



**Neutral Citation: [2024] UKFTT 187 (GRC)**

**Case Reference: CA/2023/0014**

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

**Heard at: Field House**

**Heard on: 1 March 2024**

**Decision given on: 7 March 2024**

**Before**

**TRIBUNAL JUDGE D. MCMAHON  
TRIBUNAL MEMBER M. DUGGAL  
TRIBUNAL MEMBER P. FREEMAN**

**Between**

**ANDREA SHIRLAND**

Appellant

**and**

**CHARITY COMMISSION FOR ENGLAND AND WALES**

Respondent

**Representation:**

**For the Appellant: The Appellant appeared on her own behalf as a Litigant in Person.**

**For the Respondent: Mr. F. Rechtman, Head of Litigation Services of the Respondent**

**Decision: The appeal is Dismissed.**

## REASONS

### **Background and Introduction**

1. The Appellant appealed against a Decision of the Respondent dated 18 April 2023 ('the Decision') made pursuant to s.198 of the Charities Act 2011 ('the Act') granting consent to Whiteley Homes Trust ('the Charity'), a corporate body, to amend its objects to replace the wording '**homes appropriate to their needs**' with the wording '**Charitable social housing including but not limited to Alms-house Accommodation**'.
2. Power is vested in the Tribunal to determine the appeal pursuant to s.319 and Schedule 6 to the Act. The Tribunal, in determining the appeal, considered afresh the Respondent's decision to make the Decision and made its own determination on the balance of probabilities, on the issues raised, having regard to all of the written and oral evidence and submissions before it adduced by both parties.
3. The appeal was determined in an in-person hearing on 1 March 2024. Following discussions between the parties, directions were agreed for the efficient conduct of the hearing that were communicated to the Tribunal on 08/02/2024. A Consolidated Hearing Bundle, with an Index; an Authorities Bundle, with an Index, containing only the authorities specifically referred to by each party in their respective Skeleton Arguments and the said Skeleton Arguments were provided to the Tribunal. A large amount of additional written evidence was adduced by the Appellant close to the date of hearing and was assembled and furnished to the Tribunal by the Respondent in Hearing Bundle B, with an Index. While the Tribunal noted that written evidence, it was not central to the determination of this appeal.
4. The Appellant brought this appeal as a 'person affected' by the Decision, namely, a beneficiary of the Charity. No issue arose concerning the capacity, or *locus standi* of the Appellant to bring the appeal as a 'person affected'.
5. Since the Appellant was unrepresented, a certain latitude was afforded to her by the Tribunal in the exercise of the Tribunal's enabling role. In particular, the Respondent, by consent, was invited to present its case first.

### **The Appeal**

6. The Appellant, in her Notice of Appeal dated 25 May 2023 (as subsequently amended on 2 October 2023), sought to have the Decision quashed, and remitted back to the Respondent, on four grounds, namely, that the Decision represented a breach of natural justice; that the incorrect test was applied by the Respondent in making the Decision; that the Decision was irrational and that the effect of the Decision would work against the previous Objects of the Charity.
7. The Appellant, through her own oral and written evidence and submissions, elaborated on these assertions. The Respondent's representative, in addition to submissions directly on behalf of the Respondent, made submissions addressing each of the Appellant's assertions. All of this written and oral evidence, and submissions, were considered by the Tribunal in deciding this appeal.

## **Findings of Fact**

8. There was no witness evidence from either party. The appeal was decided solely on the basis of written and oral evidence and submissions adduced and made by each of the parties.
9. Despite a number of discrete issues being raised by the Appellant, this appeal was confined to a single issue, namely, whether a Consent, pursuant to s.198 of the Act should be granted to the Charity permitting it to alter the said wording to that sought by it, contained in its Articles of Association and was decided solely on that basis.
10. A Consent pursuant to s,198 of the Act has not previously been the subject of an appeal to the Tribunal or to any other judicial authority.
11. The Charity itself was not a party to these proceedings but, quite properly, had been made aware of the proceedings by the Respondent, but had chosen not to take part.
12. The Act contains no provision that states how an application for a Consent pursuant to s.198 should be considered and applied by the Respondent (or the Tribunal on appeal).
13. In those circumstances, the Respondent had published an operational policy Guidance document (OG518) setting out a three-fold test that it would apply in deciding whether to grant a s.198 Consent to a corporate charity (as was the case of the Charity concerned in these proceedings), namely:
  - 1) were the proposed new Objects exclusively charitable;
  - 2) was the request of the trustees of the charity for a s.198 Consent rational in its circumstances;
  - 3) did the proposed new Objects undermine or work against the previous Objects of the charity?

It was the policy of the Respondent to only grant s.198 Consent if all three tests were satisfied.
14. This Guidance does not bind the Tribunal in deciding this appeal.
15. The Charity was the sole trustee of the William Whiteley Endowment Trust that holds the land in question managed and operated by the Charity.
16. The endowment contained in the will of William Whiteley ('the Will') referred to the provision of housing for aged, poor persons with a discretion given to trustees whether to charge rent or not and, overall, giving a discretion to the trustees to manage the provision of such housing.
17. Accordingly, the Objects of the Charity required to be read to be read in conjunction with the Will.
18. Essentially, the proposed change to the Objects of the Charity left the overarching Objects unchanged, once the said three-fold test was applied and, in effect, the proposed change concerned a change to the *means* by which the Objects could be delivered, namely, charitable social housing to include, but not be limited to, alms-house accommodation: alms-house accommodation is not excluded by the Proposed change to the wording of the Objects of the Charity.

19. The Respondent has also published Guidance on Alms-house Charities (OG65).
20. Most alms-house accommodation providers are social housing providers.
21. The wording 'charitable social housing' is standard wording used by the Regulator of Social Housing and in the Respondent's Guidance document OG65 (Alms-house Charities).
22. The Charity had power to amend its Objects and was obliged to take whatever rational, reasonable, appropriate and lawful steps it saw fit, within a range of potential steps, to ensure the financial security of the Charity. It is important to emphasise that the Charity, through its trustees had discretion to make such decisions.
23. In order to achieve funding from Homes England, with the endorsement of the Regulator of Social Housing, the Charity essentially, had to amend its objects in the format proposed.
24. The proposed changes in wording to the Charity's objects excluded from the beneficiary class persons who were able to afford to pay 80% of the relevant rent: such persons could not be described as 'poor'.

### **The Statutory and Legal Framework**

25. An appeal against the Decision can be brought by a 'person affected', as in this case, pursuant to s.319 of the Act.
26. The burden of proof rests on the Appellant, on the balance of probabilities to prove that Consent, pursuant to s.198 of the Act should not be granted, relying on the non-binding, but highly-persuasive, authority of *Hipkiss v. Charity Commission* (CA/2017/0014). This authority is also incontrovertible authority for the proposition that this appeal cannot be, and is not, a review by the Tribunal of the Respondent's decision-making that may have led to it making the Decision.
27. In determining this appeal, the Tribunal had regard to, as it was required, the Respondent's statutory objectives and general functions as set out in ss.14 and 15 of the Act, in summary, essentially, the 'Public Confidence' objective; the 'Compliance Objective' and the Charitable Resources Objective'.
28. In summary, the request of the Charity, a corporate body, required, pursuant to s.198 of the Act, the consent of the Respondent to alter its Objects set out in its Articles of Association, as this a 'regulated alteration' within the terms of s.198 of the Act.
29. The Respondent cannot, pursuant to s.20 of the Act, be directly involved in the administration of a charity, nor make decisions for a charity that are reserved to the trustees of the charity (albeit, on appeal, it is the Tribunal that makes the relevant decision but, it too, is constrained by the provisions of s.20 to the Act).
30. This statutory framework, and the proper approach to be taken was very firmly endorsed by the decision of the Supreme Court in *Lehtimäki and Others v. Cooper* [2020] UKSC 33, where the Court stated that "...the role of the [Tribunal] is to ensure that the trustees of a charity exercise their discretion properly and that the [Tribunal] does not interfere in the trustees' exercise of a discretionary power unless they act improperly or unreasonably."

31. There is no legal obligation on a corporate Charity, as here, (nor on the Respondent) to give public notice of its application for s.198 Consent. Nevertheless, the Charity did consult with its beneficiaries on the proposed request to change the said wording in its Objects.

### **Conclusions and Reasons**

32. A primary issue for the Tribunal was whether the variation in its Objects sought by the Charity, if granted, remained in compliance with the terms of the Will and was a request, founded upon a decision of the Charity that was within a reasonable band of decisions that could be made by it in its discretion, that is, that the said decision did not represent the Charity acting improperly or unreasonably. The Tribunal was satisfied, on the balance of probabilities, having regard to the evidence and submissions, written and oral of both parties, and having regard to the fact that the burden of proof lay on the Appellant to show otherwise, that these criteria were satisfied.
33. The Tribunal found that the three-fold test devised by the Respondent, contained in Guidance document OG518, was an appropriate and reasonable test to decide whether to grant a Consent pursuant to s.198 of the Act, without needing to alter those tests, in whole or in part, or to substitute that three-fold test with a different test.
34. The Appellant, in the course of her submissions raised a question of the Respondent, in granting s.198 Consent to change its Objects in the manner that was the subject of this appeal, was acting in bad faith. That assertion was rejected by the Tribunal as, firstly, lacking in evidence and, secondly, it was not the role of the Tribunal in deciding this appeal, to review the Respondent's decision-making: this appeal fell to be decided by the Tribunal alone looking at the matter, the subject of the appeal, entirely afresh.
35. The Respondent also published Guidance (OG518) relevant to the second of the three-fold test when considering whether to grant s.198 Consent to a proposed change in the Objects of a corporate charity. The Tribunal saw no reason to diverge from that approach in making its own decision on this appeal and decided that the request of the Charity for consent to change the said wording of its Objects was a request within the range of requests that could be made by the Charity and that could be given the necessary s.198 Consent.
36. The Appellant confirmed in her written and oral submissions, that she did attend a consultation event, as a beneficiary, with the Charity concerning its proposed change to the wording to its Objects.
37. The Appellant's ground of appeal alleging a breach of natural justice, was based upon an assertion that she had not been provided with full disclosure of all documentation concerning the Charity's proposal. However, the Appellant was provided with full disclosure in anticipation of this appeal. Accordingly, the Tribunal declined to accept that ground of appeal since the decision of the Tribunal was an entirely fresh decision and was not a review by the Tribunal of the Respondent's decision-making process.
38. In her revised Reply document, and in her oral submissions, the Appellant also relied on the fact that a previous planning application by the Charity, that would, potentially, have altered the Objects of the Charity in a material fashion, had been refused. This assertion in support of her appeal, together with her relying on a previous cy-près

application having been made by the Charity to extend the class of beneficiaries of the Charity, and her reference to a future potential, identified in a document entitled 'Masterplan 2050' produced by the Charity (that did not refer to 'beneficiaries'), all referred to matters that were not, and could not, be the subject of this appeal: the only matter that could concern the Tribunal in deciding this appeal was whether Consent pursuant to s.198 of the Act should be granted by the Tribunal in respect of the specific application made to the Respondent by the Charity to change the said wording in its Objects. The Tribunal could not decide this appeal on the basis of past actions, or speculative effects of possible future actions, of the Charity; indeed, if the Charity were to take future actions that, arguably, offended its charitable status, within the terms of the Will, such events might well, in addition, require a new decision to be made by the Respondent, resulting in a new right of appeal accruing to a party with the requisite *locus standi*.

39. The Appellant, in support of her appeal, stated that there was always conflict between the trustees of the Charity. This, however, if it were the case, was not relevant to the determination by the Tribunal of this appeal: there was no issue that the Charity had decided to seek to change its Objects by changing the said wording and that, to be effective, this required s.198 Consent from the Tribunal where the decision made by the Respondent had been appealed.
40. The Appellant, in her written and oral submissions, maintained that to provide the requisite s.198 Consent to the Charity to change its Objects by adopting the proposed new wording would only serve to undermine what William Whiteley wanted, by reference to the Will, as evidenced, she maintained, by including the words 'affordable market rate' in its 'Masterplan 2050' document. However, a careful reading of the Will does not support the contention that William Whiteley's intentions, as set out in the Will, were affected adversely in any fashion, by reference to the Charity's beneficiaries, by the proposed new wording in the Charity's Objects: the Charity will still, by receiving the requisite s.198 Consent, require to provide housing to the same beneficiary class as before.
41. The Appellant submitted that the essence of her appeal was inclusion of the proposed wording 'not limited to', maintaining that the only permitted beneficiaries of the Charity had to be residents, like her, in the alms-houses and that, in effect, if a s.198 Consent were to be granted to the Charity, a *cy-près* occasion would have arisen. This submission was not accepted by the Tribunal: the only entity who could decide whether or not a *cy-près* occasion had arisen was the Respondent (or, on any appeal, the Tribunal). There are very specific statutory provisions contained in the Act that provide how, and if, a *cy-près* occasion may have arisen. There is nothing in the facts surrounding this appeal that raise any potential that a *cy-près* occasion may have arisen: this appeal was only concerned with whether a Consent, pursuant to s.198 of the Act, having regard to the three-fold test established in the Respondent's Guidance document, adopted by the Tribunal, should be granted to the Charity permitting it to change its Objects by changing the wording of those Objects in the manner sought by it.
42. A crucial piece of written evidence before the Tribunal was a detailed letter dated 25 July 2023 from the Charity to the Appellant explaining precisely why the Charity had decided to change the wording of its Objects in the manner it did and had sought the necessary s.198 Consent to that change from the Respondent. The Tribunal decided that, in fact, by reference to that letter of explanation, beneficiaries of the Charity, including the Appellant, would only but benefit from the change in wording to the Objects and represented a proper discharge by the Charity of its fiduciary duties to the beneficiary class of which the Appellant was one. Accordingly, the Tribunal had no

hesitation in deciding to grant the necessary s.198 Consent to the change to the Charity.

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

**Date: 6 March 2024**