust.

[43] It was accepted that some of the activities carried out by Trading, namely production of woollen yarn and hydro-electric power, advanced its charitable purposes and resulted in public benefit. However, the activities of the mill shop and café, and the manufacture of ice cream, did not. The operation of the mill shop, the café and the ice cream business all constituted non-primary purpose trading to raise funds for NLT. While some of the goods

sold in the shop were produced at New Lanark, other products sold had no connection with it. To the extent that the trading activity involved the sale of goods connected with New Lanark, it was typical of gift shops associated with heritage sites. The café was similarly typical of cafés and restaurants associated with heritage sites; it did not matter that it required to be located within the historic village. Ice cream was sold predominantly at hotels and restaurants remote from New Lanark. The commercial nature of Trading's activities and its contribution to NLT's funds was evident from the financial and policy documents produced.

[44] Reference was made to the guidance "Meeting the Charity Test", in which it was stated that where an organisation carried out some activity that was not directly related to or connected with its purposes, any benefit from that activity would not be taken into account in OSCR's assessment of public benefit, and that if an activity was genuinely incidental (as a by-product of its main activities, that would not be a problem in terms of the public benefit requirement. Determining the level or proportion of an organisation's non-charitable activities that would mean that it would fail the public benefit test involved a degree of judgement, having regard to the overall substance of what the organisation was doing.

[45] Trading had emphasised the uniqueness of New Lanark village and the importance of its revivification by occupation and use of buildings. But securing occupation was the responsibility of NLT, not Trading. There were other commercial tenants. The uniqueness of Trading's commercial activities could be doubted. Such contribution as was made by Trading's commercial activities to the advancement of heritage was subsidiary to the commercial nature of those activities and the importance of generating funds for the trust.

[46] In its supplementary written submission provided for the purposes of this tribunal's decision, it was emphasised that OSCR's decision had not proceeded on the basis that

commercial activities could not be in furtherance of its charitable purposes. On the contrary, OSCR accepted that some of Trading's commercial activities were in furtherance of its charitable purposes, but considered that others were not. The question was whether and if so to what extent commercial activities could be said to further a charity's charitable purposes and thereby provide public benefit. If they did, an assessment required to be made as to whether the trading aspect could be disregarded or outweighed by Trading's contribution to the advancement of heritage.

### **Decision**

[47] I have already noted that the guidance given by the 2005 Act itself as to the meaning of "provides... public benefit" is limited. It is essentially negative in character, identifying reasons why an organisation may be regarded as not providing public benefit, ie because private benefit or public disbenefit outweighs public benefit, or where the conditions for obtaining public benefit are unduly restrictive, whether because of charges or fees or otherwise. It seems to me that the fact that the legislature thought fit to make specific provision for these situations indicates that the expression "provides... public benefit" is otherwise intended to have a broad compass. Clearly it is capable of including circumstances where there is some degree of private benefit or public disbenefit (though not too much), and circumstances where reasonable fees and charges are imposed. In relation at least to the matters specifically mentioned, a balancing exercise appears to be required. It is less clear that a balancing exercise is appropriate in other circumstances in which the question arises of whether an organisation is providing public benefit.

[48] The present case is concerned with the application of the public benefit requirement to commercial activities. According to OSCR's analysis, as I understand it, there are two

types of commercial activity which may be carried on by an organisation without compromising the public benefit requirement. The first is where the commercial activity contributes to the furtherance of the organisation's charitable purposes. So, for example, in the present case, it is accepted by OSCR that Trading's woollen yarn spinning and hydro-electricity production contribute to its charitable purposes (advancement of education and advancement of heritage), and thus provide public benefit. The second is where commercial activity which does not contribute to the furtherance of the organisation's charitable purposes can nevertheless be regarded as incidental thereto. It can be seen from OSCR's reasons for refusal of registration that I have set out at paragraph 36 above that "incidental" in this context means small scale, and that the reason why Trading's mill shop, café and ice cream production activities were not regarded as providing public benefit was that they were carried out on a significant scale and could not be characterised as incidental to the organisation's charitable purposes.

[49] That, however, is to miss the point of Trading's argument. It is not contended by Trading that these commercial activities should be regarded as incidental to its charitable purposes. Rather it is contended that they fall into the first type of commercial activity that I have identified: ie that the provision of these indisputably commercial facilities in the overall setting of New Lanark village of itself amounts to the provision of public benefit. OSCR's response in its submissions is to categorise these activities as "non-primary purpose trading". This phrase appears to have been taken from OSCR's Charities and Trading Guide, in which it is explained as being "...where the trading itself does not advance the charity's purposes or provide public benefit. The trading is carried out to raise funds for the charity, but it is not a charitable activity". What the guidance does not appear to envisage is that a commercial activity such as the operation of a shop could have a dual purpose of



raising funds and also contributing to the organisation's charitable purposes. In that situation it would not seem to me to be either necessary or appropriate to carry out a balancing exercise of which of these two purposes is the more important, however one might attempt to measure importance. The 2005 Act does not, in my opinion, require the assessment contended for by OSCR of whether the contribution made by Trading's commercial activities to the advancement of heritage is subsidiary to their commercial nature and the importance of generating funds. The statutory question is whether the organisation is providing public benefit. If that question is answered in the affirmative, then in my opinion it is irrelevant that at the same time it raises funds intended to be applied either for its own benefit or for the benefit of another charitable body.

[50] The issue in the present appeal accordingly becomes a factual one: do the commercial activities carried on by Trading in its shop, and/or its café, and/or its ice cream production business contribute to the furtherance of its charitable purposes (advancement of education and advancement of heritage)? On the basis of the FTT's findings in fact and the additional findings that I have felt able to make on the basis of the evidence that was before the FTT, I am satisfied that they do. In relation to the shop and the café, I accept Trading's submission that it is a crucial feature of the New Lanark site that it is not merely preserved, but maintained as a living village so that visitors may, so far as is practicable, experience the original concept which has led to its World Heritage designation. I accept that this feature distinguishes New Lanark from many (though not necessarily all) other heritage sites, where the presentation of the site as a living community may not be of central importance. At New Lanark the availability of commercial facilities to visitors is, on the evidence, an integral part of that presentation, contributing to the experience which has given the site its reputation and thereby providing public benefit. In relation to the ice cream production business it

seems to me that this too contributes to the presentation of the village as a functioning entity; moreover the facility for demonstrating the use of local produce behind a glazed screen has educational value.

[51] It follows from what I have said that I find that the three commercial activities at issue make a positive contribution to, as opposed to demonstrating an absence of, provision of public benefit by Trading. Accordingly, having regard to Trading's activities taken as a whole, I find that it provides public benefit and therefore meets the charity test.

[52] For the sake of completeness I confirm that I find nothing in the findings in fact to indicate that Trading fails to meet the charity test as a consequence of any of the matters mentioned in section 8(2) (private benefit, public disbenefit or unduly restrictive conditions). The appeal therefore succeeds.

### **Disposal**

[53] It follows from the foregoing that the decision of OSCR dated 7 June 2018 refusing to register Trading in the Register is quashed. As I am satisfied that Trading meets both elements of the charity test, I see no need to remit the matter to OSCR for further consideration. I shall simply direct OSCR to enter Trading in the Scottish Charity Register.

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of*

*section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*