



NCN: [2023] UKFTT 308 (GRC)

Case Reference: CA/2021/0025

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

**Heard by video on: 29th September 2022 and 3rd November 2022
Decision given on: 27 January 2023**

Before

**TRIBUNAL JUDGE PETER HINCHLIFFE
A'ISHA KHAN
STUART REYNOLDS**

Between

**THE TRUSTEES OF MOUNTAIN OF FIRE AND MIRACLES MINISTRIES
INTERNATIONAL**

Appellant

and

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Representation:

For the Appellant: Matthew Smith, Counsel represented the Appellant, instructed by Tayo Arowojolu.

For the Respondent: Felix Rechtman, Litigator for the Respondent.

The hearing took place over two days on 29th September and 3rd November 2022.

With the consent of the parties the form of the hearing was agreed to be by video. The hearing used the Tribunal's CVP Hearing System. A face-to-face hearing was not held because of the difficulties in assembling the parties in a single hearing room and for the ease and convenience of the parties. The parties confirmed in advance of the hearing they were content to proceed on this basis. We found that the hearing by video was suitable for this case and avoided delay whilst being compatible with the proper consideration of the issues.

The hearing took place with Mr Smith, Mr Rechtman, Mr Arowojolu, the Tribunal, four witnesses and nine observers all present by video.

The documents to which the Tribunal were referred were included in three bundles; one containing 4,561 pages and a second containing 341 pages included the submissions and evidence from the parties. A third bundle of 186 pages contained relevant legislation and legal authorities. The bundles were available to the parties and to the Tribunal in electronic form and the parties confirmed they had access to the bundles at the hearing.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media and members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

DECISION:

The appeal is allowed in part.

Findings of Facts and Reasons for the Decision

Introduction

1. The Mountain of Fire and Miracles Ministries International is a large charity that has been registered with the Charity Commission for England and Wales since 30 October 2003. The Mountain of Fire and Miracles Ministries International (“the Charity”) is governed by a constitution dated 31st August 2002 as amended on 26th September 2004.
2. The Charity states that its objects are “to propagate Christianity”. It states that it operates as the UK branch of a worldwide Pentecostal movement with approximately five million adherents. In the UK the Charity operates through a number of local congregations, sometimes described as branches of the Charity. Until quite recently there have been up to 90 such branches with, at times, around 40,000 adherents.
3. On 27th March 2018, the Charity Commission opened a statutory inquiry into the Charity.
4. On 1st August 2019, the Charity Commission issued an order under section 76 of the Charities Act 2011 (the “Initial Order”) appointing an Interim Manager to the Charity.
5. On 21st September 2021, the Charity Commission notified the trustees of the Charity that it had reviewed the Initial Order under which the Interim Manager was appointed and decided to continue the appointment of the Interim Manager, whilst varying the terms of the Initial Order so as to permit the Interim Manager to manage the Charity to the exclusion of the trustees of the Charity. (The order as so varied is referred to as the “2021 Order”).

6. On 28th September 2021, the trustees of the Charity submitted an appeal against the decision of the Charity Commission to issue the 2021 Order. The trustees of the Charity set out the grounds of their appeal under three headings:-
 - the actions of the Respondent and his agents were generally unlawful
 - the operations and actions of the Interim Manager/Respondent were procedurally unfair; and
 - the decisions of the Interim Manager/Respondent were generally irrational.
7. The notice of appeal submitted by the trustees of the Charity (referred to as the “Appellant” in this decision) set out in some detail the grounds on which this appeal was being brought. The Appellant stated that the outcomes that the trustees were seeking from the appeal were as follows: Firstly, that the 2021 Order should be set aside, the Interim Manager should not have power to act to the exclusion of the trustees and the status quo, where the Interim Manager continues to work with the trustees, should be maintained. Secondly, that the appeal should serve as a stay of execution according to Rule 20 of The Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2019 (the “Tribunal Rules”). Thirdly, that the Interim Manager should be replaced due to the breakdown in confidence between the Appellant and the Respondent.
8. On 10th November 2021, the Charity Commission submitted a lengthy response to the notice of appeal. The Charity Commission stated that the Charity was first registered with them on 30th October 2003. In the response, the Charity Commission set out the grounds for its defence to this appeal. The Charity Commission stated that they regarded the appeal as an appeal against their decision of 21st September 2021, which was made in exercise of their powers under section 337(6) of the Charities Act 2011 to vary an order made under section 76(3)(g) of Charities Act 2011. The Charity Commission outlined the legal and factual background to the 2021 Order. It gave its assessment of the jurisdiction under which this tribunal is considering the appeal. The Charity Commission set out their detailed reasons for not accepting any of the grounds of appeal. The Charity Commission submitted that the statutory criteria for making the 2021 Order were and remain met and that the 2021 Order is justified in all of the circumstances.
9. The Charity Commission stated that it was satisfied that both they and the Interim Manager have acted legally, fairly and reasonably at all times. The statutory inquiry into the Charity was opened on 27 March 2018 (the “Inquiry”). The Interim Manager was appointed under the Initial Order on 1st August 2019 and over two years had passed since his appointment. The Charity Commission regards the 2021 Order as a necessary and measured action that is required in order to comply with its duties and functions.
10. The Charity Commission asserted that it had issued the Initial Order under section 76(3)(g) of the Act. The Initial Order provided for the appointment of an Interim Manager to the Charity, who was named as Dr Adam Stephens, with immediate effect. The Initial Order gave Dr Stephens all the powers and duties of a trustee for the duration of his appointment. It confirmed that the trustees of the Charity retained all the powers and duties of trustees with the exception of those functions set out in a schedule to the Initial Order. The 2021 Order required the Interim Manager to

discharge the specific functions set out in the schedule to the Initial Order. These functions were summarised as follows:-

- Undertake a review of the sufficiency of the Charity's financial processes, structures and resources and the extent to which the trustees complied with their statutory reporting duties to submit accurate accounts and reports by the due date.
 - Undertake a review of the Charity's governance and administration including the management of potential conflicts of interests.
 - Review all serious incidents that constitute adverse events, whether actual or alleged.
 - Undertake a review of the three "branches" where proper administration was in doubt.
 - Make recommendations for actions required to improve the governance of the Charity.
 - Report progress to the Charity Commission on a regular basis.
11. In the schedule to the Initial Order, the Charity Commission requested that the Interim Manager should make recommendations for actions and improvements to the Charity after conducting the review.
12. In the Statement of Reasons issued by the Charity Commission in which it set out its reasons for appointing an Interim Manager to the Charity, the Charity Commission recorded the concerns that had led to the Initial Order. These included the findings that there had been misconduct and/or mismanagement in the administration of the Charity and that it was necessary or desirable to act for the purpose of protecting the property of the Charity. The Charity Commission stated that its concerns at that time included; the failure of the Charity to file its accounts on time and maintain adequate accounting records; the significant financial losses the Charity had suffered by reason of fraud by its employees and its auditor; the inadequacy of the Charity's governance of its branch structure and the power given to a single trustee under the constitution of the Charity.
13. The 2021 Order was issued following a review of the Initial Order pursuant to section 76(6) of the Act. The effect of the 2021 Order was to confirm that the Interim Manager could act with the power and duties of a trustee and authorised him to exercise such powers and duties;
- "to the exclusion of the trustees of the Charity with the exception of the conduct of the Charity's religious services and ministry".
14. The 2021 Order replaced the schedule to the Initial Order with a new schedule (the "Schedule") which gave new responsibilities to the Interim Manager:-
- The Interim Manager was to take over the management and the administration of the Charity to the exclusion of the current trustees, with the exception of the Charity's religious services and ministry.
 - The Interim Manager was to take such steps as are necessary to ensure full oversight and authorisation of all charity expenditure over £500.
 - The Interim Manager was to undertake a full review of the Charity's property, asset position and HR records in order "to devise and implement a strategy for the ordinary contraction of the Charity's branch structure".

- Subject to the contraction ‘strategy’ the Interim Manager was to consider the most appropriate future governance structure of the Charity to meet recommendations.
- Provide progress reports to the Charity Commission.

Jurisdiction

15. It was apparent from the submissions of the Charity Commission and the Appellant that there was a disagreement over the jurisdiction of this Tribunal to hear this appeal. It was also clear at the hearing that there was disagreement over the power that this Tribunal could exercise in the event that it had jurisdiction. It is necessary therefore to reach a conclusion on the jurisdiction and power of this Tribunal.
16. Under section 319 of the Act; an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column 1 of Schedule 6 to the Act. Such an appeal may be brought by any person specified in the corresponding entry in column 2 of Schedule 6 to the Act.

Section 319(4) and (5) state as follows:

(4)“In determining such an appeal the Tribunal –

- must consider afresh the decision, direction or order appealed against, and
- may take into account evidence which was not available to the Commission.

(5) the Tribunal may-

- a) dismiss the appeal, or
- b) if it allows the appeal, exercise any powers specified in the corresponding entry in column 3 of schedule 6.”

17. This Tribunal is therefore to make a de novo decision in respect of an appeal over which it has jurisdiction under the provisions of Schedule 6 of the Act. Relevant provisions of Schedule 6 are set out in the Annex to this decision, which forms the part of this decision.
18. In order to determine the jurisdiction of the Tribunal it is necessary to identify the relevant provision of the Act under which any order, decision or direction that is the subject of an appeal was made.
19. The parties to this appeal disagreed about which provision of the Act the 2021 Order was made under. The 2021 Order states on its face that it is:
- “Made under Section 76(3)(g) of the Charities Act 2011 in exercise of the power in section 337(6) of the Charities Act 2011”
- It goes on to state in paragraph 1 of the 2021 Order that:
- “The Order of the Commission dated 1st August 2019... made under section 76(3)(g) of the Charities Act 2011 is varied with effect from the date of this Order”...
20. Mr Smith, on behalf of the Appellant, clarified that there is no challenge in this appeal to the decision to appoint the Interim Manager. The Appellant is not disputing that

there has been misconduct or mismanagement in connection with the Charity in the past. Mr Smith stated that the sole issue in this appeal is whether it was proportionate, in accordance with the Commission's regulatory functions, and in the best interests of the Charity to appoint the Interim Manager to the exclusion of the trustees in September 2021. He stated that by virtue of Schedule 6 to the Act an order made pursuant to section 76(3) of the Act could be the subject of an appeal to this tribunal, which has the jurisdiction to quash such an order or to substitute or add to it any provision which the Charity Commission could have ordered.

21. Mr Rechtman for the Charity Commission stated that this appeal concerns the decision made by the Charity Commission after the review of the Initial Order pursuant to section 76(6) of the Act. He stated that the decision that was made after such review by the Charity Commission was whether to continue the appointment of the Interim Manager and this decision is made pursuant to section 76(6) of the Act. Schedule 6 of the Act gives appeals rights in respect of decisions made under section 76(6) of the Act.
22. Mr Rechtman explained the Charity Commission's view that the exercise of its power under section 337 of the Act to vary an Order after it has been made may not be the subject of the appeal to this Tribunal. Schedule 6 of the Act does not provide a right of appeal against decisions made under section 337 of the Act. Mr Rechtman went on to state that decisions made under section 78 of the Act may not be appealed for the same reason. Section 78 permits the Charity Commission to make decisions with regard to the functions to be discharged by the Interim Manager and to make other administrative decisions relating to the appointment of the Interim Manager, including the identity of the Interim Manager and their remuneration.
23. Therefore, Mr Rechtman stated that the Tribunal's jurisdiction is limited to considering the outcome of the review that was conducted under section 76(6) of the Act.
24. The Tribunal discussed with Mr Smith and Mr Rechtman the positions they wished to advance in relation to the power that this tribunal could exercise in determining this appeal. Mr Smith accepted that no right of appeal existed in respect of decisions made pursuant to section 78 or section 337(6) of the Act. Mr Rechtman argued that any variation of the terms of appointment of the Interim Manager could not therefore be the subject of an appeal. The Tribunal could only agree to renew the Interim Manager's appointment or discharge it. Mr Smith stated that the 2021 Order amounted in substance to a new order. It made very significant adjustments to the terms of appointment of the Interim Manager and gave him authority to exercise his power without reference to the existing trustees.
25. In the hearing, the Tribunal reserved its position in relation to the decision to be made on its jurisdiction. We stated that the hearing would continue on the basis that we would hear evidence on the understanding that the Charity Commission had exercised its powers under section 76(6) to continue the Interim Manager's appointment. The Tribunal would consider evidence and submissions on whether the appointment should have continued and whether the power and authority of the Interim Manager should have been varied and on any and all matters that could be the subject of a new decision were the 2021 Order to be remitted back to the Charity Commission for a

new decision. Such an approach would permit the parties to pursue all of the arguments set out in their skeleton arguments. A final decision on jurisdiction would be made after further deliberation.

26. Having considered the submissions of the parties carefully the Tribunal has considered its jurisdiction to hear this appeal. The Tribunal's jurisdiction is set out in Schedule 6 to the Act. Schedule 6 establishes that this Tribunal can hear appeals against an;

 "Order made by the Commission under 76(3) in relation to a charity"
 and a
 " Decision of the Commission (a) to discharge an order following a review under section 76(6), or (b) not to discharge an order following such a review".
27. No right of appeal is provided for in respect of the exercise of the Charity Commission's powers under section 78(4) of the Act to make supplementary decisions regarding the terms of appointment of an Interim Manager.
28. No right of appeal is provided for in respect of the exercise of the Charity Commission's powers under section 337(6) of the Act to vary or revoke any order made by the Commission under any provision of the Act by a subsequent order. However, the Tribunal finds that it can hear an appeal against such a "subsequent order" if it is made pursuant to, inter alia, section 76(3)(g) of the Act
29. When conducting its review of the Initial Order pursuant to its obligations under section 76(6) of the Act, the Charity Commission had to decide whether to discharge the Initial Order or not. The Tribunal finds that were the Initial Order to have been discharged then the appointment of the Interim Manager would have ceased. Had the decision following such review been simply that the Initial Order should not be discharged, then the authority of the Interim Manager would have remained limited to that set out in the schedule to the Initial Order. In practice the outcome of the section 76(6) review by the Charity Commission was not to discharge the Initial Order, nor to continue with the Initial Order, but to vary the terms of appointment of the Interim Manager. The variation of the terms of appointment are very significant. The Interim Manager was previously conducting an investigation, reviewing the position of the Charity and making recommendations to the Charity Commission. In the Schedule to the 2021 Order the Interim Manager is given exclusive authority to manage all aspects of the Charity except for the Charity's religious service and ministry. As such the 2021 Order deprives the trustees of the Charity of their rights, duties and powers. The Tribunal finds that the extent of the alterations to the powers and duties of the trustees cannot be seen as a mere variation of the 2021 Order under section 337, nor as a supplementary matter to be dealt with under section 78 of the Act. Under section 337(6) of the Act the Charity Commission may vary or revoke an order "by a subsequent order so made." The Tribunal finds that the 2021 Order is such a "subsequent order" and that it was made pursuant to the Commission's powers under section 73(6) (g) of the Act.
30. The effect of the Tribunal's findings in relation to the power exercised by the Charity Commission in making the 2021 Order is that a right of appeal exists in respect of the decision of the Charity Commission under section 76(6) to discharge or not discharge

the Initial Order and, in addition, a right of appeal exists in respect of the decision of the Commission to make the 2021 Order, as a new order, under section 76(3) of the Act.

Procedure

31. A directions hearing was required in order to resolve the issues preventing the satisfactory progress of this appeal. This was held on 25th May 2022. The Appellant had failed to meet the requirements of the original directions set by Judge Alison McKenna on 27th January 2022. The Appellant explained that delays had arisen due to the refusal by the Interim Manager to release funds from the Charity to pay for the legal advice that the Appellant required in order to bring the appeal. New directions were issued after the 25th May 2022 hearing. These were largely complied with. However, the parties failed to agree a chronology, a schedule of agreed facts and a list of issues to assist the Tribunal.
32. On the first day of the hearing on 29th September 2022, objections were raised by the Appellant to the allegations that were made by the Charity Commission in the skeleton argument submitted by Mr Rechtman regarding the exercise of power granted under the constitution of the Charity to the General Overseer of the Charity. Mr Smith argued that these allegations had not previously been made in the proceedings and that it was unfair and inadmissible for them to be made in the skeleton. The Tribunal determined that any such allegations could be advanced only in so far as this was necessary in order to determine the appeal in respect of the power exercised under section 76(3) and 76(6) of the Act. In so doing, the Appellant must be permitted a right to respond to any such allegation. However, the Tribunal stated that in the event that makes any finding about the actions or powers or failure to act of the General Overseer, they would merely be findings on the balance of probability based on the evidence and submissions that were made in the course of these proceedings.
33. On the start of the second day of the hearing on 3rd November 2022 Mr Smith sought to submit a new bundle of evidence comprising 73 pages. Mr Smith stated that this was information that was required in order to respond to assertions made by the Charity Commission on the first day of the hearing, where he argued that inaccurate assertions had been made. Mr Smith explained that a large part of the bundle related to the allegations regarding the influence of, and exercise of power by, the General Overseer of the Charity. The Tribunal determined that the new bundle would not be admitted as a whole but, in the course of Mr Smith's submissions and in hearing the evidence of the witnesses, documents from that bundle may be referred to and Mr Rechtman and the Tribunal would be given time to review and assess the new documents in order to ensure that they were understood and to see if there were any concern over their admissibility. The hearing proceeded on this basis.

Legal Framework

34. The Charity Commission's statutory objectives under section 14 of the Act include a public confidence objective, a compliance objective, and an accountability objective. Its statutory functions under section 15 of the Act include encouraging and facilitating the better administration of charities, identifying and investigating apparent

misconduct or mismanagement in the administration of charities and taking remedial or protective action.

35. The sections of the Act that are of greatest relevance to this appeal are set out below in the Annex, which forms part of this decision.

36. Section 76 of the Act sets out the basis upon which an Interim Manager can be appointed to a charity. Section 76 of the 2011 Act provides (where relevant) as follows:

“(1) Subsection (3) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is satisfied
(a) that there is or has been any misconduct or mismanagement in the administration of the charity, or
(b) that it is necessary or desirable to act for the purpose of—
(i) protecting the property of the charity, or
(ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity.”

37. Section 76(3)(g) is set out in the Annex and states that the Commission may of its own motion by order appoint (in accordance with section 78) an interim manager, to act as receiver and manager in respect of the property and affairs of the charity.

38. There is no statutory definition of the terms “mismanagement” or “misconduct” to be found in section 76 of the 2011 Act, or elsewhere in the 2011 Act. The meaning of the words “misconduct” and “mismanagement” was considered by the First-tier Tribunal in *Mountstar (PCT) Limited v Charity Commission*, (CA/2013/0001 & 0003), at [136] – [139] and, whilst that decision is not binding on this tribunal, we concur with the following reasoning therein:

“136. There is no statutory guidance as to what is meant by “mismanagement” or “misconduct”. Both are ordinary English words which should be given their ordinary meaning: *Scargill v Charity Commissioner* (unreported) 4th September 1998 (which was confined to the meaning of “mismanagement”). The Commission has issued guidance: “Misconduct includes any act (or failure to act) in the administration of the charity which the person committing it knew (or ought to have known) was criminal, unlawful, or improper. “Mismanagement includes any act (or failure to act) in the administration of a charity that may result in significant charitable resources being misused or the people who benefit from the charity being put at risk.”

137 ... “only serious mismanagement and, even more serious misconduct will suffice to satisfy the statutory threshold albeit that this argument shades into whether the decision to appoint a manager is proportionate to the acts of mismanagement or misconduct complained of by the Commission.

138 We do not think it necessary to so qualify the “mismanagement” and “misconduct”. We do however accept that its or the several acts or omissions complained of in their totality must be of some substance to justify the appointment of an Interim Manager rather than the alternative which would involve the use of some or all of the other statutory tools within the Commission’s armoury. The Commission’s guidance may provide illustrations of what might constitute mismanagement and misconduct, but

cannot restrict their ordinary meaning.”

39. In the decision of the First-tier Tribunal in the Knightland Foundation v the Charity Commission (2021 UKFTT 0365(GRC)) consideration was given to the burden of proof in appeals against the appointment of an Interim Manager. Whilst this decision is not binding upon us the Tribunal is content to adopt the approach set out in paragraph 51 of that decision:-

“In my view, unless parliament has clearly spelt out in legislation to the contrary, it is for an appellant on appeal even an appeal in which there is to be a complete rehearing or where the Tribunal must consider the decision afresh, to demonstrate that the evaluative judgements and discretionary decisions of the decision-making body (in this case the Charity Commission) are wrong; *“that is to reach its conclusions on the basis of the evidence put before it and then to conclude the judgement below is wrong, even if it was not wrong at the time”* (Burton J at [43] first instance in Hope (CO/5324/2009). The weight to be attached to the reasons of the Charity Commission is a matter for the Tribunal to determine, bearing in mind that parliament entrusted the Commission to regulate the charity sphere. To put this into words which have been used by other constitutions of this Tribunal, the Tribunal should *“stand in the shoes of the Charity Commission and take a fresh decision on the evidence before it, giving appropriate weight to the Commission’s decision as the body tasked by parliament in making such decisions.”*”

Agreed Facts and Matters Not in Dispute

40. There was common ground between the parties on a number of facts that are relevant to this appeal. In addition, the Charity was able, in Mr Smith’s skeleton argument and during the course of the hearing, to clarify the particular grounds of the appeal that they wished to pursue and to indicate which matters were not in dispute. The following matters were agreed by the parties and, having reviewed the evidence and submissions, accepted by the Tribunal.
41. The Appellant is not challenging the decision to open the statutory inquiry under section 46 of the Act. The statutory inquiry was opened on 27th March 2018. The Appellant is not challenging the decision to appoint Dr Adam Stephens as the Interim Manager on 1st August 2019, or to leave Dr Stephens in that role following the reviews under section 76(6) of the Act.
42. It was accepted on behalf of the Appellant that the identity of the Interim Manager and his remuneration are not the subject of this appeal. The Tribunal agrees that matters concerning the appointment of the Interim Manager that are covered by section 78 of the Act are not open to appeal to this Tribunal.
43. The Appellant does not dispute that there has been misconduct or mismanagement in connection with the Charity in the past. The statement of reasons issued by the Charity Commission when appointing the Interim Manager summarised the misconduct or mismanagement into four headings:-
- Persistent non-compliance with trustee legal obligations.
 - Lack of financial controls leading to losses in excess of a million pounds.
 - Failure to submit serious incident reports in a timely manner.
 - Breaches of the governing documents, i.e., the constitution of the Charity.
- In the light of these failings and in particular the lack of financial controls in the

branches of the Charity and the two significant frauds that had been carried out by staff or advisors to the Charity, which gave rise to losses of around £1 million, there was also a risk to charity property.

44. The parties agree on the terms of the Initial Order and their effect.
45. In early 2019 the trustees of the Charity were changed, and a new group of trustees was appointed. In January 2021 all of the trustees resigned and four new trustees were appointed. An additional trustee was appointed in March 2021. The current trustees are those appointed in January and March 2021.
46. The parties made submissions on the effect of any decision to quash the 2021 Order. This was discussed with the Tribunal. During the course of the hearing, it was accepted by the parties and agreed by the Tribunal that were the 2021 Order to be quashed, the Initial Order would apply in the form in which it was originally issued. The Initial Order gave the Interim Manager the powers and duties set out in the schedule to the Initial Order.
47. The Charity Commission and the Appellant agreed with the description that the Charity is in “intensive care” at present. The number of attendees at the branches have declined, revenue has declined, disputes have arisen with landlords and staff are not receiving payment on time.
48. On 18th March 2021, the Charity Commission made an order under section 84 of the Act directing the trustees of the Charity to complete 13 actions (“the section 84 order”). The Tribunal heard evidence and submissions relating to the responsibilities of the trustees of the Charity to comply with the section 84 order and their capability to do so. This is considered below.
49. On 21st September 2021, the Charity Commission issued directions to the trustees of the Charity pursuant to section 47 of the Act. The section 47 directions were issued simultaneously with the 2021 Order. The Tribunal heard evidence and submissions in relation to the responsibility of the trustees of the Charity to comply with these directions and their success in doing so. These are considered below.

The Issues for the Tribunal to Decide

50. It follows from the decision of the Tribunal regarding its jurisdiction to hear this appeal, the agreed facts set out above and from the Appellant’s clarification of the terms of this appeal also set out above that the Tribunal is required to decide two principal matters in order to properly determine the outcome of this appeal. The first matter to be decided is whether the Tribunal would, as at the time of the hearing, continue the appointment of the Interim Manager on the basis of the evidence now before it. In reaching such decision the Tribunal may take into account evidence that was not available to the Charity Commission at the time the 2021 Order was made. The second principal matter to be determined by the Tribunal is, in the event that it determines that the appointment of the Interim Manager is to continue, the terms upon which the appointment should continue.

51. In considering the issue of whether it was appropriate to discharge the Initial Order on its review by the Charity Commission, the Tribunal notes that both Mr Smith and Mr Rechtman accepted in the hearing that the appointment of the Interim Manager should continue.

The Evidence

52. The evidence in this case is extensive with over 4,500 pages of documents and four witness statements.
53. The Tribunal heard from four witnesses during the course of the hearing.
54. Mr Adewole, the chair of the Charity since March 2022 and at the time of the hearing, stated that the trustees had complied with the Charity Commission's directions and requirements to the best of their ability however, he recognised that not all of the directions had been complied with. He indicated that where the Charity had failed to provide the information or exercise the control required by the Charity Commission it largely arose from the failure of individual branches to provide information or take steps required by the trustees. He also indicated that the failure of the Interim Manager to approve expenditure had caused further delays and difficulties for the trustees. Mr Adewole gave evidence regarding the frauds that had taken place in the Charity and the steps that were being taken to recover the proceeds of such frauds. These steps are incomplete and he accepted that it may be difficult to recover the funds in their totality. He discussed the difficulties around obtaining complete DBS checks on all staff acting for the Charity in each of the branches. He was aware of the difficulties that occurred in trying to compile a complete list of the properties, assets, bank accounts and insurance of the Charity.
55. The Tribunal heard from Mr Akinleye, who is the central accountant for the Charity and has held that position since 2014. He discussed and was frank about the difficulties that the Charity had in producing accounts and obtaining an unqualified audit for them and in controlling the property, assets and bank accounts of the Charity due to the difficulty in obtaining information from, and exercising control over, the branches of the Charity. Mr Akinleye pointed to the progress that had been made since the auditors had first qualified their audit report of the Charity but acknowledged there was still more to be done.
56. Mr Hughes Jones, who is an investigator for the Charity Commission gave evidence regarding the steps that the Charity Commission had required the trustees of the Charity to take and their difficulty in completing all of the obligations placed on them.
57. Dr Adam Stephens is the Interim Manager of the Charity. Dr Stephens gave evidence as to the concerns that arose in relation to some of the objectives set out in the section 84 order issued by the Charity Commission to the Charity dated 18th March 2021. Amongst these concerns were the objectives in respect of the following:-
- Securing control of all of the Charity's cash in preparation for the transfer of the Charity's banking facilities.

- Reducing the number of branches to remove those that are loss making or uneconomical to run.
- Preparing a complete schedule with details of all property used by the Charity including details of property insurance, property occupancy and relevant planning permission.
- Obtaining assurance that all relevant personnel working for or at the request of the Charity who require DBS certificates for safeguarding purposes have obtained such certificates. Dr Stephens said that the trustees had provided information on 11th June 2021 setting out the DBS status of 140 individuals, including 27 who had not obtained approval.
- Resolving issues with financial controls over the branches.
- Resolving concerns over employment matters including payroll records, employment status and payments by the Charity.

58. Having taken account of all of the evidence and submissions in this case, the Tribunal came to the conclusion that the review of the Initial Order conducted by the Charity Commission under section 76(6) of the Act reached the correct conclusion in deciding that it was not appropriate to discharge the Initial Order. The Tribunal finds that the Charity will continue to benefit from the appointment of an Interim Manager and the scrutiny and discipline that this appointment will bring as it seeks to build adequate records of, and assert control over, its assets and its risks and liabilities.

59. It is, therefore, necessary for the Tribunal to consider the terms upon which the Interim Manager should continue his appointment. In particular, the Tribunal needs to decide if the terms on which Dr Stephens was appointed in the 2021 Order are appropriate in all of the circumstances.

60. The Tribunal sought to understand the position of the Charity at the time of the hearing and the extent to which the misconduct or mismanagement and risk to the Charity's property that had occasioned the making of the Initial Order were still a cause for concern. The evidence from the Interim Manager included an analysis of how far the trustees of the Charity had succeeded in meeting the objectives that were set by the Charity Commission in the section 84 directions that were issued on 18th March 2021. The Interim Manager recorded the position on certain key objectives as at 3rd August 2022 in the terms set out below.

61. Objective 4 of the section 84 directions is to:

“Secure control of all MFM cash in preparation for closure of the Lloyds banking facility and demonstrate/manageable control of MFM finances so reducing the overall number of bank accounts.”

The Interim Manager stated that he had been aware of over 200 accounts being operated by the Charity. He regarded this as an excessive number. On 18th May 2021 he had requested a full schedule of all bank accounts and details of the Charity's plan for migration from Lloyds to Barclays Bank. He received a response from the Charity on 26th May 2021. The Interim Manager stated that following receipt of this plan his team sought to monitor progress by requesting regular updates from the Charity. He reported the following progress:-

“Despite certain progress being made and, a certain level of information being provided in respect of our enquiries, the Trustees still did not provide complete clarity to my satisfaction on the position and status of the “old” accounts. We are aware that many of the old accounts and balances have been transferred to the new Barclays arrangements but there still remain several accounts not transferred despite the passage of a number of months and it appears to be the case there were a number of accounts still with HSBC at least.”

The Interim Manager confirmed that a bank account operated by the Stevenage branch was still causing concern over the safeguarding and use of the cash in that account which amounted to around £63,000 in June 2021.

62. Objective 5 of the section 84 directions is as follows:

“Reduce number of branches to remove those that are loss making or uneconomical to run due to the number of members or location to another branch. Redefine regions making it easier to monitor.”

The Interim Manager stated that he had required recommendations for branch mergers/closures to be supported by evidence of membership numbers, accounts, property arrangements and statement of reasons. He stated that the trustees of the Charity in their follow up responses failed to comply with the request: They did not provide a full detailed record of the branch merger process and they did not appear to have undertaken a full analysis of the branches’ financial and property circumstances to evidence the justifications in their considerations when merging the branches. The Interim Manager stated that he was aware that proposals were being put forward involving the trustees establishing new legal structures (such as a newly established charity or other not for profit enterprise) for at least some of the branches in the hope that this would reduce the Charity’s problems. He had explained to the trustees that existing donations made to the Charity would not necessarily transfer to the branch that was being reconstituted as a separate charity.

63. Objectives 7, 8 and 9 of the section 84 directions required a schedule of all properties used by the Charity to be produced with confirmation of their planning status and other regulatory requirements. All property insurance arrangements should be set out in a schedule and the occupancy of each property should also be recorded. The Interim Manager indicated that his team had found deficiencies in respect of the responses to these objectives. This included lack of property details relating to leases which had expired. There had been a failure to provide monthly update reports on property matters and a failure to provide a complete list of planning details for all relevant branches.

64. Objectives 11 and 12 of the section 84 directions required that current DBS certificates be held on file for all personnel of the Charity and all personnel files be brought up to date with the requisite information. The Interim Manager reported that 27 individuals listed by the Charity as personnel had not obtained a satisfactory DBS status and that a schedule provided by the trustees to the Interim Manager on 15th June 2022 still showed the DBS status of some of the 27 people as being outstanding.

65. Dr Stephens gave evidence of some of the challenges he had encountered following the issue of the 2021 Order. These included:-

- Ongoing issues with property management. He stated that when his team had attended the central offices of the Charity, the explanation provided for the non-provision of information had been that it was a work in progress and not yet fully complete. The information lacking included the records relating to the planning status and insurance for each branch. There remain some items that had been outstanding for 14 months. He stated:

“we have had to request repeatedly for property schedules as this is an ongoing matter that the Charity has had to progress and improve. We have also assisted the Trustees by providing templates and suggestion for information to be included in such schedules”.

- With regard to the contraction or merger of branches; the Interim Manager stated that the trustees had proposed a merger of branches to reduce the number from 90 to 55. He stated:

“I am yet to be provided with full details of how the Trustees identify branches to be retained”

- The Interim Manager referred to concerns relating to legal action by the landlord of the Bermondsey branch, where although the Charity vacated the premises, the Charity remained liable for the rent.
- The Liverpool branch was also a cause of concern. On 27th May 2022, the Interim Manager had sent an email to the trustees to request their proposals for resolving a dispute and potential court hearing relating to the premises. He had received such proposals and on 8th June 2022 he confirmed that the cost to be incurred had been approved by him. He said the trustees did not respond to him and had responded to the landlord’s lawyers directly. On 19th July 2022, the Interim Managers team emailed the trustees to repeat the request for information and proposals to comply with the terms of the section 84 order.
- The Interim Manager referred to the repeated requests that had been made to the trustees to normalise the position on the lease for the Manchester branch.
- The Interim Manager expressed his concern about expenses being incurred without his authorisation and identified as an example, an ‘advance pastor’s retreat/training’ that was held in Nigeria. The cost of the accommodation and flights had been incurred by the participants without his consent and a request for reimbursement had been received, which he had not yet approved.
- The Interim Manager stated that he had brought to the attention of the trustees (both the present and the prior trustees of the Charity) his concern over the failure to provide information about effective cash reconciliations and the consequence in terms of the loss of charitable funds. Payments had been made without the Interim Manager’s consent by the Coventry, Milton Keynes, Kent and Leicester branches.

- The Interim Manager referred to the need for further work to obtain missing DBS certificates, proof of addresses, passports and academic or other certificates for personnel of the Charity.
- He stated that he and his team had made enquiries to trustees in respect of individuals who had been receiving payments from the Charity and whose employment status was uncertain. Only 17 of the 62 individuals receiving payments had been reconciled with the Charity's payroll records.

66. The Interim Manager referred to his engagement with the trustees after his appointment. He stated that he attended monthly meetings with the trustees in which the objectives are discussed and he said;

“we sought to encourage the Trustees for the objectives being implemented by the Charity”

However, he stated that it was clear to him that the Charity had a completely inadequate governance infrastructure prior to his appointment.

67. Mr Hughes Jones gave evidence that also referred to the list of problems and concerns set out above and commented upon the Interim Manager's assessment of the trustees' performance against the objectives set out in the section 84 order. Mr Hughes Jones also regarded the failure to achieve these objectives as a basis for continuing the Interim Manager's appointment and for making the 2021 Order giving the Interim Manager powers and duties to manage the Charity to the exclusion of the trustees.
68. The Tribunal was struck by the extent to which both the Interim Manager and Mr Hughes Jones continued to attribute responsibility for resolving the problems of the Charity to the trustees of the Charity even after the 2021 Order had come into effect. The Tribunal asked Dr Stephens to clarify why he expected the trustees to retain responsibility for general management matters after they had lost the ability to exercise their powers as trustees. Dr Stephens stated that because of this appeal he had discussed with the Charity Commission how he should approach the management of the Charity and it had been decided that he would take “a holding pattern”. He would not take aggressive actions in case the Tribunal took a different view of the matter.
69. Dr Stephens was asked who was responsible for safeguarding within the Charity after the 2021 Order had been made? Dr Stephens stated that Mr Akinleye and a colleague in the central organisation of the Charity were responsible. This was queried by the Tribunal on the basis that Mr Akinleye is the central accountant of the Charity. Dr Stephens stated that the two senior managers worked closely together, but he was not sure which of them was responsible for the safeguarding. He was asked if these individuals knew that they were responsible for safeguarding? Dr Stephens stated that he would have to ask them as he was not sure.
70. Dr Stephens was asked about the control exercised by the central organisation of the Charity over the individual branches. Dr Stephens stated that each branch was run by a charismatic pastor, and he was aware they may not work well with Mr Adewole. He clarified that he was only aware of the two senior managers in the central office of the Charity. He regarded this as woefully inadequate and said he had raised this a lot of

times with the trustees. He believes that the Charity needs a chief executive. When asked whether it was his responsibility to address this problem, Dr Stephens stated he had been through an exercise with the trustees and could not remember if this proceeded. This exercise was undertaken in September 2021; he had told the trustees that they must recruit people who were not from the church in order to strengthen its management, but this did not work out. He was then asked why he had not recruited such staff himself? He said that he had pursued this and raised it at a recent trustee meeting, but matters remained in “a holding pattern”. He further clarified that he felt that he could not impose someone on the trustees.

71. Dr Stephens was asked to clarify his comments that the Charity’s operations;

“were too large to be managed effectively and that there was no reasonable prospect of reforming it now and for the future, into a manner which would allow it to manage itself effectively”.

Dr Stephens stated that it was his view that the Charity should be massively cut down. He recognised the impact this would have on its religious activities. He stated that the Charity needs much stronger governance and he believes that as soon as he is out of his role at the Charity it will go back to chaos. Three groups of trustees have struggled to address the charity's problems and with great regret he thinks the Charity cannot carry on.

72. The tribunal found that the evidence of Mr Adewole, Mr Akinleye and Dr Stephens and the contents of the correspondence between the Interim Manager and the trustees of the Charity all pointed to the essential problem of the Charity being that of exercising control over its branches. The Tribunal was concerned that even after the Interim Manager’s appointment to manage the Charity to the exclusion of the trustees, it was clear that the Interim Manager and his team had relied upon the trustees to obtain information from, exercise control over and give instruction to the branches of the Charity. The Interim Manager had recognised the inadequacy of the central team to fulfil these functions but had done nothing to take steps to improve the capability or authority of the central team. The Interim Manager remained reliant on the active involvement and co-operation of the trustees in seeking to improve the management of the Charity.

73. It was apparent from the evidence of Mr Hughes Jones and Dr Stephens that the agreed approach between the Interim Manager and the Charity Commission with regard to addressing the concerns over central control was to reduce the size of the Charity. It was also apparent from the evidence that the contraction of the Charity was to be achieved on the basis of which branches were economically viable. It is not clear to us how this was to be achieved. The Tribunal was not satisfied that this was the only basis on which a charity pursuing religious objectives should decide on its most effective structure or form of governance. The schedule attached to the 2021 Order required a full review of the Charity’s property, asset position and HR records;

“in order to devise and implement a strategy for the orderly contraction of the Charity’s branch structure”.

It is not clear to us why a full review of the Charity's property, assets and staff should not form the basis for the Charity, or the Interim Manager, implementing measures to ensure the effective and rigorous control of such property, assets and staff.

74. The schedule to the 2021 Order also stated that the work required to consider the most appropriate future governance structure of the Charity was to be subject to the contraction strategy and implementation. The option of improving the governance and effective management of the Charity without reducing the number of branches appeared to have been rejected by the Interim Manager and the Charity Commission. The evidence of both Mr Adewole and Mr Hughes Jones was that the Charity's attempts to permit or assist branches to set up as independent charities had been either frustrated by, or discouraged by, the Charity Commission. It is not clear to the Tribunal why such an approach would not be in the best interests of those served by the Charity. However, the Tribunal lacked clarity on the approaches that had been made to the Charity Commission, the Charity Commission's response to them and the decisions then made by those pursuing such an approach.
75. The evidence from Mr Akinleye and from Mr Adewole and the submissions from Mr Smith asked the Tribunal to take account of the difficulties and the frustrations that the trustees had in working with the Interim Manager. The Charity was struggling as a result of the regulatory difficulties it faced. Its revenue had declined, the number of adherents was declining and the Charity was unable to pay all of its personnel. Disputes had broken out with landlords regarding non-payment of rents or over the status of leases. The current trustees of the Charity take the view that they are not tainted by previous failures. They seek to achieve a position where they can take a role in the management of the Charity over and above its religious affairs alongside the Interim Manager.
76. The Tribunal noted the submissions made by Mr Rechtman regarding the difficulties that the Charity Commission and the Interim Manager had in dealing with a board of trustees whose members changed from time to time. The current trustees were the third group who had been in position since the start of the Inquiry. The constitution of the Charity permitted trustees to be appointed by a single authorised individual, who holds the title of General Overseer within the Charity. The submissions of Mr Smith and the evidence of Mr Adewole was that this was recognised as a legitimate concern and various trustees had looked at how to improve the constitution of the Charity in order to strengthen its governance. To date such reforms have not been effected.
77. The Tribunal considered all of the evidence and submissions in relation to the status of the Charity and the operational effectiveness and regulatory and legal compliance of the Charity at the date of the hearing. The Tribunal concluded that the 2021 Order had not been effective in improving the position of the Charity in terms of achieving its charitable purpose or achieving regulatory or legal compliance. It was unfortunate, but understandable, that the Interim Manager felt that it was not appropriate to take robust action during the period in which an appeal against the 2021 Order was taking place. However, even after making allowances for such an approach it appears that on a practical level the Interim Manager was unable to manage the Charity on a day to day basis without the co-operation and active involvement of the trustees of the Charity.

78. It was possible to discern from the evidence of Dr Stephens and Mr Hughes Jones the possibility that the Charity may be in such a poor state that it could not continue to operate. The evidence and submissions also suggested that the Interim Manager would not be able to achieve a rundown of the Charity's operations and secure the Charity's assets and properties without the co-operation of the Charity's trustees.
79. The Tribunal does not accept that an Interim Manager appointed in the course of a section 46 inquiry should be able to decide that a Charity should be closed down. Section 46 of the Act gives the Charity Commission the power to institute enquiries with regard to a charity either generally or for particular purposes. The conduct of the inquiry is for the Charity Commission and if necessary, an Interim Manager, to determine. The Charity Commission enjoys extensive powers in obtaining the information that is required for the inquiry to proceed. Section 50 of the Act states that where an inquiry is held under section 46 the Charity Commission may;

“cause the report of the persons conducting the inquiry, or such other statement that the results of the enquiries the Commission thinks fit, to be printed and published, or publish any such report or statement in some other way which is calculated in the Commission's opinion to bring it to the attention of persons who may wish to make representations to the commission about the action to be taken

The Tribunal is concerned if the terms of the appointment of an Interim Manager and the instructions given to them by the Charity Commission were to lead to a charity being wound up without any report having been published and representations in response to such a report having been considered. Mr Akinleye stated that the report of the Interim Manager that had led to the Charity Commission deciding to issue the 2021 Order had not been sent to the trustees or anyone else in the Charity. The Tribunal understands that this is accepted by the Charity Commission. The Tribunal does not find that the Charity Commission or Dr Stephens had concluded that it was necessary to wind up the Charity at the time of making the 2021 Order. However, the terms of the appointment of the Interim Manager should be such as to avoid this concern arising in the minds of those involved in, or dealing with, the Charity.

Conclusion

80. Having considered all of the evidence and submissions of the parties, the Tribunal has reached the following conclusions with regard to certain of the legal and factual matters it has to determine:-
- The review of the Initial Order conducted by the Charity Commission under section 76(6) of the Act was correct to conclude that it should not be discharged. The Charity will benefit from the appointment of an Interim Manager, who can act independently and in the best interests of the Charity as a whole in improving the governance and management of the Charity and in ensuring that all branches and all individuals with de facto power over the Charity's property and management comply with all relevant legal, regulatory and accounting obligations.
 - The Charity Commission was also correct to conclude in its review of the Initial Order pursuant to section 76(6) that the Initial Order needed to be amended. The schedule to the Initial Order required and authorised the Interim Manager to

review and make recommendations with regard to the sufficiency of the Charity's financial processes, structures and resources, review and make recommendations regarding the Charity's governance and administration and review all serious incidents affecting the Charity. The Interim Manager was also required and authorised to undertake a review of three branches to see whether these branches were properly administered and managed and whether serious incidents are being identified and promptly reported. The Interim Manager was to make recommendations for actions required to improve governance in respect of the Charity's future operation. By the time that the review of the Initial Order was taking place, in September 2021, the Tribunal accepts that it had become clear that it would be appropriate to take action to address the concerns over the Charity's governance and its effective control over the property and assets of the Charity and its compliance with its legal and regulatory obligations. Therefore, the factual review required under the Initial Order had been substantively completed.

81. The Tribunal concludes that the conditions for the making of a section 76(3)(g) order applied as at the date of the hearing. An inquiry under section 46 of the Act into the Charity is in place and continuing. There has been misconduct and there continues to be mismanagement in the administration of the branches of the Charity. The Charity does not have adequate control over the bank accounts being operated in its name, it does not have adequate records of the property and assets that it owns or occupies, it lacks adequate records of its employees and lacks control over the payments made to individuals who are undertaking roles within or working for the Charity, but whose employment status is unclear. The Charity has inadequate safeguarding practices. These failings all contribute to its inability to produce unqualified accounts. The Tribunal concludes, on the balance of probabilities, that the process of appointing and maintaining trustees in position is opaque and unsatisfactory. In addition to the continuing mismanagement, the Tribunal concludes that the evidence summarised above make it desirable for action to be taken for the purpose of protecting the property (including the funds) of the Charity.
82. The Tribunal concludes that the 2021 Order is to be regarded as having been made under section 76(3) of the Act. Under schedule 6 of the Act a right of appeal exists against the 2021 Order made under section 76(3) in relation to the Charity. The Tribunal finds that the trustees of the Charity have the power to bring an appeal against such an Order. The Tribunal itself has the powers set out in schedule 6 to quash the 2021 Order in whole or in part and (if appropriate) remit the matter to the Charity Commission or substitute for all or part of the 2021 Order any other order which could have been made by the Charity Commission, or add to the 2021 Order anything which could have been contained in the 2021 Order made by the Charity Commission.
83. The Tribunal concludes that the Interim Manager and the Charity Commission had the benefit of the review carried out by the Interim Manager when making decisions. However, it is not clear that recommendations had been made, as required by the schedule to the Initial Order. If any such recommendations were made by the Interim Manager they had not been made known to the Charity or the trustees of the Charity.
84. The Tribunal finds that the 2021 Order as made has proven to be ineffective in practice. It is clear from the evidence that the Interim Manager has been unable or

unwilling to act without the co-operation or active involvement of the current trustees and has to a large extent relied on the trustees in order to discharge his responsibility to manage the Charity. The 2021 Order was made at the same time that directions were issued by the Charity Commission under section 47 of the Act. The 2021 Order was addressed to the trustees of the Charity and required them to provide the Interim Manager with copies of documents covering 60 different areas of activity or records of the Charity. There is a clear inconsistency in removing the power of the trustees to manage and administer the Charity, whilst at the same time requiring them to produce the records of the Charity, to answer and be responsible for the Charity providing additional information and to communicate with the senior management and the branches.

85. The 2021 Order refers to a contraction strategy to be devised and implemented by the Interim Manager without providing any details or criteria by which such strategy should be devised or any goals or measures that such strategy should achieve in order to be effective.
86. The 2021 Order requires the Interim Manager to make recommendations regarding future governance of the Charity, but this is subject to the contraction strategy being implemented. It appears from the evidence before the Tribunal that the Interim Manager will have considerable difficulty seeking to implement any strategy for the Charity unless steps are taken to address the governance of the Charity and to maintain or create a minimum standard of central control over the branches of the Charity.
87. Having concluded that the Initial Order should not be discharged and that the appointment of the Interim Manager should continue and having found that the 2021 Order that has been made is ineffective in practice, reflects contradictory conclusions about the role of the trustees of the Charity, prejudices the results of the Inquiry and does not address the governance failings at the heart of the mismanagement of the Charity, the Tribunal concludes in all of the circumstances of this case that it is appropriate to quash the 2021 Order in part and remit the matter to the Charity Commission for the 2021 Order to be amended.
88. The Tribunal quashes those parts of the 2021 Order, including the Schedule, that appoint the Interim Manager to the exclusion of the Trustees, requires the implementation of a strategy for the orderly contraction of the Charity's branch structure and defers the making of recommendations about, or the implementation of, improvements in governance.
89. The 2021 Order is remitted to the Charity Commission for a fresh decision to be made on those parts of the 2021 Order referred to above and for the 2021 Order to be modified to reflect the findings of fact and law in this decision and otherwise in such manner as the Charity Commission sees fit. The Tribunal does not make any direction with regard to the fresh decision to be made by the Charity Commission.
90. The Tribunal recognises the Charity Commission's statutory objectives under section 14 of the Act and its statutory functions under section 15 of the Act and that the Charity Commission may revise the 2021 Order as it sees fit, including those parts of the 2021 Order that are not quashed by the decision.

91. The Tribunal makes the following recommendations for the Charity Commission to take into account in reconsidering the terms of the 2021 Order:
- The governance of the Charity should be addressed urgently. The constitution of the Charity should be amended so as to permit trustees to be appointed by such means as are necessary to ensure they can act independently and in the best interests of the Charity at all times and can remain in office, subject to removal for misconduct, for such a period of time as is necessary to effect reforms of the Charity.
 - The Interim Manager should give priority to implementing effective systems and controls over all parts of the Charity and over all assets, including funds of the Charity.
 - In order to enable these recommendations to be implemented, the Charity Commission should permit the trustees of the Charity to remain in office with such powers and responsibilities as are necessary or useful to enable them to work with the Interim Manager in amending the constitution of the Charity and in implementing and operating effective systems and controls across the whole of the Charity.
 - The strategy of the Charity, which may include a strategy to reduce the scale and scope of the Charity and the number of branches where necessary to ensure that effective systems and controls are in place, should be devised by the Interim Manager and recommendations made for consideration by the Charity Commission.
 - The Charity Commission should consider whether any such recommendation regarding the strategy that the Charity should pursue will amount to the “results of the inquiry” or will constitute “the report of the person conducting the inquiry” under section 46 of the Act. In which case the Charity Commission should consider whether such recommendations should be published and representations sought pursuant to section 50 of the Act. In any event, the Commission should consider how the Inquiry will come to an end and how those affected by the Inquiry will be informed of its conclusions.

The Decision

92. The appeal is allowed in part.
93. Those parts of the 2021 Order, including the Schedule, that appoint the Interim Manager to the exclusion of the Trustees, requires the implementation of a strategy for the orderly contraction of the Charity’s branch structure and defers the making of recommendations about, or the implementation of, improvements in governance are quashed.
94. The 2021 Order is remitted to the Charity Commission for a fresh decision to be made on those parts of the 2021 Order referred to above and for the 2021 Order to be modified to reflect the findings of fact and law in this decision and otherwise in such manner as the Charity Commission sees fit.

Signed: **Peter Hinchliffe**
Judge of the First-tier Tribunal

Date: **27 January 2023**

ANNEX
Charities Act 2011

76 Suspension of trustees etc. and appointment of interim managers

(1) Subsection (3) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is satisfied—

(a) that there is or has been a failure to comply with an order or direction of the Commission, a failure to remedy any breach specified in a warning under section 75A, or any other misconduct or mismanagement in the administration of the charity, or

(b) that it is necessary or desirable to act for the purpose of—

(i) protecting the property of the charity, or

(ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity.

(2) The reference in subsection (1) to misconduct or mismanagement extends (regardless of anything in the trusts of the charity) to the employment—

(a) for the remuneration or reward of persons acting in the affairs of the charity, or

(b) for other administrative purposes,

of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.

(3) The Commission may of its own motion do one or more of the following—

(a) by order suspend any person who is a trustee, charity trustee, officer, agent or employee of the charity from office or employment pending consideration being given to the person's removal (whether under section 79 or 80 or otherwise);

(b) by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity;

(c) by order—

(i) vest any property held by or in trust for the charity in the official custodian,

(ii) require the persons in whom any such property is vested to transfer it to the official custodian, or

(iii) appoint any person to transfer any such property to the official custodian;

(d) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commission;

(e) order any debtor of the charity not to make any payment in or towards the discharge of the debtor's liability to the charity without the approval of the Commission;

(f) by order restrict (regardless of anything in the trusts of the charity) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commission;

(g)by order appoint (in accordance with section 78) an interim manager, to act as receiver and manager in respect of the property and affairs of the charity.

(4)The Commission may not make an order under subsection (3)(a) so as to suspend a person from office or employment for a period of more than 12 months subject to any extension under subsection (7).

(5)But any order under subsection (3)(a) made in the case of any person (“P”) may make provision, as respects the period of P’s suspension for matters arising out of it, and in particular—

(a)for enabling any person to execute any instrument in P’s name or otherwise act for P, and

(b)in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.

This does not affect the generality of section 337(1) and (2).

(6)The Commission—

(a)must, at such intervals as it thinks fit, review any order made by it under paragraph (a), or any of paragraphs (c) to (g), of subsection (3), and

(b)if on any such review it appears to the Commission that it would be appropriate to discharge the order in whole or in part, must so discharge it (whether subject to any savings or other transitional provisions or not).

78 Interim managers: supplementary

(1)The Commission may under section 76(3)(g) appoint to be interim manager in respect of a charity such person (other than a member of its staff) as it thinks fit.

(2)An order made by the Commission under section 76(3)(g) may make provision with respect to the functions to be discharged by the interim manager appointed by the order.

This does not affect the generality of section 337(1) and (2).

(3)Those functions are to be discharged by the interim manager under the supervision of the Commission.

(4)In connection with the discharge of those functions, an order under section 76(3)(g) may provide—

(a)for the interim manager appointed by the order to have such powers and duties of the charity trustees of the charity concerned (whether arising under this Act or otherwise) as are specified in the order;

(b)for any powers or duties specified by virtue of paragraph (a) to be exercisable or performed by the interim manager to the exclusion of those trustees.

(5)Where a person has been appointed interim manager by any such order—

(a)section 110 (power to give advice and guidance) applies to the interim manager and the interim manager’s functions as it applies to a charity trustee of the charity concerned and to the charity trustee’s duties as such, and

(b)the Commission may apply to the High Court for directions in relation to any particular matter arising in connection with the discharge of those functions.

319 Appeals: general

- (1) Except in the case of a reviewable matter (see section 322) an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column 1 of Schedule 6.
- (2) Such an appeal may be brought by—
 - (a) the Attorney General, or
 - (b) any person specified in the corresponding entry in column 2 of Schedule 6.
- (3) The Commission is to be the respondent to such an appeal.
- (4) In determining such an appeal the Tribunal—
 - (a) must consider afresh the decision, direction or order appealed against, and
 - (b) may take into account evidence which was not available to the Commission.
- (5) The Tribunal may—
 - (a) dismiss the appeal, or
 - (b) if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of Schedule 6.

337 Other provisions as to orders of Commission

- (1) Any order made by the Commission under this Act may include such incidental or supplementary provisions as the Commission thinks expedient for carrying into effect the objects of the order.
- (2) Where the Commission exercises any jurisdiction to make an order under this Act on an application or reference to it, it may insert any such provisions in the order even though the application or reference does not propose their insertion.
 - (2A) Where an application is made for an order under this Act or the Commission proposes to make such an order, the Commission—
 - (a) may itself give such public notice as it thinks fit of the contents of the order applied for or proposed to be made, or
 - (b) may require it to be given by—
 - (i) any person making an application for the order, or
 - (ii) any charity that would be affected by the order.
- (3) Where the Commission makes an order under this Act, the Commission—
 - (a) may itself give such public notice as it thinks fit of the making or contents of the order, or

(b) may require it to be given by—

(i) any person on whose application the order is made, or

(ii) any charity affected by the order.

(3A) Where the Commission's written consent is sought under section 67A, 198, 226 or 280A in relation to a charity, the Commission—

(a) may itself give such public notice as it thinks fit of the contents of the consent sought, or

(b) may require it to be given by the charity.

(3B) Where the Commission gives written consent under section 67A, 198, 226 or 280A in relation to a charity, the Commission—

(a) may itself give such public notice as it thinks fit of the giving or contents of the consent, or

(b) may require it to be given by the charity.

(4) The Commission may, with or without any application or reference to it, discharge an order in whole or in part, and subject or not to any savings or other transitional provisions, if—

(a) it made the order under any provision of this Act other than section 263 (dissolution of incorporated body), and

(b) at any time within 12 months after it made the order, it is satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with this Act.

(5) Except for the purposes of subsection (4) or an appeal under this Act, an order made by the Commission under this Act—

(a) is to be treated as having been duly and formally made, and

(b) is not to be called in question on the ground only of irregularity or informality,

but (subject to any further order) has effect according to its tenor.

(6) Any order made by the Commission under any provision of this Act may be varied or revoked by a subsequent order so made and may include transitional provisions or savings.

SCHEDULE 6

Appeals and applications to Tribunal

1 Decision, direction or order

Order made by the Commission under section 76(3) in relation to a charity.

Decision of the Commission—

- (a) to discharge an order following a review under section 76(6), or
- (b) not to discharge an order following such a review.

2 Appellants/applicants (see sections 319(2)(b) and 321(2)(b))

The persons are—

- (a) the charity trustees of the charity,
- (b) (if a body corporate) the charity itself,
- (c) in a section 76(3)(a) case, any person suspended by the order, and
- (d) any other person who is or may be affected by the order.

The persons are—

- (a) the charity trustees of the charity to which the order relates,
- (b) (if a body corporate) the charity itself,
- (c) if the order in question was made under section 76(3)(a), any person suspended by it, and
- (d) any other person who is or may be affected by the order.

3 Tribunal powers if appeal or application allowed

Power to—

- (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission;
- (b) substitute for all or part of the order any other order which could have been made by the Commission;
- (c) add to the order anything which could have been contained in an order made by the Commission.

Power to—

- (a) quash the decision and (if appropriate) remit the matter to the Commission;
- (b) make the discharge of the order subject to savings or other transitional provisions;
- (c) remove any savings or other transitional provisions to which the discharge of the order was subject;
- (d) discharge the order in whole or in part (whether subject to any savings or other transitional provisions or not).