



**Neutral Citation: [2024] UKFTT 282 (GRC)**

**Case Reference: CA/2023/0007**

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

**Heard by: HMCTS Cloud Video Platform**

**Heard on: 20 and 21 December 2023**

**Decision given on: 8 April 2024**

**Before**

**TRIBUNAL JUDGE DAMIEN MCMAHON  
TRIBUNAL MEMBER MANU DUGGAL  
TRIBUNAL MEMBER STUART REYNOLDS**

**Between**

**KRISTINE LOVELADY**

Appellant

**and**

**CHARITY COMMISSION FOR ENGLAND AND WALES**

Respondent

**Representation:**

For the Appellant: The Appellant was not represented and appeared on her own behalf.

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

**Decision: The appeal is Dismissed.**

**REASONS**

**Background and Introduction**

1. The Appellant appealed against an Order of the Respondent dated 4 May 2023 ('the Removal Order') made pursuant to section 76 and section 79 of the Charities Act 2011 ('the Act') removing the Appellant from acting as a trustee of any charity. This Order superseded an earlier Suspension Order made on 15 December 2022.
2. Power is vested in the Tribunal to determine the appeal pursuant to section 319 and Schedule 6 to the Act. The Tribunal, in determining the appeal, considered afresh the Respondent's decision to make the Removal Orders and made its own determination on the balance of probabilities, on the issues raised on all the evidence and submissions before it, adduced by both parties, both written and oral.
3. The appeal was determined, following a remote oral hearing, held by CVP, on 20 – 21 December 2023. Following various Tribunal Directions being made culminating in Directions made by a Tribunal judge on 28 November 2023, a Consolidated Hearing Bundle; an Authorities Bundle; a Witness Statement Bundle and Skeleton Arguments of each party were provided to the Tribunal. The Appellant, in advance of the hearing, sent considerable further documentary evidence to the Tribunal, some of which was too large to be furnished electronically. This was contrary to Tribunal Directions concerning the preparation of the Bundles.
4. On 17 January 2023, the Appellant sought a review by the Respondent of the making of the Suspension Order and filed an appeal against its being made. On 28/03/223, the Tribunal stayed that appeal pending the review. On 4 May 2023 the Suspension Order was upheld and the Removal Order, with reasons, made. On 8 August 2023, the Tribunal lifted the stay and, on the same day, the Appellant appealed the Removal Order.
5. The Removal Order was based on a finding by the Respondent that the Appellant had:
  - failed to file accounts information;
  - failed to comply with various Directions and Orders made by the Respondent;
  - failed to provide information concerning an alleged substantial personal benefit that accrued to her and her family, from the Charity's property;
  - issues concerning payments made to other trustees of the Charity from Charity assets and failure to account for the Charity's finances;
  - breach of the Charity's Governing Document and a general failure in the administration of the Charity;
  - provision of misleading information to the Respondentand that it was proportionate to make the Removal Order.

The detail of the Respondent's findings on each of these issues was very fully set out in the Respondent's Skeleton Argument and in its oral submissions.
6. The Response of the Respondent was filed on 4 May 2023 (pages 198-289).
7. The Respondent's reasons for making the Removal Order are set out in pages 390-406 of the Consolidated Hearing bundle.
8. The Appellant, on 16 December 2023, made application in writing to have this appeal held in private, that is, *in camera*. At the invitation of the Tribunal in advance of the opening of the hearing, the Respondent made representations, in writing, objecting to that application. At the opening of the hearing, the Tribunal refused the Appellant's application as to grant it would offend the immutable principle of open justice, there

being no issue, for example, of national security being compromised. It was also acknowledged that the Appellant was unrepresented and that, accordingly, in its enabling role, the Tribunal would ensure that she was enabled to put forward her case but that the Tribunal could not be an advocate for her. It was emphasised to the Appellant that it was prohibited in law for any person to record or publish, in whole or in part, any part of these proceedings. The Appellant expressed her acknowledgement and satisfaction at these explanations and that these went some way to allaying her concerns that led her to ask that these proceedings be heard *in camera*.

9. There being no objection from the Respondent, the Tribunal agreed to admit late evidence submitted by the Appellant, with the exception of a 28 page written document, described as a 'Witness Statement', submitted by her after the 28 November 2023 deadline. However, to further enable the Appellant as a litigant in person, the Tribunal accepted the Appellant's written Grounds of Appeal as her written evidence in chief and, thus, a Witness Statement from her.
10. By way of further enablement of the Appellant, the Tribunal recessed for a generous period of time, following the oral evidence of the parties, to allow the Appellant further time to prepare her oral closing submissions, and a further recess following the Respondent's closing submissions, to allow her time to prepare her oral submissions by way of Reply.
11. On 21 February 2024, the Appellant, sent voluminous further documentation to the Tribunal stating again her assertion of 'personal trial and pressure by social media'. It also included a further copy of a document from a witness for the Respondent, Marie Joyce, who had attended the hearing of this appeal and who was cross-examined by the Appellant at her request. Apart from that document, which was already within the knowledge of the parties and the Tribunal, the furnishing by the Appellant of the other documentation was found to be inappropriate, of no relevance to the determination of this appeal and therefore was not, as a matter of procedural fairness to both parties, considered by the Tribunal.
12. In response to the various significant concerns expressed by the Respondent as to alleged misconduct and mismanagement of the Charity by the Appellant, the Appellant was, regrettably, inconsistent and contradictory in her written and oral evidence. In essence, her evidence amounted to a plea for a less serious view to be taken of her misconduct and mismanagement, as a trustee, in connection with the governance and administration of the Charity.

### **The Appeal**

13. The Appellant, in her Notice of Appeal dated 26 January 2023 (pages 1-118) sought to have the Suspension Order 'removed' and Muffin Pug Rescue ('the Charity') to be permitted to continue with the benefit of professional support and expertise. However, there was no Order made against the Charity. The Appellant, in effect, offered various mitigations against the making of the Suspension Order. As stated in paragraph 4 above, the Suspension Order was superseded, and was no longer of any effect, once the Respondent, on 4 May 2023, made the Removal Order removing the Appellant from being a trustee of the Charity. The only appeal before the Tribunal for determination was the Appellant's appeal against the Removal Order made against her. The Appellant furnished what are described as 'Amended Grounds of Appeal' on 8 August 2023, this time by way of appeal against the making of the Removal Order (pages 119-197).
14. The Appellant, through her own oral and written evidence and oral evidence of Kathleen King, witness for the Appellant, and Marie Joyce, witness for the Respondent,

elaborated on the assertions in the Amended Grounds of Appeal in their Witness Statements. The Tribunal found that most of the Appellant's witness statements these were character references for the Appellant and, therefore, of little probative value to the determination of this appeal. Nonetheless, all of this written and oral evidence, and submissions, were considered by the Tribunal in making its Decision.

### **Issue**

15. The sole issue in this appeal was whether, at the date of the Removal Order, the statutory criteria contained in sections 76 and 79 of the Act, to remove the Appellant from acting as a trustee of the Charity, were satisfied and whether the making of the Removal Order was proportionate in all the circumstances. Neither the history of the Charity, no matter how meritorious, nor the complaints made by the Appellant to the Respondent, were an issue for determination by the Tribunal in this appeal. Essentially, the issue was whether there were instances of misconduct or mismanagement by the Appellant, a trustee, in the administration of the Charity, and whether those posed a risk to the Charity's property. While the Respondent relied upon a list of alleged mismanagement and/or misconduct instances that it attributed to the Appellant, it was a matter for the Tribunal to consider the position *de novo* and make its own decision, the burden of proof resting on the Appellant to show, on the balance of probabilities, that the statutory test to show misconduct or mismanagement on her part, was not met so that it was inappropriate to issue a Removal Order and/or that the making of a Removal Order was not proportionate.

### **Factual Background**

16. The Appellant was a trustee of the Charity from the outset when it was established and registered in October 2015. At different times, there were other persons who were co-trustees of the Charity. From 1 August 2022, the Appellant was not a trustee of the Charity but the Charity remained constituted.
17. At times animosity existed between the Appellant and other trustees of the Charity.
18. The Appellant did not fully appreciate her roles and responsibilities as a trustee of the Charity and that she, personally, was not the Charity or the embodiment of it even though the Charity was created by her.
19. The Respondent took regulatory action in the form, initially, of a Suspension Order, and then a Removal Order against the Appellant and, at the time, the only other trustee of the Charity, the Appellant's son (the Appellant in a linked appeal, withdrawn by him shortly before the opening of this appeal).
20. Substantial personal benefit accrued to the Appellant and connected persons (her family) from using a large property ('The Orchard, 242, Chester Road, Cheshire'), paid for by the Charity, as the family residence of the Appellant, rent-free (albeit denied by the Appellant under cross-examination) as well as other personal benefits accruing to persons (family) connected to the Appellant.
21. The Appellant failed to comply with various Directions and Orders issued by the Respondent.
22. The Appellant was responsible for a failure of the Charity to file accounts as required under charity law. She accepted this under cross-examination but said that, due to COVID, there were extenuating circumstances.

23. The Appellant provided misleading information to the Respondent not least on the issue of which person or entity was paying rent for The Orchards and whether the landlord was aware that this property was being used for the purposes of the Charity.
24. The Appellant was responsible for a breach of the Charity's Governing Document and failures in the general administration of the Charity.
25. The Appellant was responsible for a misapplication of the funds of the Charity and a failure to account for the finances of the Charity. Under cross-examination, the Appellant accepted that she had used Charity funds to purchase personal items but that she had kept accounts of such expenditure. She accepted, too, that all such payments were made by her reflected poor judgement and that it was not acceptable to make payments to herself, but submitted that these were repayment of loans she had made earlier to the Charity. However, there was no evidence of the existence of Loan Agreements between the Appellant and the Charity.
26. Only the Appellant and her son, the Appellant in the withdrawn linked appeal, were signatories for payments by the Charity but there were no Minutes of meetings of the Charity, or its trustees, authorising same. At different times, in addition to the Appellant and her son, there were two other trustees of the Charity, namely, Kathleen King and Olivia King.
27. At all relevant times, there were only two trustees of the Charity - the Appellant and her son – despite the Governing Document of the Charity requiring there to be no fewer than three trustees.
28. The Respondent had opened a Statutory Inquiry into the Charity, that remained ongoing at the date of hearing of this appeal. There was no application for review of the opening of that Statutory Inquiry before the Tribunal. The Removal Order, directed to the Appellant, was made during the ongoing Statutory Inquiry, as the Respondent felt this was necessary to protect the property of the Charity, having regard to the alleged misconduct and/or mismanagement by the Appellant as a trustee of the Charity.

### **The Statutory Framework**

29. In determining this appeal, the Tribunal is required to have regard to the Respondent's statutory objectives as set out in sections 14-16 of the Act, in summary, the 'Public Confidence' objective; the 'Compliance Objective'; the Charitable Resources Objective' and the 'Accountability Objective' in order to encourage voluntary participation by members of the public in charitable work.
30. The cumulative activity of the Appellant only served to undermine these objectives: the roles and responsibilities of charity trustees are significant and cannot be treated lightly, or as optional, as occurred in this case.
31. Pursuant to section 79 of the Act, the Respondent may make an Order removing, *inter alia*, a trustee of a charity who had been responsible for misconduct or mismanagement of the charity; or who knew of same and failed to take any reasonable step to oppose it; or, whose conduct contributed to or facilitated it, in order to protect the charity where it has instituted a Statutory Inquiry into the affairs of the charity are satisfied.
32. The terms 'misconduct' or 'mismanagement' are not defined in the Act. However, in Guidance issued by the Respondent, following the Tribunal decision in *Mountstar (PCT) v. Charity Commission*, and in *Scargill v. Charity Commission*, 'misconduct' is taken to include any act or failure to act in the administration of the charity which the

Appellant knew or ought to have known was criminal, unlawful or improper while 'mismanagement' is taken to include any act or failure to act in the administration of the charity that may result in significant charitable resources being misused or the people who benefit from the charity being put at risk.

33. In addition, even where the said criteria are satisfied, the Tribunal, standing in the place of the Respondent, having regard to the information before it at the hearing, in determining the appeal against the Removal, had to consider whether, if it were to make a Removal order removing the Appellant from being a trustee of the Charity, that such a step was proportionate. Having regard to the level of risk to the Charity and its reputation. There was no dispute between the parties as to the questions that fell to be considered in deciding that particular matter, the burden falling upon the Appellant in that regard.

### **Conclusions and Reasons**

34. While the Appellant continued to maintain that there was no misconduct or mismanagement on her part in discharging her role as a trustee of the Charity, the Tribunal concluded, on the evidence, on the balance of probabilities, and its findings of fact, that the appeal had to be refused and the Appellant removed as a trustee of the Charity; that the statutory imperatives set out in sections 76 and 79 of the Act, were satisfied, and that removal was a proportionate action to take.
35. The Tribunal further concluded that the Appellant, having regard to the matters set out in its findings of fact, was the person primarily responsible for the proven misconduct and mismanagement in the administration of the Charity, due to a lack of understanding on her part of the proper management of charities as set out in the Respondent's Guidance Document; and the statutory obligations of the Respondent (or the Tribunal on appeal), as set out in sections 14-16 of the Act, and the role and responsibility of a charity trustee.
36. The power to remove a charity trustee from acting in the capacity of Trustee is vital to protect charities.
37. Evidence from Ms. Joyce of the Respondent gave cause to show that there were, potentially, even greater concerns regarding the misconduct and mismanagement of the Charity by the Appellant in her role as a trustee of the Charity, arising out of the ongoing Statutory Inquiry into the affairs of the Charity. While not directly relevant to the determination of this appeal, it gave the Tribunal even greater cause for concern and provided useful, indirect, supportive evidence to its determination of this appeal and was an appropriate consideration in all the circumstances.
38. While the removal of the Appellant as a trustee of the Charity is indefinite, it is always open to her to make application to the Respondent, pursuant to section 181 of the Act, to apply for a waiver of the removal, a waiver that must be granted after five years unless there are exceptional circumstances that dictate otherwise.
39. The Tribunal decided that, as a basic premise, the Appellant showed a worrying disregard or complete lack of understanding, as a trustee, for the law relating to charities.
40. There was a distinct lack of appreciation shown by the Appellant of her roles and responsibilities as a trustee of a charity and that she did simply not appreciate or understand the issues her actions, as a trustee, raised for the proper conduct and management of the Charity.

41. The Appellant accepted, but only at the hearing, in her written and oral evidence, most of the instances of misconduct and mismanagement committed by her in her role as a trustee of the Charity, as alleged by the Respondent but, worryingly, sought to justify some of that misconduct and mismanagement. Even in respect of those instances fully admitted by her, such as a failure to file accounts, she still sought to blame professional advisers rather than recognise her responsibilities and duties as a trustee of the Charity. She also accepted, in oral evidence, that a trustee of a charity must comply with Directions and Orders issued by the Respondent. Even if only one of the concerns raised by the Respondent were true (a fact accepted by the Appellant) that, alone, would have been sufficient to justify the making of a Removal Order.
42. The Tribunal concluded that the Appellant, by her conduct, placed the Charity in significant financial and reputational risk; that the Appellant was unfit to discharge the duties of a trustee of the Charity as, by her conduct, the Appellant damaged public trust and confidence in charities generally. Consequently, the Tribunal was satisfied that it was desirable in the public interest to make Removal Order within the statutory framework.
43. The Appellant accepted she and her family benefited from personal gain due to her actions as a trustee of the Charity despite the existence of an obligation on her to protect the funds of the Charity. Therefore, the Tribunal found that this gain amounted to misconduct and mismanagement as alleged. There was a serious failing on her part, in any event, in not separating personal expenditure and expenditure by, or on behalf of, the Charity which was simply not done correctly or appropriately.
44. The Appellant was being 'paid' as a trustee without there being appropriate authorisations or consent of at least three trustees of the Charity, the Governing Document requiring that. There were, at the date of the decision under appeal, only two trustees.
45. The Appellant attempted to justify this particular misconduct and mismanagement by submitting that her receiving funds from the Charity was a repayment of a loan made by her to the Charity. This was not accepted by the Tribunal in the complete absence of any loan agreement being produced as evidence.
46. Despite advice from the Respondent, the Appellant, as a trustee of the Charity, continued and repeated this pattern of misconduct and mismanagement behaviour over a number of years.
47. The Appellant was the 'controlling mind' of the Charity and these breaches of fiduciary duty owed to the Charity made her misconduct and mismanagement actions all the more significant and serious.
48. It was accepted that the Appellant's partner did incur expenses in travelling to collect dogs. However, this had to be subject to proper, accountable procedures being in place, but these were not present. Further, the Appellant's partner quite candidly stated in writing in a witness statement he gave in criminal proceedings in 2020 –  
  
***“Financially, our family relies on the income generated by the Charity. This includes the rent for the house which is the HQ of the Charity and its registered office.”***
49. However, the landlord of the property, in response to a Notice to him issued by the Respondent, dated 16 April 2023, stated that he -

***“was unaware that the property was being used to rescue and house Pugs.”***

50. The Tribunal accepted, and found, that, in relation to rent being paid for The Orchards was simply not credible and that alone amounted to her providing misleading information to the Respondent.
51. Nothing emerged in the course of this hearing to justify the Appellant being treated differently than any trustee faced with removal from acting as a trustee of a charity; indeed, to the contrary, the Appellant’s case, at its height, was an attempt to justify, in hindsight, and even deny, the facts giving rise to many findings and instances of misconduct and mismanagement on her part as a charity trustee.
52. The Tribunal was satisfied that the statutory criteria for making the Removal Order are satisfied and that making a Removal Order is proportionate in all the circumstances. The Tribunal concluded that the conduct of the Appellant was seriously detrimental to the interests of the Charity and that harm was caused to the Charity for which she was primarily responsible and there was a risk of further harm arising from further misconduct or mismanagement if the Removal Order is not made. Further, the evidence before the Tribunal established a specific link between the Appellant and the misconduct and mismanagement identified by the Respondent. For the reasons stated in the preceding paragraphs, the Tribunal is satisfied that to make the Order is proportionate. In considering the question of proportionality, the key issue is the need to increase public trust and confidence in charities and to promote compliance by charities with their legal obligations in the proper administration of charities. The Tribunal considered that to fail to make a Removal would only serve to pose an unacceptable level of risk to the Charity by the Appellant.
53. This appeal against the making of the Removal Order is refused.

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

**Date: 4 April 2024**