

Deregistration decision: Grey Lynn Farmers' Market Incorporated

The facts

Registration history

1. Grey Lynn Farmers' Market Incorporated (the Society) was incorporated under the Incorporated Societies Act 1908 on 11 December 2008.
2. The Society applied to the Charities Commission (the Commission) for registration as a charitable entity under the Charities Act 2005 (the Act) on 12 March 2009.
3. The Society's objects are set out in clause 3 of its Constitution:
 - "3.1 The purposes of the Society are:*
 - a) To provide a community owned and operated venue for producers to market their fresh local produce;*
 - b) To provide the community with a pleasant and vibrant atmosphere in which to socialise and shop for produce;*
 - c) To engage with and benefit the local community by actively promoting Society membership and participation;*
 - d) To better public health by running food preparation demonstrations;*
 - e) To benefit the environment by practising and encouraging renewable packaging, responsible waste disposal and recycling;*
 - f) To encourage sustainable transport options such as walking, cycling and public transport;*
 - g) To do anything necessary or helpful to achieve the above objectives."*
4. The Society was registered as a charitable entity on 20 May 2009. The Commission determined that the primary purpose of the society, set out in clause 3(a), amounted to promotion of agriculture and was therefore considered charitable under the fourth head as "other matters beneficial to the community". The remaining purposes set out in clauses 3(b) to (g) were ancillary to the main charitable purpose. In addition, the purposes set out in clauses 3(d), (e), and (f) amounted to promotion of public health and protection of the environment and were therefore charitable under the fourth head.
5. Following an investigation into an entity with similar purposes, the Commission commenced an investigation into the Society's continued eligibility for registration.
6. The Commission reassessed the Society's purposes and the grounds for registration, and concluded that a main purpose of the Society appeared to be the provision of benefits to individual stall holders.
7. On 23 June 2009, the Commission sent the Society a notice of its intention to remove the Society from the register under section 33 of the Act, on the basis that the Society was not established and maintained for exclusively charitable purposes.

8. On 29 July 2009, the Society responded to the notice making the following submissions:

- The Commission has failed to differentiate between the farmers' market and the stall holders:

"It is true that the Farmers Market will provide a venue for individuals who will seek to advance their own private interests, and obtain a private benefit; however that does not of itself taint the charitable objectives of the Farmers Market."

- The Commission has not taken into account the particular features of the Society, its operating structure and philosophy.¹

These submissions are addressed below (paragraphs 30-33).

The issue

9. The Commission has considered whether or not the Society remains qualified for registration as a charitable entity, in terms of section 32(1)(a) of the Act. In this case, the key issue for consideration is whether the Society is a society or institution established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, as required by section 13(1)(b) of the Act.
10. As the Society made an objection to its proposed removal from the register, the Commission has also considered whether it is in the public interest to proceed with the removal of the Society from the register, as required by section 35 of the Act.

The law on deregistration of charitable entities

11. Section 31 of the Act provides:

- "(1) An entity is deregistered as a charitable entity if it is removed from the register.*
- (2) An entity is removed from the register if the Commission registers a notice in the register that –*
 - (a) states that the entity is removed from the register; and*
 - (b) states the date on which the removal is effective.*
- (3) The entity ceases to be a charitable entity on the date referred to in subsection 2(b). ..."*

12. Section 32(1)(a) of the Act provides that the Commission may remove an entity from the register if the entity is not, or is no longer, qualified for registration as a charitable entity.

13. Section 33 of the Act requires the Commission to give notice of its intention to remove an entity from the register.

¹ Paragraph 24 of the Society's letter to the Commission dated 29 July 2009.

14. Section 35(1)(a) of the Act provides that if an objection to removal of an entity from the register is received, the Commission must not proceed with the removal unless the Commission is satisfied "that it is in the public interest to proceed with the removal from the register and that one or more of the grounds of removal from the register have been satisfied".
15. The essential requirements for registration are set out in section 13(1)(b) of the Act. In the case of a society or an institution, the society or institution must be established and maintained exclusively for charitable purposes, and must not be carried on for the private pecuniary profit of any individual.
16. 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. In addition, to be charitable at law, a purpose must be for the public benefit.² This means that the purpose must be directed at benefitting the public or a sufficient section of the public.
17. Section 5(3) of the Act provides that any non-charitable purpose must be ancillary to a charitable purpose.

Charities Commission's analysis

18. In order to determine whether the Society continues to be established and maintained for exclusively charitable purposes and not for the private pecuniary profit of any individual, the Commission has reassessed the Society purposes, the Society's submissions in response to the section 33 notice, and the relevant case law.
19. The Commission considers that the purpose set out in clause 3(d), running food preparation demonstrations, may be charitable under the advancement of education. The purposes set out in clause 3(e), practising and encouraging renewable packing, responsible waste disposal and recycling, and clause 3(f), encouraging sustainable transport options such as walking, cycling and public transport, are likely to be charitable under the fourth head as other matters beneficial to the community because they will amount to protection of the environment. The purposes set out in clauses 3(c) and (g) are ancillary.
20. The remaining clauses, clauses 3(a) and 3(b), have been considered in more detail below.

Clause 3(a)

21. The Commission considers that that the purpose set out in clause 3(a), providing a venue for producers to market their produce, does not indicate an intention to relieve poverty, or advance education or religion. It has therefore been considered in relation to "any other matter beneficial to the community".

² See *Latimer v Commissioner of Inland Revenue* [2002] 3 NZLR 195.

22. In order for a purpose to qualify as “any other matter beneficial to the community”, the purpose must be beneficial to the community and be within the spirit and intendment of the purposes set out in the Preamble to the Charitable Uses Act 1601 (the Statute of Elizabeth).³
23. When considering whether the Society’s purposes are within the spirit and intendment of the Preamble to the Statute of Elizabeth, it is relevant to consider the court’s decision in *Inland Revenue Commissioners v Yorkshire Agricultural Society*.⁴ In that case, the improvement of agriculture was held to be charitable where it was for the benefit of the public at large. However, Lord Hanworth made it clear that the promotion of agriculture for private profit or benefit would not be charitable.
24. The courts have also considered the promotion of industry and commerce in *Crystal Palace Trustees v Minister of Town and Country Planning*,⁵ *Hadaway v Hadaway*,⁶ and *Commissioner of Inland Revenue v White*.⁷
25. In *Crystal Palace Trustees v Minister of Town and Country Planning*, a body of trustees was entrusted with the control and management of Crystal Palace and park as a public place for education and recreation, and for the promotion of industry, commerce and art. Danckwerts J stated:

*“it seems to me that the intention of the Act in including in the objects the promotion of industry, commerce and art, is the benefit of the public, that is, the community, and is not the furtherance of the interests of individuals engaging in trade or industry or commerce by the trustees. [Emphasis added]”*⁸

26. In *Hadaway v Hadaway*, the court held that benefits to individuals involved in agriculture would not provide sufficient public benefit to be considered charitable:

*“The promotion of agriculture is a charitable purpose, because through it there is a benefit, direct or indirect, to the community at large: between a loan to an individual planter and any benefit to the community the gulf is too wide. If there is through it any indirect benefit to the community, it is too speculative.”*⁹

27. In *Commissioners of Inland Revenue v White and Others and Attorney General*, it was held that the entity’s purpose to “promote any charitable purpose which will encourage the exercise and maintain the standards of

³ *Re Jones* [1907] SALR 190, 201; *Williams Trustees v Inland Revenue Commissioners* [1947] AC 447, 455; *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138, 146-48; *Incorporated Council of Law Reporting (QLD) v Federal Commissioner of Taxation* (1971) 125 CLR 659, 667, 669; *Royal National Agricultural and Industrial Association v Chester* (1974) 48 ALJR 304, 305; *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147, 157; *Re Tennant* [1996] 2 NZLR 633, 638.

⁴ [1928] 1 KB 612.

⁵ [1951] Ch 132.

⁶ [1955] 1 WLR 16 (PC).

⁷ (1980) 55 TC 651.

⁸ [1951] Ch 132, 142.

⁹ [1955] 1 WLR 16 (PC).

crafts both ancient and modern, preserve and improve craftsmanship and foster, promote and increase the interest of the public therein" was charitable. However, in that case, Fox J stated:

*"The three cases which I have last mentioned seem to me to establish that the promotion or advancement of industry (including a particular industry such as agriculture) or of commerce is a charitable object **provided that the purpose is the advancement of the benefit of the public at large and not merely the promotion of the interest of those engaged in the manufacture and sale of their particular products**". [Emphasis added]¹⁰*

28. It is possible that the purpose set out in clause 3(a) provides some benefits to the community, however, considering the Society's specific purposes and applying the reasoning from the case law set out above, the Commission does not consider that providing a venue for producers to market their produce is within the spirit and intendment of the Preamble to the Statute of Elizabeth. This is therefore not a charitable purpose.

Clause 3(b)

29. Courts have held that fostering good relations between people and providing social benefits may be beneficial, but they are not charitable purposes.¹¹ Similarly, the Commission considers that the purpose set out in clause 3(b), providing the community with a pleasant and vibrant atmosphere in which to socialise and shop for produce, is not charitable.

Society's submissions

30. In paragraph 3 of its letter, the Society states that it "does not have any profit making objective, and does not operate as a commercial enterprise" and therefore the Commission has failed to differentiate between the farmers' market and the stall holders.
31. The Commission is aware that sections 4, 14, 19, and 20 of the Incorporated Societies Act 1908 prohibit societies incorporated under that Act from engaging in operations involving "pecuniary gain" for their members. It also notes that "not-for-profit" status does not equate to charitable status. While the Society may operate on a not-for-profit basis, the Commission considers that the purpose set out in clause 3(a) is aimed at providing an opportunity for individual stall holders to financially benefit. This is not a charitable purpose.
32. The Society also argues that the Commission does not take into account the particular features of the Society.
33. The Commission takes a case-by-case approach to each entity, and has based its assessment of the Society on the relevant case law and information provided by the Society, including its Rules document and its correspondence with the Commission.

¹⁰ [1982] 55 TC 651.

¹¹ *Taxation Review Authority Case 46* (1980) 3 TRNZ 665; *Royal Choral Society v Commissioner of Inland Revenue* [1943].

Conclusion

34. The Commission concludes that the purposes set out in clauses 3(d) to (f) are charitable, but that the purpose set out in clauses 3(a) and 3(b) are non-charitable. Further, these non-charitable purposes are not ancillary to any of the charitable purposes. Therefore, the Commission considers that there are grounds to remove the Society from the register on the basis that the Society does not meet the requirements for registration set out in section 13 of the Act.

Public interest

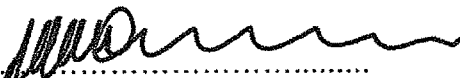
35. Under section 35 of the Act, where an objection is made to the proposed removal of an entity from the register, the Commission must not proceed with the removal unless it is satisfied that it is in the public interest to do so, and that –
- one or more of the grounds for removal have been satisfied; or
 - the objection has been withdrawn; or
 - any facts on which the objection is based are not, or are no longer, correct; or
 - the objection is frivolous or vexatious.
36. Section 10(1)(a) of the Act obliges the Commission to promote public trust and confidence in the charitable sector. The Commission considers that public trust and confidence in registered charitable entities would not be maintained if entities that did not meet the essential requirements for registration remained on the register.

Charities Commission's determination

37. The finding of the Commission is that the Society is no longer qualified for registration as a charitable entity because it is not established and maintained for exclusively charitable purposes as required by section 13(1)(b)(i) of the Act. In addition, the Society is carried on for the private pecuniary profit of individuals and therefore fails to be qualified for registration in terms of section 13(1)(b)(ii) of the Act.
38. Under section 35(1) of the Act, the Commission is satisfied that it is in the public interest to proceed with the Society's removal from the register and that one ground for removal from the register has been satisfied, that is, the Society is not qualified for registration as a charitable entity.
39. The decision of the Commission is therefore to remove the Society from the register, pursuant to section 31 of the Act with effect from 21 September 2009.

For the above reasons, the Commission determines to deregister the Society as a charitable entity by removing the Society from the Register.

Signed for and on behalf of the Charities Commission


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Trevor Garrett
Chief Executive

21/9/09
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Date