

## **Registration decision: Sheree Seymore Trust Fund (SHE42792)**

### **Summary**

1. This is a decision to decline the application for registration of the Sheree Seymore Trust Fund (**the Applicant**). The decision is made under section 19 of the *Charities Act 2005* (**the Act**) on the ground that the Applicant is not qualified to be registered as a charitable entity because its purposes are for the benefit of one family, and so do not meet the public benefit requirement for charitable status.

### **Background**

2. The Applicant applied for registration as a charitable entity under the *Charities Act 2005* on 25 October 2011.
3. Clause 3 of the Applicant's constitution sets out the purposes:

*The Trust fund both capital and income from time to time arising therefrom at the Trustees absolute discretion shall be used for the furtherance of the following charitable purposes and objects within the Dominion of New Zealand and elsewhere in the world.*

- (a) *The promotion of medical science including research and to facilitate medical treatment in any way of any person entitled to receive medical treatment of any kind or any other matter beneficial to the community.*
- (b) *To provide funds for the medical treatment and care in New Zealand and overseas of New Zealand citizens including their travel and associated expenses with such treatment (including travel to and from overseas destinations) and other expenses of any adult or adults accompanying any such beneficiary in connection with such care and treatment.*
- (c) *The provision of financial support for families suffering or having members of their families requiring medical care and treatment.*
- (d) *To do generally each and every act necessary or expedient for the proper carrying out and accomplishment of the objects of this Trust.*
- (e) *To engage in any activity of a charitable nature in New Zealand and in furtherance of this purpose to promote and assist in any manner directly or indirectly any organisation person or persons engaged in any charitable activity in New Zealand.*

4. On 21 March 2012, a registration analyst wrote to the Applicant requesting information about the current and proposed activities of the Applicant, including the annual accounts of the Applicant for the years ending 30 June 2010 and 30 June 2011.
5. On 8 May 2012, the Applicant responded to the letter stating:

*The Trust supports Sheree Seymour who had a kidney transplant in 1996 and will require another transplant in the future. Sheree has a daughter who also suffers from the same kidney condition and will require a transplant. The trust supports the family with transport costs and expenses to lessen the financial burden of the family as necessary. Currently their kidney function is managed and stable so our expenses over the last few years have been few but with the possibility of two transplants being required in a short period of time and the associated financial burden that would create the Trust feels it is prudent to earmark the majority of funds to the future support of Sheree and her family. The funds were publicly raised for the purpose of supporting Sheree and her family.*

*The Trust has donated funds to similar appeals over the past few years from the interest received from term deposit interest. The Trust will consider other requests for funds of a similar nature as and when they come to our attention. The Trust wishes to hold the funds they have on deposit as principal for the benefit of Sheree and her daughter Kabbana. There is no intention of raising more funds at present. The only income that the Trust receives is interest on deposits from the bank.*

6. The Applicant also provided annual accounts for 2010 and 2011. These showed:

	<b>Opening balance</b>	<b>Interest</b>	<b>Expenses</b>
<b>2010</b>	\$14966	\$1062	nil.
<b>2011</b>	\$16028	\$772	nil.

7. The registration analyst considered the information and on 15 May 2012, sent the Applicant a notice that the application may be declined on the basis that a trust for the benefit of one family does not provide sufficient public benefit to meet the requirements for registration as a charity.
8. On 15 June 2012, the Applicant provided the following response:

*In response to your letter dated 15 May 2012 we note your intention to decline our application we wish to raise one issue for clarification.*

*It appears the commission is concerned that the trust is for the benefit of one family. While that is essentially true the fact is that the trust's funds were donated by members of the local community for the express purpose of assisting the family concerned.*

*Therefore the needs of the Seymour family are our first priority.*

Does the Charities Commission [have] any discretion in the abovementioned situation.

9. On 19 July 2012 the registration analyst sent the Applicant a letter stating that there is no discretion to register an entity if it does not meet the statutory requirements for registration. The letter indicated if no response was received a final decision would be made by the Charities Registration Board (**the Board**).

## The issue

10. The issue the Board must consider is whether the Applicant meets all of the essential requirements for registration under the Act. In this case, the key issue for consideration is whether the Applicant is a trust 'of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes' under section 13(1)(a) of the Act.

## The law on charitable purposes

11. Section 13 of the *Charities Act 2005* sets out the essential requirements for registration. Under section 13(1)(a) of the Act, a trust must be of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes.
12. Section 5(1) of the Act defines charitable purpose as including every charitable purpose, whether it relates to the relief of poverty, the advancement of education, the advancement of religion, or any other matter beneficial to the community.<sup>1</sup> In addition, to be charitable at law, a purpose must be for the public benefit.<sup>2</sup> This means that the purpose must be directed at benefiting the public or a sufficient section of the public.
13. A trust for charitable purposes will be void for uncertainty if it is not for exclusively charitable purposes.<sup>3</sup>

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<sup>1</sup> This statutory definition does not alter the scope of charitable purposes recognised in New Zealand law but rather adopts the general law classification of charitable purposes in *Commissioner for Special Purposes of Income Tax v Pemsel* [1891] AC 531 extracted from the preamble to the *Statute of Charitable Uses 1601* (43 Elizabeth 1 c 4) and previous common law: *In Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [13]; *In re Draco Foundation (NZ) Charitable Trust* HC WN CIV 2010-485-1275 [3 February 2011] at [11].

<sup>2</sup> Authorities include: *Oppenheimer v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Verge v Somerville* [1924] AC 496; *Dingle v Turner* [1972] AC 601. See also: *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147 at 152-155; *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195 at [32]; *Travis Trust v Charities Commission* (2009) 24 NZTC 23,273 (HC) at [54], [55]; *Queenstown Lakes Community Housing Trust* HC WN CIV 2010-485-1818, 24 June 2011 at [30]; *Re Education New Zealand Trust* HC Wellington CIV-2009-485-2301, 29 June 2010 at [23].

<sup>3</sup> *McGovern v Attorney-General* [1982] 1 Ch. 321, 341. In New Zealand, see *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787; *Molloy v Commissioner of Inland Revenue* [1981] 1 NZLR 688 at 691. See also the assumption evident in the provision

...[A] requirement for a valid charitable trust is that each and every object or purpose designated must be of a charitable nature. Otherwise, there are no means of discriminating what part of the trust property is intended for charitable purposes and what part for non-charitable purposes, and the uncertainty in this respect invalidates the whole trust.

14. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.<sup>4</sup>
15. In considering an application for registration, section 18(3)(a) of the Act requires that the chief executive of the Department of Internal Affairs have regard to the entity's activities at the time the application was made, the entity's proposed activities, and any other information that the chief executive considers relevant.
16. Determining whether an entity's purposes are charitable involves an objective characterisation, and a declaration in an Applicant's rules document which purports to limit its objects to charitable purposes will not be determinative.<sup>5</sup>

## Charities Registration Board's Analysis

17. The Board has considered the Applicant's stated purposes and information about the Applicant's activities, and relevant case law. The purposes in clause 3 do not indicate an intention to advance religion or provide some other matter beneficial to the community. These purposes have therefore been considered in relation to the relief of poverty and advancement of education.

### **Relief of poverty**

18. To be charitable under this head of charity, a purpose must be directed at people who are poor, in need, aged or suffering genuine hardship, and it must be capable of providing relief.
19. The **stated** objectives of the Applicant set out in clause 3 indicate an express intention to provide relief to people in need of medical care and treatment. The Board considers these objectives would be charitable under the first head of charity, if they provided sufficient public benefit.

### **Advancement of education**

20. In order for a purpose to advance education, it must provide some form of education and ensure that learning is advanced. The modern concept of

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at section 5(3) and (4) of the Act, that a trust will not be disqualified from registration because it has *ancillary* non-charitable purposes.

<sup>4</sup> Section 5(4) defines 'ancillary purpose'.

<sup>5</sup> *M K Hunt Foundation Ltd v Commissioner of Inland Revenue* [1961] NZLR 405 at 407; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133 [18 March 2010] at para 56.

“education” covers formal education, training and research in specific areas of study and expertise. It can also include less formal education in the development of individual capabilities, competencies, skills, and understanding, as long as there is a balanced and systematic process of instruction, training, and practice.<sup>6</sup> In order to advance education, learning must be passed on to others.

21. Under advancement of education, research must be carried out in an objective and impartial way and useful results must be made available, or accessible to the public, further it must meet some minimal standard.<sup>7</sup>
22. The Board considers the **stated** purpose; ‘the promotion of medical science,’ in clause 3(a) is charitable under advancement of education.
23. We accept that the purposes set out in clause 3(b) – (e) of the Applicant’s constitution, if they provided a public benefit, could be characterised as charitable, being for the relief of poverty.

### **Public benefit**

24. It has long been established law that an entity cannot be considered charitable unless it provides public benefit, that is, it must benefit the community or a sufficient sector of the community.<sup>8</sup>
25. In *Re Doug Ruawai Trust*, the Court held that a trust to provide financial support to a single person in need of medical care was not charitable as it did not provide a public benefit. In that case, McGechan J stated:<sup>9</sup>

*Clearly [the trust] is not charitable. The general public might be surprised to hear that but the law of charities is a technical field in which some very ancient history still comes through and as the law at present stands this trust is not charitable because it is not for a public purpose, rather it was for the private benefit of ... the late Mr Douglas Ruawai. It does not come within the exceptional and controversial class of the so called poor relation cases ... because it is not for the relief of poverty or impotence as such but for the relief of a person.*

26. The Board considers an entity that is in fact operating for the benefit of one family does not qualify for registration because its’ purposes do not confer a sufficient public benefit. This is not to say that a charity may not occasionally provide a benefit to one family selected from a wider class of beneficiaries for whom the charity pursues its objects. Rather, we consider

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<sup>6</sup> *Re Mariette* [1915] 2 Ch 284. See also *Chesterman v Federal Commissioner of Taxation* (1923) 32 CLR 362; *Lloyd v Federal Commissioner of Taxation* (1955) 93 CLR 645; *Chartered Insurance Institute v London Corporation* [1957] 1 WLR 867; *Flynn v Mamarika* (1996) 130 FLR 218.

<sup>7</sup> See e.g. *Re Collier (deceased)* [1998] 1 NZLR 81 at 92.

<sup>8</sup> See authorities at 2 above. The courts have accepted that a narrower class of persons could constitute a section of the public in financial poverty cases (see *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297; *Dingle v Turner* [1972] AC 601) but this does not apply to the relief of the aged and impotent under the first head of charity: *Re Dunlop* [1984] NI 408, 423.

<sup>9</sup> *Re Doug Ruawai Trust* (HC, PN, CP285/86 25 November 1987, McGechan J), at 10.

that an entity cannot qualify for registration if, viewed objectively, the entity is *operating solely for the benefit of one family*.

27. Section 18(3) of the Act provides that the chief executive must have regard to the activities of an entity. New Zealand laws recognise that it is appropriate to consider activities to understand an entity's purposes.<sup>10</sup> If the entity appears to be partaking in non-charitable activities, substance must prevail over form, and an entity cannot qualify for registration, even if its **stated** purposes are exclusively charitable.<sup>11</sup>

28. Information provided by the Applicant to the chief executive indicates that the Trust's intention is to provide benefits to only Sheree Seymour and her family. The Board has come to this conclusion in light of the following considerations:

- the initial fund was raised by public appeal to support the medical treatment of Sheree Seymour;
- the Applicant is named the 'Sheree Seymour Trust';
- the Applicant holds the principal of the fund for the benefit of Sheree and her daughter;
- while the Applicant considers requests for donations to other appeals it:
  - makes donations from the interest on the principal only;
  - did not make any donations in 2010 or 2011;
  - considers that it is prudent to earmark current funds for future surgeries for Sheree and her daughter; and
  - does not seek to raise further funds, so that the sole income is interest on the principal.

29. While Sheree Seymour and her family are not the named beneficiaries of the Trust's purposes, as in the case in *Re Doug Ruawai*, the Board considers that, taking its activities into account, the Applicant is not providing sufficient public benefit.

## Determination

30. The Board's finding is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that it is not a trust of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes, as required by section 13(1)(a) of the Act.

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<sup>10</sup> See e.g. *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] 1 All ER 747 at 751-752; *Attorney-General v Ross* [1986] 1 WLR 252 at 263; *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204 at [70]; *Canterbury Development Corporation v Charities Commission* HC WN CIV 2009-485-2133, 18 March 2010 at [29]; *Re The Grand Lodge Of Antient Free And Accepted Masons In New Zealand* HC WN CIV 2009-485-2633, 23 September 2010 at [71]; *New Zealand Computer Society Inc* HC WN CIV-2010-485-924, 28 February 2011 at [60] and [68].

<sup>11</sup> See further G E Dal Pont *Law of Charity* (LexisNexis Butterworth, Australia, 2010) at [2.12], [13.19], [13.20].

Specifically, the Applicant's purposes are for the benefit of one family and do not provide a direct benefit to a section of the public.

**For the above reasons, the Board declines the Applicant's application for registration as a charitable entity.**

Signed for and on behalf of the Board



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Brendon Ward  
General Manager DIA - Charities



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Date

