

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

IN THE MATTER OF THE DOVE TRUST

B E T W E E N:

THE CHARITY COMMISSION

Applicant

and

(1) PESH FRAMJEE

(the interim manager of the Dove Trust, appointed pursuant to s. 76 of the Charities Act 2011)

Respondents

WITNESS STATEMENT OF ANGELA ASCROFT

I, Angela Ascroft of the Charity Commission, PO Box 211 Bootle L20 7YX, Deputy Head of Investigations Team (Liverpool), will say as follows:

Introduction

1. I am the Deputy Head of Investigation at the Charity Commission (the “Commission”). I have been employed by the Commission since October 2001. I am the Commission officer dealing with the Dove Trust case and am authorised to make this witness statement in support of the Commission’s application for permission to use the remaining funds so as to cover the Interim Manager’s (“IM”) final bill of costs with the remaining balance be refunded to the Commission towards its substantial outlay as set out in more detail below.
2. A paginated exhibit bundle marked AA1 has been produced in support of my witness statement and I will refer to this in the course of this witness statement. References to page numbers in this witness statement are references to page numbers of exhibit AA1 unless otherwise stated.

BACKGROUND

3. The Commission is the statutory registrar and regulator of charities in England and Wales. Its general functions, performed on behalf of the Crown, are set out in s. 15 of the Charities Act 2011 (the “2011 Act”). The Commission is funded by grants from Treasury currently of approximately £25m per annum to cover staffing and admin costs as well as operational

costs. The Commission regulates approximately 168,000 registered charities and deals with new registration applications.

4. The Dove Trust is a charitable trust established in 1983 and registered as a charity with the Commission shortly thereafter (the “Charity”). The Charity was established for such charitable purposes as the trustees thought fit, with the trust deed granting the trustees power to “themselves engage in charitable activities”. In 2004 the trustees of the Charity attempted to do this by establishing and running a website called www.charitygiving.co.uk (the “Website”). The purpose of the Website was, broadly speaking, to facilitate charitable giving by members of the public by allowing donations to be made for the benefit of other charities or good causes (‘the Creditors’) by credit or debit card, and with Gift Aid being claimed by the Charity on behalf of donors.
5. The Commission had concerns as to the management of the Charity. On 25 August 2011, the Commission opened a statutory inquiry under what is now s. 46 of the Act 2011 for the purposes of investigating such concerns.
6. In due course, the Commission appointed Pesh Framjee to work alongside the trustees as the Interim Manager (the “IM”) of the Charity on 6 June 2013. The IMs costs were paid by the Commission which was unusual at the time and even today. As set out in more detail below, based on the legislation and practice IM fees are generally paid out of the respective charity’s funds as the Commission’s annual funding is limited as set out in paragraph 3 above. The Commission does not get specific Treasury funding to cover IM costs and expenses. On this occasion the Commission decided to pay the IM fees and expenses at the outset as there was no other option, the Charity had no unrestricted funds so it was either the Commission fund the IM or the Charity failed resulting in all the money raised for good causes being lost.
7. On 11 July 2013, after the IM had informed the Commission of his initial findings, the Commission extended the IM’s appointment, with effect from 12 July 2013, so that it was to the exclusion of the other trustees of the Charity.
8. Since his appointment, the IM gave instructions to the Charity’s bankers to stop accepting any donations. The IM also took control of the Charity’s offices and changed the locks.
9. The IM has investigated the operations of the Charity generally, concluded that its business model as operated was not sustainable and so made its staff redundant. He ascertained that funds held in the bank accounts maintained by the Charity are insufficient to discharge its liabilities in full.
10. Following regulatory action taken by the Commission referred to above which, in addition to the appointment of the IM, included the removal of one of the trustees and the resignations

of the remaining trustees, the Charity has had no trustees since January 2014. Should the Commission at this time discharge the IM it would result in a governance vacuum at the Charity meaning the cash surplus could not be applied and the Charity could not be wound up and removed from the Register of Charities.

THE COMMISSION'S HIGH COURT APPLICATION IN 2014

11. As this was a complex case with a substantial number of Creditors (1,812), the Commission sought a direction under section 78(5)(b) of the 2011 Act from the High Court on the following issues in relation to the Charity.
12. The court was asked to:
 - a. determine the legal basis on which monies paid through the Website are held
 - b. give directions as to how the remaining funds are to be allocated between different charities and good, and
 - c. give such further directions as are necessary for the purposes of resolving a number of consequential issues that arise in connection with the Website and the funds held by the IM.
13. A hearing was held on 3 July 2014 and a copy of the judgment ("Court Judgment") is at [Exhibit pages 1-19].
14. The judgment was followed by an order sealed on 5 August 2014 ("Sealed Order") [Exhibit pages 20-23].

THE COMMISSION'S APPLICATION

15. The current application is in accordance with the Sealed Order [Exhibit pages 22-23], in particular paragraph 2, states that "*The Commission shall have liberty to apply (if necessary and if so advised) for an order that the costs of and associated with the appointment of the Interim Manager (which shall, for the avoidance of doubt, include the steps taken by the Interim Manager) and/or the costs of and associated with these proceedings shall be paid out of future recoveries made in connection with the Dove Trust.*"
16. The Commission took the initial view that it should fund the IM fees directly (including associated costs such as the IM's legal fees and agents fees) instead of ordering the IM fees be paid from Charity's income so as to maximise the recovery for the many Creditors of the Charity.
17. As set out in paragraph 16 of Court Judgment [Exhibit page 6], upon the IM being appointed, he discovered that the Charity had approx. £709,529.45 in the bank while the debt to the

Creditors stood at that stage £1,680,230. This clearly showed there were insufficient funds to pay in full those Creditors directly concerned.

18. Also noted in paragraph 56 of Court Judgment, at the time of the court matter, the Commission and IM expected to achieve a recovery of approx. 33p in pound to the affected Creditors. In view of this calculation, the Commission decided at the time to continue paying the IM fees directly rather than through the Charity funds. At that stage, as is noted in the Court Judgment, the Commission had already spent in excess of £250,000 on the IM fees.
19. Since the IM was appointed in 2013 the costs associated with the IM appointment that have been paid by the Commission amounts to approx. £657,000 in fees. The Commission considers the IM fees to be very reasonable in the circumstances and good value for money and therefore such fees are not disputed as the Commission is fully aware of the enormous task the IM had to deal with in the circumstance where there were 1,812 Creditors affected as well as recovery action taken to maximise recovery.
20. We attach public statements made by the IM on the Website [Exhibit pages 24-27] as well as a recent update from him in an email to the Commission [Exhibit page 28].
21. As clearly set in the public statements as well as the email referred to above, the IM managed to recover additional sums to the ones communicated to the court in 2014 and the total declared distribution to creditors now stands at 58.7 pence in the pound against the gross amounts as shown on individual charity accounts. However, these accounts gave full credit for potential Gift Aid reclaims and the reality is that not all of these claims were valid. When the amount of receivable Gift Aid claims not paid over by HM Revenue & Customs is taken into account (by reducing the amount owed to charities and good causes) then the effective amount distributed is nearer to 68 pence in the pound.
22. As set out in the email [Exhibit page 28] the IM has made 3 distributions to Creditors in accordance with the Sealed Order. It apparent that a number of Creditors are either not active or gone away and in some cases cheques were not cashed.
23. In the view the fact that some beneficiaries were no longer trading or gone away, and in light of better than expected recoveries by the IM, this has contributed to the IM now holding a surplus of £84,458 ("Surplus"). (A few payments are still to be made regarding charities and good causes that have now provided alternative banking details)

REMUNERATION OF INTERIM MANAGERS

24. Pursuant to Regulation 3(2) The Charities (Receiver and Manager) Regulations 1992, '*the remuneration of an appointed person shall be payable out of the income of the relevant charity*'.

25. The Commission's operation guidance "OG5-01 – Appointment of Interim Managers" [Exhibit pages 29-53] states that the interim manager is normally paid from the charity's current income funds and future income flows.
26. Exceptionally, the Commission may decide that it is in the public interest to appoint an interim manager even where the income of the charity may be insufficient to meet the remuneration or where it is not clear whether there will be any income to cover such fees but it is in the public interests for the manager to be appointed.
27. This was such an exceptional case in which the Commission at the outset decided to fund the IM directly rather than through charity income for a time as it was in the public interest to try and recover as much as possible for the Creditors.
28. The Commission has spent in excess of £650,000 out of its budget on IM and legal fees and other related costs, where it was open to the Commission to order that these be paid by the Charity.
29. As set out above, the IM did much better than expected in recovery for the Creditors and have recovered 68 pence in the pound as against an initial estimate of 33 pence in the pound.
30. On the basis of the above, in accordance with paragraph 2 of the Sealed Order, we hereby seek an order from the court allowing release of the Surplus to the Commission so as to cover the IM's final bill of costs and expenses with any remaining surplus being used to reimburse in part the Commission for its expenditure to date.
31. Such an order will allow the Commission to recover a small contribution towards its substantial outlay in this matter and finally bring this matter to a conclusion following a lengthy 6 year process. The sum recovered will be put back into operational budget and used in accordance with the Commission's statutory objectives.

CONSULTATIONS WITH CREDITORS

32. As this is an unusual application which affect a large number of potential Creditors, the Commission will seek to consult with the identified Creditors before issuing of the application. The Commission has instructed the IM to post a copy of this witness statement on the Charity's website inviting representations from those potentially affected within 28 days. The Commission will also be posting the same on its website.
33. The Commission will attach a copy of any representations it receives in its application to the court.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed 

Angela Ascroft

Dated 28/10/19