



NCN: [2023] UKFTT 306 (GRC)

**FIRST-TIER TRIBUNAL
(GENERAL REGULATORY CHAMBER)
CHARITIES**

Appeal Reference: CA/2021/0006

**Heard remotely by VHS
On: 1 September 2022 and 15 November 2022**

Before

**Upper Tribunal Judge Rintoul
(sitting as a Judge of the First-tier Tribunal)
Tribunal Member Elizabeth
Tribunal Member Reynolds**

Between

VLADIMIR IOANNOU

Appellant

and

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Representation:

For the Appellant: Mr Deeljur, counsel, by Direct Access

For the Respondent: Ms Hynes, instructed by Legal Services, Charity Commission

DECISION AND REASONS

Preamble

1. The appeal was heard remotely by video using the VHS on 1 September 2022 and via CVP on 15 November 2022. In addition to the representatives, the appellant attended the hearing. The appellant gave oral evidence as did two of his witnesses on the first day. There were several connection issues with video hearing platform, but these were resolved, and no submissions were made that the hearing had been rendered unfair owing to these difficulties.
2. There was insufficient time for the parties to make their submissions at the hearing on 15 November 2022. The panel therefore directed that written submissions be made. The final document – the appellant’s reply – was received on 9 December 2022.
3. The appellant appeals against an order made by the Charity Commission (“the Commission”) on 10 March 2021, disqualifying him from being a charity trustee or a trustee of a charity pursuant to its powers under section 181 A of the Charities Act 2011 for a period of five years.

Appeal Proceedings

4. The appellant appealed in time to the First-tier Tribunal which issued case management directions on 5 April 2021. In accordance with those directions, on 12 May 2022 the Charity Commission served a response and on 28 July 2021 the appellant replied to that, expanding on his grounds of appeal.
5. Further case management directions were issued on 9 August 2021

Statutory criteria for making a disqualification order

6. Section 181A of the Charities Act came into force on 1 October 2016. It provides that the Charity Commission may by order disqualify a person from being a charity trustee or trustee for a charity, either in relation to all charities or in relation to such charities or classes of charity as may be specified or described in the order.
7. Section 181A (6) provides:

The Commission may make an order disqualifying a person under this section only if it is satisfied that—

- (a) one or more of the conditions listed in subsection (7) are met in relation to the person,
 - (b) the person is unfit to be a charity trustee or trustee for a charity (either generally or in relation to the charities or classes of charity specified or described in the order), and
 - (c) making the order is desirable in the public interest in order to protect public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order.
8. The conditions listed in subsection (7) are lettered A to F; we are here concerned primarily (but not exclusively) with D:

D that the person was a trustee, charity trustee, officer, agent or employee of a charity at a time when there was misconduct or mismanagement in the administration of the charity, and—

- (a) the person was responsible for the misconduct or mismanagement,
 - (b) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or
 - (c) the person's conduct contributed to or facilitated the misconduct or mismanagement.
9. If the statutory criteria set out in section 181A (6) of the Charities Act are satisfied (and the procedural requirements in section 181C have been met), then a disqualification order may be made for a specified period not exceeding 15 years. The disqualification period must be proportionate (see section 181B (1) and (2)).

The substantive appeal

6. We now turn to consider the substantive appeal.

Relevant History & factual background

7. The appellant was a trustee of Enfield Island Village Trust, (“the Charity”) which was registered as a charity in 2009, but existed for several years prior to that. EIVT’s purpose is to maintain the facilities of and promote the wellbeing of the inhabitants of Enfield Island Village (“the Estate”), a large housing estate built between 1997 and 2003. EIVT is funded by rent charges paid by freeholders and leaseholders of the estate and is responsible for the upkeep of common land and parkland, some utilities and enforcing legal covenants covering the development. EIVT contracts with a private company to manage the Estate.
8. In December 2009, the appellant purchased property on the Estate and thereby became a member of EIVT. He did not become a trustee until July 2013.
9. Around this time, a serious dispute arose within the charity concerning, amongst other matters, how the estate should be managed and consequently as to the choice of managing agent. There were two main groups of individuals involved in the dispute, each of which claimed to be the validly appointed trustees, and it was this dispute which brought about the Charity Commission’s involvement.
10. On 23 January 2014, Amber Estate Management Ltd (“Amber”) who had until then been managing the estate for EIVT terminated its contracted, leading to a legal dispute between EIVT and Amber as to which party was in breach, Amber issuing proceedings in April 2014.
11. On 26 January 2014, EIVT appointed ICRI Ltd to be its new managing agent. The appellant was a director of ICRI.
12. On 24 October 2014 EIVT entered into an agreement with EIVT Management Ltd (“EIVT Management”), a company of which the appellant was also a director, for it to be its agent from 26 January 2015.
13. On 4 February 2015, the Charity Commission issued an action plan to EIVT in respect of the appointment of trustees, management of conflicts, management of contracts and other perceived risks. On 29 June 2015, the Charity Commission opened a statutory inquiry pursuant to section 46 of the Charities Act.

14. Following that, on 9 September 2015, the Charity Commission appointed Mr Paul Ridout and Mr Con Alexander of Veale Wasborough Vizards LLP (“the interim managers”) to be interim managers of EIVT on its behalf, pursuant to section 76 (3) (g) of the Charities Act.
15. On 11 September 2015, the appellant tendered his resignation as a trustee of EIVT.
16. On 22 October 2015 the interim managers asked the appellant to transfer to them £200,000 being accumulated rental income from two flats owned by the Charity, together with other funds held by ICRI, that figure later being revised to £175,000. The appellant did not do so, save for a transfer of £30,000 on 24 October 2015.
17. There then followed correspondence between the appellant and the interim managers, the appellant contesting the legality of their instructions. He then issued an invoice on behalf of EIVT management for fees for its management services for £306,259.
18. On 5 November 2015, the Charity Commission obtained freezing orders on bank accounts with Barclays and Santander relating to ICRI (“the accounts”), and on 16 November 2015, the contract between EIVT and EIVT Management was terminated by the interim managers. The appellant resigned as a director of EIVT Management on 16 November 2015.
19. On 17 July 2017 the Interim Managers were discharged, following trustee elections, and on 29 March 2018, the respondent directed ICRI to transfer remaining funds in the accounts to the Charity.
20. The Charity Commission reviewed the order of 5 November 2015 on 18 October 2018, stating to ICRI it was satisfied that the order should remain in place. That decision was challenged by ICRI on appeal (case CA/2018/0004). That appeal was dismissed on 7 October 2019, the First-tier Tribunal concluding that funds in the accounts in question were charitable funds and that the order remained necessary.
21. In April 2020 ICRI complied with the direction to transfer funds to the Charity.
22. On 14 January 2021, the Charity Commission wrote to Mr Ioannou notifying him of its intention to disqualify him from being a charity trustee for a period of five years. A provisional statement of reasons were enclosed. On 10 March 2021, the Charity Commission wrote to Mr Ioannou, noting that he had not made representations to them within the time period permitted, and made the order disqualifying him from being a charity trustee for five years.

Respondent’s case – in summary

23. The respondent’s case is set out in the Statement of Reasons dated 10 March 2021 and in the response to the grounds of appeal, dated 12 May 2021.
24. In summary, the Charity Commission concluded that the appellant was a trustee, charity trustee, officer, agent or employee of a charity at a time when there was misconduct or mismanagement in the administration of the charity, and was responsible for that, knew of it and failed to take steps to oppose it or his conduct contributed to or facilitated the misconduct or mismanagement. It reached that conclusion having had regard to three areas: the handling

of the Amber Management Contract; misappropriation of charity property in respect of funds held in three bank accounts controlled by ICRI; and, permitting conflicts of interest to arise as a result of him being a director and shareholder in both EIVT Management and ICRI.

25. The respondent concluded that these matters made him unfit to be a trustee by reason of failing to meet the required standards of competence, in failing to demonstrate honesty and integrity; and, that it is in the public interest to disqualify him in order to protect public trust and confidence in charities generally and that an order should be made. The respondent concluded also that the appellant had put the charity's funds at risk; his misconduct and failings were over a period; he had displayed a persistent disregard for compliance with charity law and had engaged in conduct resulting in charitable funds being transferred outside of the Charity's control. In the circumstances, it considered that five years' disqualification was proportionate.

Appellant's case – in summary

10. In summary, the appellant denies any misconduct or mismanagement. In particular, he says that it was Amber Management who terminated the contract, not him or the Charity; that proper legal advice was taken; that his sending of a letter was done with the approval of the trustees; and, that there was proper documentation of the decisions taken about Amber. With respect to the claimed misappropriation of funds, the appellant's case is that by operation of sections 42A and 42B of the Landlord & Tenant Act 1987 he could not lawfully have transferred out the sums held in the accounts as these were derived from rent charges. Further, and in the alternative, he submits that he had ceased to be a trustee and his actions were as a director of the managing company, not as a trustee, agent or employee of the charity, a company which had a distinct legal personality.
11. The appellant also states that there was in fact no misconduct or mismanagement, it being at all material times evident that he had no intention of misusing the funds. The appellant also avers that there was no conflict of interest, any potential for that being managed or resolved in a timely and lawful manner.
12. The appellant submitted that neither his competence nor his honesty or integrity can be called into question; and, that making the Disqualification Order is neither desirable, necessary nor proportionate.

The law - Statutory criteria for making a disqualification order

13. Section 181A of the Charities Act came into force on 1 October 2016. It provides that the Charity Commission may by order disqualify a person from being a charity trustee or trustee for a charity, either in relation to all charities or in relation to such charities or classes of charity as may be specified or described in the order.
14. Section 181A (6) provides:

The Commission may make an order disqualifying a person under this section only if it is satisfied that—

- (d) one or more of the conditions listed in subsection (7) are met in relation to the person,
(e) the person is unfit to be a charity trustee or trustee for a charity (either generally or in relation to the charities or classes of charity specified or described in the order), and

(f) making the order is desirable in the public interest in order to protect public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order.

15. The conditions listed in subsection (7) are lettered A to F; we are here concerned primarily with D:

D that the person was a trustee, charity trustee, officer, agent or employee of a charity at a time when there was misconduct or mismanagement in the administration of the charity, and—

- (a) the person was responsible for the misconduct or mismanagement,
- (b) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or
- (c) the person's conduct contributed to or facilitated the misconduct or mismanagement.

16. If the statutory criteria set out in section 181A (6) of the Charities Act are satisfied (and the procedural requirements in section 181C have been met), then a disqualification order may be made for a specified period not exceeding 15 years. The disqualification period must be proportionate (see section 181B (1) and (2)).

The law – Tribunal’s function

17. An appeal against the Charity Commission’s Order under s181A requires the Tribunal to “consider afresh” the Charity Commission’s decision (s319 (4) (a) of the 2011 Act). In so doing, it can consider evidence which has become available subsequent to the Charity Commission’s Order (s319 (4) (b) of the 2011 Act).
18. In doing so, we give appropriate weight to the Charity Commission’s decision as the body tasked by Parliament with making decision to disqualify a trustee and we have regard to the Charity Commission’s Explanatory Statement as its policy guiding its decision-making in relation to the power to disqualify. We also remind ourselves that we are conducting a rehearing, not a review: we must use our own judgment and we can vary such a decision where we disagree with it, despite having given it due weight.
19. It is for the Charity Commission to demonstrate that the statutory criteria for disqualifying Mr Ioannou from being a trustee are met. Once it has done so, however, the burden of proof rests with him (as the party seeking to disturb the status quo) to show that a disqualification order should not be made (or that it should be made on different terms and/or for a shorter period of time).
20. It follows that the issue for the Tribunal in determining Mr Ioannou’s appeal is whether the Tribunal would, as at the time of the hearing, disqualify Mr Ioannou from being a charity trustee or a trustee for a charity in relation to all charities and from holding an office or employment with senior management functions in any charity and, if appropriate to make such order, the length that order should last.

The hearings

21. On the first day of the hearing, we heard evidence from the appellant, and two witnesses for the appellant, Ms Nemcova and Mr Burke.

22. On the second day, we heard evidence from Mr Nicolaou on behalf of the appellant. He admitted candidly that he had little or no independent recall of what had happened at meetings at which he had been present, relying on the minutes. We find that entirely likely given the lapse of time and as he had had a significant amount of stress in his life at the time. In the light of that admission, the further cross-examination pursued was of no assistance to the Tribunal.
23. We also heard evidence from Ms Burmiston who gave evidence on behalf of the respondent.

Findings of fact

24. In reaching our decision we have taken into account the bundle provided by the parties, the oral evidence and submissions made during the hearing even if we do not refer specifically to any particular piece of evidence. Much of the evidence of the witnesses did not go to any dispute of fact but rather to how the facts should be interpreted. It was not in dispute that the contract with Amber Management came to an end, or that money was not transferred to the Interim Managers at their request; the evidence was primarily explanations and reasons for what occurred and whether the acts amounted to misconduct or mismanagement.
25. We start our analysis of the facts bearing in mind that many of the events in question took place some 7 year ago and in the context of a much wider dispute concerning EIVT and how it was run. It is not, however, our function to reach conclusions about that dispute.

The Amber Management Contract

26. It is plain from the evidence that the contract between Amber and the Charity, and whether it provided value for money was one of the major points of dispute between the two different groups within the charity. It is not in dispute that the group to which the appellant belonged believed strongly that Amber provided poor value for money and were not performing their duties under the contract properly. It was also a continuing contract for services and had been in existence for some time before the appellant became a trustee. It was not disputed that the contract contained a penalty clause in favour of Amber, triggered if the contract were not brought to an end in a particular time frame and in a particular manner. Whether or not that clause could be enforced, the appellant was, as is evident from his statements and the documentary evidence, aware of it prior to his letter to Amber of 13 December 2013.
27. The contract with Amber was significant because it was one of the largest, if not the largest contract, into which the Charity had entered both in terms of the value of continuing payments and the fact that it covered the majority of the activity of the Charity.
28. We accept that, as is recorded in the minutes of the trustees meeting on 5 August 2013 that the trustees had voted to remove Amber as company secretary, but that is a separate matter with no relevance to the contract for services.
29. It is not in dispute that the appellant wrote to Amber on 13 December 2013, or that Amber asserted (as set out in its particulars of claim and in the letter of that date) that it had terminated the contract on 23 January 2014.

30. In the letter of 13 December 2013, the appellant wrote that it appeared that the contract is invalid and of no legal effect as it had not been approved by the Trustees; that it contains terms which are unfair under the Unfair Contract Terms Act; and that:

Accordingly, the Trust now has to consider whether they are bound by this contract or whether it is void or voidable and the Trust is now seeking independent legal advice and will revert shortly.

You will no doubt take your own legal advice as to whether you believe the contract is valid.

31. The letter also makes a number of allegations about Amber, including that it had acted illegally and was embezzling the Charity's funds.

32. The letter concludes:

Finally, I should say to you that the performance by Amber under the contract does not mean that the Trust accepts that the contract is valid and accordingly prevented from relying on the fact that the contract has no legal effect.

33. Looked at as a whole, the letter of 13 December 2013 was provocative and made serious allegations which did not assist the submission that the contract was void but were likely to inflame the situation.

34. The issue of the validity of the contract is not referred to in the minutes of the trustees' meeting on 12 November 2013. The minutes of the meeting of 12 January 2014, signed by the appellant, record [7]:

With Amber Management dismissed from acting on behalf of the Trust a new managing agent is required. VI is confident that, utilising his company ICRI Ltd, he can ably execute the duties previously executed by Amber Management. The managing agent duties described in the Amber Management contract are largely administrative and financial. Large works are contracted out. VI has extensive experience of running multi-million pound businesses and does not see any reason why he could not run the managing agent business, which is a relatively small and simple business, at least on an interim basis. AS, as an OHSAS 18001 Lead Assessor, can provide the necessary expertise on health and safety issues.

As this proposed change is unorthodox, due diligence will be required to ensure that the Board can satisfy itself and the EIVT Members that it has taken all reasonable and necessary precautions to ensure that the Articles Objects are not compromised.

35. It is also recorded that the board would evaluate this, and that the appellant had offered to perform the role of managing agent for £48,000 per annum, substantially less than what was charged by Amber, and below market price in the interests of maintaining confidence. The minutes conclude:

Consideration will also need to be given to VI and IN being unable to vote or be present if a Board meeting is convened to decide on whether to appoint ICRI Ltd as the managing agent. In order to be completely transparent and to be certain of working within regulatory and professional guidelines, VI will write to ACCA and Charities Commission to inform them of the proposal. Also VI will ask one of the Trust's solicitors, Gisby Harrison, to draft a contract based on Amber Management's contract. However, the contract will be biased towards EIVT as opposed to Amber Management's contract which was biased towards them and drafted by their own solicitors.

36. The minutes of the meeting on 16 January 2014 and signed by the appellant record:

d. Amber Management

[The appellant] informed the attendees that Amber Management's contract had been terminated for breach of contract and that he was acting as managing agent in the interim. The attendees raised concerns that:

1. there is potential conflict of interest
2. he doesn't have the expertise to manage an estate

37. We note in passing that several matters on the agenda were not discussed owing to the "unsavoury atmosphere and regular disturbances". It is recorded:

Monthly meetings are a concession and not a right. A number of the attendees acted in a very unbecoming manner and were neither professional nor constructive and have behaved in the same unprofessional manner at the last two consecutive meetings. The Board has therefore decided that they are not prepared to be subject to cowardly attacks and bullying tactics. Instead minutes will be provided to everyone on the website and any suggestions members have can be submitted by email to info@eiv.org.uk for consideration.

38. We note also that in his letter of 22 April 2014, the appellant said that he had:

"discovered that the only way to break this contract without making the punitive payments to Amber was through breach of contract which I was able to establish and therefore terminate the said contract."

39. When asked about the contract with Amber, Ms Nemcova's evidence was of little assistance, as she was unable to recall consideration of the contract at meetings. We found her responses when asked if it was an important issue to be evasive.
40. Beyond the three letters referred to above, and the board minutes, there is little by way of contemporaneous documentation. We accept that the appellant said in oral evidence that the letter of 13 December was circulated for approval, but he was unclear if a copy was circulated by email or by hand delivered letter. No relevant documentary evidence was presented showing whether or how that approval had been recorded.
41. The earlier evidence in the form of the minutes and the letter of 22 April 2014 indicates that the appellant believed he had terminated the contract with Amber. Further, in his detailed and lengthy statement in reply to the reasons given for disqualification the appellant states at page 23: (Bundle page 647): The following were defects of the [Amber Management] contract which necessitated its termination."
42. This is in conflict with the appellant's later evidence, but we prefer the earlier evidence as it is closer in time to the actual events. We note that the appellant said in oral evidence that the minutes might have been misconstrued and misinterpreted by the author. We do not accept that. The Minutes were contemporaneous and signed by the appellant. We do not accept there was a mistake.
43. We did not find the evidence of the appellant's witnesses on this issue to be helpful. Mr Nicolaou had no independent recollection, and Ms Nemcova's evidence was lacking in detail. After nearly 9 years that is hardly surprising. Mr Huckle's evidence related to the period after Amber ceased to be the agent.

44. We note that Mr Deeljur submitted, there is a danger in seeking to apply precise legal terminology to what happened; the appellant is not a lawyer, nor were the trustees. Equally, Amber's assertions are to its benefit. That said, the letter of 13 December 2013 is couched in legal terminology. And while we accept that the law is with respect to repudiatory breach of contract, complex, that is equally true in respect of when a contract signed by the director of a company which the Charity is, falls to be treated as void if that act was ultra vires. Even a cursory glance at sections 39 to 42 of the Companies Act 2006 demonstrates that issue is far from simple, nor is the general law with regard to void or voidable contracts simple particularly where, as here there had been work done by Amber and money had been paid to it.
45. Whether or not the appellant terminated the contract in strict legal terms is not the issue; rather, it is his actions in bringing about a situation which led to an action against the Charity for breach of contract.
46. We are satisfied that the appellant and the trustees did want to bring the contract with Amber to an end. But we find that he did so in a reckless manner. It was manifestly the case that it would be controversial, and that there was a real likelihood that that Amber would (as indeed it did) seek to enforce the penalty clause. On any view this was likely to lead to the Charity having to incur legal costs. While we accept that some relatively informal legal advice was sought, this is the sort of major and complex issue on which the appellant and for that matter the other trustees should have sought specific legal advice both as to the validity of the contract and as to how it could most prudently be brought to an end. It is also something which should have been properly discussed and minuted.
47. Whether or not, as Mr Deeljur submitted, the appellant kept meticulous records in respect of other areas and was concerned about poor record keeping prior to his appointment is beside the point. There was in our view, no sufficient documentation of this issue; and, while responsibility was collective, that does not absolve the appellant from his duty to ensure matters were properly handled.
48. We find that, as the respondent submits, the appellant was very closely involved with the situation regarding this contract. There is, as is submitted, insufficient reliable evidence to show that the other trustees considered, discussed or approved the letter of 13 December 2013, or the decision not to pay Amber.
49. Further, we find no merit in the submission that any lack of documentation is due to there being no termination. Given what was recorded in the minutes, and what the appellant said in his letter of 22 April 2014, we are satisfied that he and the other trustees did think that the contract had been terminated.

Misappropriation of charitable funds

50. The appellant does not in his reply dispute the respondent's closing submissions that
 - a. In October 2015, the Interim Managers asked for £175,000 held in three of the appellant's company's accounts to be returned;
 - b. the appellant transferred £30,000 to the Interim Managers on 24 October 2015 in three tranches; and

- c. on or around 28 October 2015, he transferred £175,000 to another account (account 4), held by a company under his control;
- d. the appellant was aware of formal orders to return the money, and that he did not voluntarily return the money.

51. Equally, the respondent does not dispute that the appellant resigned as a trustee well before these transfers.
52. It is also of note that on 28 October 2016, the appellant issued an invoice to the Charity for £306,250 which is an amount in excess of the value of services so far provided to the Charity.
53. It is accepted by the respondent that the appellant was not a charity trustee after 9 September 2015. They do, however, submit that he nonetheless comes within the ambit of section 181A (7) D of the Charities Act.
54. We start from the finding of the First-tier Tribunal in ICRI Ltd v Charity Commission CA/2018/0014 at [23] that the funds held in the two Barclays accounts were and had been at all times charitable funds, having been set up to receive the rentals that the Charity earned from two flats it owned. While that decision is not in the strict sense binding on us, we are not satisfied that there is any good reason not to follow it out of judicial comity, even if the ordinary rules relating to *res judicata* do not apply.
55. We accept the appellant's argument that as a director of a company he had fiduciary duties in respect of the company. Those include, we accept, ensuring that it is paid.
56. As the respondent submits, the appellant has put forward two different reasons to justify his refusal to transfer the funds at the request of the Interim Manager or the direction of the respondent.
57. First, in 2015, on the basis that the company was entitled under its contract to full payment of the remainder of the contractual term, and issuing an invoice for that; and, second and more recently, the money held represented service charges and thus, by operation of the Landlord and Tenant Act 1987 ("the 1987 Act") it had to be held on trust and he could not lawfully transfer it.
58. The effect of section 40 of the 1987 Act in combination with section 18 (1) of the Landlord and Tenant Act 1985 is that "service charges" must be held on trust, but service charges are defined as payments made under leases as contributions to costs which are in addition to the rental payable. Rent paid does not fall within this definition nor do rentcharges as they are not paid under leases. Thus, section 42A and 42B of the 1987 Act which require services charges to be held on trust have no relevance.
59. The submission of the appellant that the funds are service charges is not supported by any evidence. On the contrary we find that the flats were purchased with funds from freeholders paying a rentcharge. We therefore do not accept that the appellant was prevented by operation of the 1987 Act from transferring the funds.
60. Returning to the first reason, there is clearly in a case such as this a tension between the duty of a company to hold money it has on trust, and seeking to pursue its contractual rights against the beneficiary of that same trust.

61. However even were the appellant's company entitled to recover its fees from the charity, that would be a contractual claim which he seeks to set off against funds held on trust by the company for the Charity. The appellant's stated reason that he was exercising his fiduciary duties to the company by holding onto the funds as a lien is not compatible with the trusts under which the company held those funds and as such is not a proper excuse for not transferring them or arranging for them to be transferred.
62. Fundamentally, the director's duty in this case was to ensure that clause 6.1 of the contract (stipulating that funds of the charity were to be held on trust for the charity) was properly honoured, and so the company's duty as trustee and the appellant's duty as a director to promote the interests of the company were identical and we are thus satisfied, applying the principles of equity that the appellant was obliged to effect the requested transfer.

Conflict of interest

63. In assessing this issue, we recall that the appellant as trustee allowed his company to be appointed as a managing agent while he remained as trustee. We accept that he was not present when votes were taken. For example, the minutes of 26 January 2014 record that he and Ms Nemcova who also had an interest in the company left the room while the remaining board members considered whether it was appropriate to pay the appellant's business, ICRI for the work on the accounts and managing the estate up to that point.
64. The board concluded that it could not function without his expertise and knowledge, and he was already acting as managing agent, a position previously held by Amber. It was agreed that a contract would be drafted, weighted in EIVT's favour, having observed that the contract with Amber was weighted in its favour, it being noted that "if the contract was terminated for any reason then the Trust would be liable to pay them three year's fees. On current contract terms that would equate to around 221,400GBP."
65. On 7 October 2014 the board invited the appellant to extend the initial contract.
66. On 23 October 2014, the board listened to a presentation from the appellant and agreed, in his absence, to a new contract which was of five years' duration. Some of the clauses were discussed but not the penalty clause which entitled the appellant's company to recover the remainder of the management fees due under the contract if terminated in certain circumstances.
67. We note the acceptance in the appellant's closing submissions that the circumstances in which he was a trustee of the Charity and director of the Charity's managing agent could give rise to a conflict of interest. That, with respect, is a serious understatement. The fact that he was aware of the potential conflict and contacted the ACCA provides some mitigation, but their advice was limited as was the solicitors who advised on the conflict. The ACCA's investigation was not on the same issues, and did not consider the evidence that is before the Tribunal. The letter from Gisby Harrison is again limited to payments of trustees. And, the letters from the appellant to the ACCA and the Respondent of 3 February 2014 asking for advice on whether there would be a conflict do not set out the actual contractual arrangement which arose.
68. It should have been manifestly clear that being a trustee of the Charity and the director of its managing agent would lead to a conflict of interest that could not simply be managed by stepping out of board meetings from time to time. The contract in question was one of long

duration and required continual performance. The sums paid under it represented the biggest outlay of the Charity each year. It was almost inevitable that conflicts would arise under such a contract, particularly in the context of the disputes within the Charity. The dispute regarding repatriating charity funds and attempting to recover fees allegedly due under the contract clearly illustrate the dangers. Further, it is worrying that the appellant permitted his company to benefit from a penalty clause requiring full payment of the entire contract period were it to be terminated in some circumstances whilst as a trustee he was acutely aware of the disadvantages to the charity of such clauses.

Is the Statutory Test met?

69. Having made these findings, we turn next as to whether the statutory test for disqualification is met. That test requires us to ask:
- a. Has one or more of the conditions listed in s181A subsection 7 been met?
 - b. Is the appellant unfit to be a charity trustee?
 - c. Would disqualifying him from being a trustee in the public interest?
 - d. From what should he be disqualified from doing?
 - e. What is the appropriate and proportionate disqualification period?
70. In assessing this part of the appeal we have taken fully into account the evidence from the appellant and his witnesses, and indeed the views of the interim managers when first appointed, that he had administered things properly. The accounts were put on a proper basis, and there is evidence that the estate was well maintained.
71. We find that the handling of the Amber Management termination was misconduct or mismanagement, that the appellant was a trustee during the misconduct or mismanagement, and that he contributed to or facilitated it. This therefore falls within subsection 7, in particular case D.
72. We find that the failure to return the Charity's funds, in particular over such a long period of time and when the appellant had previously been a trustee and had a full understanding of the obligations of his company with regards to the Charity's property, amounted to past and continuing conduct which was damaging or likely to be damaging to public trust and confidence in charities generally. This therefore falls within subsection 7, case F.
73. We find that the failure to properly manage conflicts of interest, and to allow a situation to arise where he was conflicted as a trustee from dealing with the fundamental business of the charity, amounts to misconduct or mismanagement at a time when the appellant was a trustee and that he contributed to or facilitated it. This is therefore another example of case D of subsection 7.
74. Despite the evidence referred to at [70] above, we are satisfied that each of these elements, separately and taken together, makes the appellant unfit to be a trustee in relation to charities generally.
75. The Charity Commission's Explanatory Statement says that there will normally be some causal link or connection between the identified conduct and its actual or likely impact on the person's ability to be a trustee. It also states:

“Conduct falling within conditions A-F may make a person unfit to be a trustee even

where that conduct does not call into question a person's honesty, integrity or competence. Such conduct may be otherwise sufficiently serious that it calls into question a person's fitness to be a trustee because it impacts or is likely to impact on public trust and confidence."

76. On the facts of this case, the appellant's conduct is clearly connected to the administration of the charity, and manifestly calls into account his fitness to be a trustee. We find further that his continued involvement as a charity trustee would present a risk to public trust and confidence in the charity sector.

What should the appellant be disqualified from doing?

77. The findings set out above lead to the conclusion that a disqualification order should be made against the appellant under section 181A of the Charities Act. We must therefore go on to determine the terms in which the order should be made – both as to the extent of the disqualification and as to its duration.
78. The essential feature of a disqualification order is that it disqualifies a person from being a charity trustee or trustee for a charity. However, subsections (3) and (5) of section 181A effectively give rise to a statutory presumption that the disqualified person should also be disqualified from holding an office or employment with senior management functions in the charity or charities to which the order relates. We find no reason, given the nature of the appellant's misconduct, why a disqualification order should be restricted. The overarching consideration in this regard should be the protection of public trust and confidence in charities.

What is the proportionate disqualification period?

79. We turn finally to the question of the Disqualification Order's duration. We note that section 319 of the Charities Act permits us to vary the term of a disqualification order only downwards; it does not permit us to fix a longer period – see Mustafa Musa v Charity Commission (CA/2020/00006).
80. The statutory regime for disqualifying trustees does not permit a disqualification order to have indefinite or permanent effect. Instead, section 181B of the Charities Act provides that any disqualification order must be made for a specified period not exceeding 15 years. The disqualification period must also be proportionate.
81. The Charity Commission's Explanatory Statement sets out the approach which the Commission should take when deciding the appropriate length of a disqualification. It states that:
- “... the commission will consider the seriousness of the conduct which gives rise to the disqualification and of the risk to and its impact on a charity or charities. To determine this, the commission will look at all relevant information received, the facts of each case that led to the criteria for disqualification being met and the consequences to the charity in question.”
82. In doing so, the Charity Commission should take account of a range of relevant factors, including: the gravity of the conduct; the nature and extent of the risk the person poses; their

level of knowledge or culpability; the extent of any loss or damage; and any equalities or human rights considerations.

83. The Explanatory Statement goes on to say that:

“... the commission will use as a reference point 3 disqualification ‘bands’ as an aid to inform its decision on the length of disqualification. The bands are not provided for by statute and will be applied on a case by case basis.”

84. The three disqualification bands are as follows:

- Upper (over 10 years and up to 15 years);
- Middle (5 – 10 years); and
- Lower (less than 5 years)

85. The Explanatory Statement says that the upper band will be reserved for particularly serious cases. The middle band will apply to serious cases which do not merit consideration in the upper band; and the lower band will apply where the Commission has decided that, whilst the circumstances are sufficiently serious to warrant the making of a disqualification order, a relatively short period of disqualification would be proportionate.

86. The Explanatory Statement does not explain in detail how the positioning within a given disqualification band should be decided, but it does go on to say that:

18 ... “When deciding on the proportionate period of disqualification, the commission may take account of (where relevant) the existence of any aggravating or mitigating features to determine whether the banding is correct and, if so, at what point in the band the period of disqualification should sit.”

87. We do not consider that the appellant’s actions place him in the upper band. We have, however, considered whether his actions should place him in the lower band. As was clearly the case, the Charity’s funds were not dissipated; they did not lose anything. In some aspects of his duties as a trustee, as noted above, the appellant did ensure that the estate was properly maintained. As against that, we find the misconduct and failings were of significant duration in respect of (a) the contract with his companies and (b) in the withholding of funds, albeit that there was no danger of them not being returned, given the basis on which he said in a letter they were being held. Nonetheless, the Charity was deprived of the use of these funds for four and a half years. Further, the actions were deliberate and without any lawful reason.

88. Further, the appellant has not demonstrated any proper acknowledgement that what he did was wrong. Rather, he has changed his explanations for his conduct, and now argues speciously that he did not misappropriate charity funds because they were held by a separate corporate entity even though it was one which he controlled.

89. Taking all of these factors into account, we are satisfied that the appellant’s conduct does fall within the middle band. We find further that is so with respect to each of the handling of the Amber Management contract; the mishandling of the conflict of interest; and, the misappropriation of funds

Proportionality

90. It therefore just remains for us to consider whether the resulting disqualification period of five years is proportionate in the circumstances of this case. Given everything we have said above

about the seriousness of the conduct in question and about the likelihood of it damaging public trust and confidence in charities generally, we are satisfied that it is indeed proportionate.

Disposal

91. For all of these reasons, we are satisfied that the statutory criteria are met for disqualifying Mr Ioannou from being a charity trustee or trustee for a charity and that the appropriate period of disqualification is 5 years. Accordingly, the appeal is dismissed.

Signed

Date: 22 February 2023

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul
(sitting as a judge of the First-tier Tribunal)