

## Registration decision: The Post Office Welfare Trust

### The facts

1. The Post Office Welfare Trust was established in 1945 to provide relief and assistance to the wives and children of Post Office employees serving their country during the Second World War. In 1987, the Trust was varied to its current form and incorporated under the Charitable Trusts Act 1957.

2. The Trust's objects are set out in clause 3 of the 1987 Trust Deed<sup>1</sup>:

"3. *THE objects and purposes of which the Trust is established are: -*

(a) *To receive donations, gifts, bequests, subscriptions and otherwise accumulate funds and assets and to apply or provide moneys and assets as the Trustees in their absolute discretion think fit to or for any purpose or purposes within New Zealand as the Trustees in their absolute discretion may determine from time to time (whether such purpose or purposes relates to the relief of poverty, the advancement of education or religion or any other matter beneficial to the community) which is or are in accordance with the law of New Zealand charitable.*

(b) *Without limiting the generality of the above object, to make provision as the Trustees in their absolute discretion think fit for:*

(i) *The relief or maintenance of employees of the employers;*

(ii) *The relief or maintenance of the spouses of employees of the employers;*

(iii) *The relief or maintenance of the children (including adopted and step-children) of employees of the employers;*

(iv) *The relief or maintenance of other dependants of employees of the employers;*

*who are incapacitated by sickness, age, accident or other infirmity (whether bodily or mental) and who are unable to pay for their own care or who are otherwise in need of financial assistance);*

(v) *The relief or maintenance of employees of the employers;*

(vi) *The relief or maintenance of the spouses of employees of the employers;*

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<sup>1</sup> As amended on 12 March 1997.

*(vii) The relief or maintenance of the children (including adopted and step-children) of employees of the employers;*

*(viii) The relief or maintenance of other dependants of employees of the employers;*

*when in distressed circumstances or in need of recuperation to promote their general physical and mental wellbeing.*

*(c) To use the funds of the Trust as the Trustees may consider necessary and proper in payment of the costs and expenses of the furthering of or carrying out of the objects of the Trust or any of them including the employment of counsel, solicitors, accountants, agents and officers and servants as shall appear necessary or expedient;*

*(d) To make known and further the objects and activities of the Trust by the publication and distribution of papers, journals and other publications and by advertising in any medium or by any means;*

*(e) To take on lease in exchange on hire or otherwise acquire any real or personal property and any rights or privileges which the Trustees shall think necessary or expedient for the purpose of attaining the objects of the Trust or any of them or promoting the interests of the Trust in New Zealand and to sell exchange, let or bail or lease with or without option to purchase or in any manner dispose of any such property rights or associated privileges as aforesaid;*

*(f) Generally to do all such acts, matters and things and to enter into and make such arrangements as are incidental or conducive to the attainment of any of the objects of the Trust."*

3. "The employers" are defined in the Trust Deed as the "ANZ Banking Group (New Zealand) Limited, New Zealand Post Limited and Telecom New Zealand Limited together with the subsidiaries of those companies and the successors to those companies". "Subsidiary" means "such company connected in any way to any Employer as the Trustees in their absolute discretion determine from time to time".
4. The Applicant applied to the Charities Commission for registration as a charitable entity on 18 July 2007.
5. The Commission analysed the application, and on 1 February 2008, sent the Applicant a letter requesting further information about its activities.
6. On 12 and 14 February 2008, the Applicant responded to the Commission's request for further information. The Applicant advised that its two main activities are the provision of low cost holidays (through a scheme called "Sevenaway") and a medical benefits

program (through a scheme called "Trustaide"). These services are available to the employees of 85 New Zealand companies and their families for a payment of \$6.50 per week.

7. On 18 March 2008, after consideration of the additional information, the Commission sent the Applicant a notice that may lead to a decline on the basis that its activities did not meet the definition of charitable purpose in section 5(1) of the Charities Act 2005 (the Act).
8. On 7 May 2008, the Applicant wrote to the Commission providing further information in support of its registration application.

### **The issue**

9. The issue for the Commission to consider is whether the Trust is 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. In particular, whether the Trust's purposes fall within the definition of charitable purpose in section 5(1) of the Act.

### **The law on charitable purpose**

10. In order for a purpose to be charitable, it must fall within the definition of charitable purpose set out in section 5(1) of the Act.
11. 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.
12. Section 18(3) of the Act states:  
  
In considering an application, the Commission must –  
(a) have regard to:
  - (i) the activities of the entity at the time at which the application was made; and
  - (ii) the proposed activities of the entity; and
  - (iii) any other information that it considers relevant; ...
13. The Commission must therefore have regard to the activities of the Applicant in determining whether it qualifies for registration as a charitable entity.

### **Charities Commission's analysis**

14. Clause 3(a) of the Trust Deed appears to express the Applicant's purposes as being the four heads of charity. In addition, it appears that clause 3(b) relates to the relief of poverty and clauses 3(c) to 3(f) are ancillary purposes. Accordingly, the Commission considers that the

Applicant's purposes, as set out in the Trust Deed, fall within the definition of "charitable purpose" in section 5(1) of the Act.

15. However, the Applicant's letter of 12 February 2008 indicates that the Applicant's primary *activities* are the provision of low cost holidays (through holiday homes) and a medical benefits program. In the Commission's view, these activities appear to have such a degree of significance that it is possible to consider these the purposes of the Trust. For this reason, it is necessary to consider whether the provision of low cost holidays and a medical benefits program fall within any of the heads of charity.
16. The Commission considers that these purposes do not advance religion or education. Accordingly, in order to be charitable, the provision of low cost holidays and the medical benefits program must either be directed towards the relief of poverty or to any other matter that is beneficial to the community.

#### *Relief of poverty*

17. In order for a purpose to be charitable as being for the relief of poverty, the law requires that it must be directed at people who are poor, in need, aged, or suffering genuine hardship, and must provide relief. The Commission has considered whether the provision of low cost holidays and the medical benefits program meet these criteria.
18. In *Re Drummond*,<sup>2</sup> a trust to provide for the holiday expenses of certain employees was held not to be charitable. In coming to this conclusion, Eve J held that the trust did not come within the charitable head of the relief of poverty because there was nothing that imposed upon the directors "the obligation of inquiring into the ability of the participants to provide themselves with a holiday without assistance or limits their powers of contribution to cases where no holiday would be possible without such contribution".
19. In the present case, the holiday homes offered by the Applicant appear to be available on a ballot basis to any of its eligible members. There do not appear to be any criteria by which the provision of the holiday homes is limited or directed to people who are poor, in need, aged, or suffering genuine hardship. Accordingly, the provision of holiday homes does not appear to be a purpose to relieve poverty.
20. In relation to the medical benefits program, it appears that the benefits of the program are not limited to those who are poor or unable to meet the financial costs of the medical care without the assistance of the program.

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<sup>2</sup> [1914] 2 Ch. 90.

21. While the medical benefits program provides relief to any members who are sick or in need of medical care, the Commission considers that the medical benefits program is analogous to a mutual benefit society. Mutual benefit societies have been held by the Courts not to be charitable<sup>3</sup>. This again indicates that the Applicant is undertaking activities that are inconsistent with purposes to relieve poverty.

*Other purposes beneficial to the community*

22. In order for a purpose to be charitable by being otherwise beneficial to the community, the purpose must be directed at advancing objects that benefit the community and fall within the spirit and intendment of the Preamble to the Charitable Uses Act 1601 (Statute of Elizabeth I). The Commission has considered whether the provision of low cost holidays and the medical benefits program meet these criteria.
23. The Commission is of the view that the provision of low cost holidays and the medical benefits program are not "other matters beneficial to the community". These purposes are not listed in the Preamble to the Charitable Uses Act 1601, and are not within the spirit and intendment of the purposes listed there.
24. In addition, the Commission considers that the purposes are not directed to the benefit of the public or a sufficient section of the public. Therefore, the public benefit requirement for this head of charity is not met. This is discussed further below.

*The public benefit test*

25. In order to be charitable, purposes must also be directed to the benefit of the public, or an appreciable section of the public ("the public benefit test"), unless the law recognises an exception to this requirement.
26. In terms of the public benefit test, the Courts have held that when the beneficiaries of a trust are defined by a personal relationship, such as that of employer and employee, the trust does not provide a benefit to a significant section of the public. Thus, in *Oppenheim v Tobacco Securities Trust Co Ltd and Others*<sup>4</sup> (*Oppenheim*) Lord Simonds states:

*A group of persons may be numerous, but, if the nexus between them is their personal relationship to a single propositus or to several propositi, they are neither the community nor a section of the community for charitable purposes ...*

*It appears to me that it would be an extension, for which there is no justification in principle or authority, to regard common employment as a quality which constitutes those employed a section of the community*

<sup>3</sup> *Re Trusts of Hobourn Aero Components Ltd's Air-Raid Distress Fund* [1946] 1 Ch 194, 200.

<sup>4</sup> [1951] AC 297, 306-307.

27. *Re Trusts of Hobourn Aero Components Ltd's Air-Raid Distress Fund*<sup>5</sup> (*Hobourn*) involved a trust funded through voluntary payments from the employees of a company for the purposes of grants to those employees in respect of air-raid damage. In that case, Lord Greene held that the trust was of personal and not public character. In coming to this conclusion, he states:

*The point, to my mind which really puts this case beyond reasonable doubt is the fact that a number of employees of this company, actuated by motives of self-help, agreed to a deduction from their wages to constitute a fund to be applied for their own benefit without any question of poverty coming into it. Such an arrangement seems to me to stamp the whole transaction as one having a personal character, money put up by a number of people, not for the general benefit, but for their own individual benefit.*

28. The decision in *Oppenheim* accepted that there were a number of "poverty" cases where a trust for a narrower class of person would be charitable. This was upheld by the House of Lords in *Dingle v Turner*,<sup>6</sup> which created an exemption to the *Oppenheim* rule for charities whose purposes are for the relief of poverty.
29. At present, it is unclear from case law whether the exception to the *Oppenheim* rule relates to three of the relevant categories (being the relief of poverty, the relief of the aged and the impotent) or just to the relief of poverty. The interpretation of the term "relief of poverty" in this context was discussed in *Re Dunlop*<sup>7</sup> where Carswell J states:

*The discussion in In Re Scarisbrick ([1951] Ch. 622) centred solely round trusts for the relief of poor persons, and there was no case cited in the judgements which concerned only aged or impotent people without the added qualification of poverty ... Although Lord Simonds said in Oppenheim v Tobacco Securities Trust Co. Ltd [1951] A.C. 297, 308 that the law of charity, so far as it relates to "the relief of aged, impotent and poor people" has followed its own line, which might indicate a willingness to regard the exception as applying to the whole of Lord Macnaghten's first head, I consider that the House of Lords in Dingle v Turner intended to circumscribe it more closely and to confine it to cases concerning the relief of actual poverty*

30. Accordingly, the Commission considers that the exemption to the public benefit test in *Oppenheim* relates to the relief of a need arising from financial hardship and does not cover activities that relate to "the relief of the aged or the impotent".
31. Clause 3(b) of the Trust Deed provides that the trust is to be used for the benefit of the employees of the ANZ Banking Group (New Zealand) Limited, New Zealand Post Limited and Telecom New Zealand Limited

<sup>5</sup> [1946] 1 Ch 194, 200.

<sup>6</sup> [1972] AC 601.

<sup>7</sup> [1984] NI 408, 423.

(and the subsidiaries of and successors to those companies), or the spouses, children or other dependents of these employees. The Applicant has outlined in its letter of 12 February 2008 that the Trust serves the staff and families of 85 New Zealand companies.

32. The requirement that the beneficiaries of the trust must be employees of one of a number of employers' means that the trust is a private trust and does not provide a public benefit unless the purposes of the trust relate to the relief of financial hardship. The low cost holidays and the medical assistance program provided by the Applicant do not relate to the relief of poverty as neither are limited or directed to people who are poor or unable to meet the costs of the services without the Applicant's assistance. Accordingly, it is considered that the Applicant's purposes are not aimed at providing a public benefit and therefore are not charitable.
33. The Applicant submits that its low cost holidays should not be judged solely on the basis of relief of poverty, as the provision of low cost holidays benefits the community by providing "cheap holiday homes and ... providing a mental relief and assistance to participants/employees who would not otherwise have the opportunity to receive or take mental recreational breaks."<sup>8</sup>
34. The Commission is of the view that providing for "mental recreational breaks" will only be charitable when that service is aimed at a class of persons who are in need of such mental breaks and who are unable to meet this need because of hardship. However, as stated above, the low costs holidays are available to all employees of the companies involved in the Trust and not all of those employees will be poor or "in need". Accordingly, the provision of low cost holidays is not charitable under the relief of poverty.
35. The Applicant argues that the circumstances in *Oppenheim* and *Hobourn* can be distinguished, as those cases involved a single employment workplace with a significantly narrower pool of beneficiaries. The Applicant submits that while the beneficiaries of its Trust are "not necessarily an open pool of beneficiaries, it is a significant pool of beneficiaries."<sup>9</sup>
36. The Commission considers that the *Oppenheim* rule is not limited to cases where the employees are connected to one employer, but covers the situation where a trust covers employees from a number of different employers. In *Oppenheim*, the trust was to benefit children of employees or former employees of the British-American Tobacco Company "or any of its subsidiary or allied companies ...". Accordingly, the beneficiaries of the trust in the *Oppenheim* decision were not limited to the children of employees of one employer but

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<sup>8</sup> Applicant's letter dated 7 May 2008.

<sup>9</sup> Applicant's letter dated 7 May 2008.

rather could cover a range of different employer companies. In that case, Lord Simonds states:

*"I come then, to the present case where the class of beneficiaries is numerous, but the difficulty arises in regard to their common and distinguishing quality. That quality is being children of employees of one or other of a group of companies. I can make no distinction between children or employees and employees themselves. In both case the common quality is found in employment by particular employers".*

37. Moreover, the issue in *Oppenheim* was not the size of the beneficiary pool but rather the personal nexus between the trust and its beneficiaries.<sup>10</sup>
38. The Applicant disagrees that its medical benefits program is analogous to a medical insurance fund. Rather, the Applicant argues that the medical benefits program "provides relief to people who are sick or in need of medical care" (as opposed to a medical insurance fund which is provided to employees as a right before they become ill).<sup>11</sup> The program is regarded "as a top up to existing medical insurance schemes"<sup>12</sup> and the funding is capped at 60% of the contribution revenue.
39. The Commission does not consider that the nature of the program is sufficient to distinguish it from medical insurance schemes. The program requires members to pay weekly contributions, and in return, they are entitled to reimbursement for some of the costs of medical care. Payment of money to an entity in return for partial coverage of costs on the occurrence of a specific event or need is the defining characteristic of an insurance fund<sup>13</sup> and private insurance funds have been held by the Courts not to be charitable.<sup>14</sup>
40. Even if it was accepted that the medical benefits program related to the "relief of the impotent", the program, on the analysis set out above, would still not provide a public benefit and therefore could not be considered charitable.
41. In addition, the Applicant states that it has made donations to a number of charities over the last five years. The Commission considers that these donations are ancillary to the main non-charitable activities, and the Applicant itself states that these donations are "in addition to our core services."<sup>15</sup>

<sup>10</sup> In *Oppenheim*, the size of the beneficiary pool was significantly larger than that of the Applicant's (over 110,000 compared with 17,000), and comparable in nature to the number of people that Applicant claims has direct access to one or both of its services (around 100,000).

<sup>11</sup> Applicant's letter dated 7 May 2008.

<sup>12</sup> Applicant's letter dated 12 February 2008.

<sup>13</sup> "Insure" is defined as "arrange for compensation in the event of damage to or loss of (property, life, or a person), in exchange for regular payments to a company" (Concise Oxford English Dictionary).

<sup>14</sup> *New Zealand Society of Accountants v Commissioner of Inland Revenue* [1986] 1 NZLR 147.

<sup>15</sup> Applicant's letter dated 7 May 2008.



*The Applicant's Proposed Activities*

42. It is noted that the Applicant intends to rebrand its services and has changed its name to "The Marram Trust".<sup>16</sup> The Applicant has advised "that the existing structure of the Post Office Welfare Trust and its wholly owned management company Sevenaway Trustaide Ltd would collapse into the simple entity, The Marram Trust Ltd, with the same Deed and Charitable Objectives". This rebranding does not appear to significantly change the nature of the activities the Applicant is undertaking. Accordingly, the rebranding does not affect the Commission's analysis above.

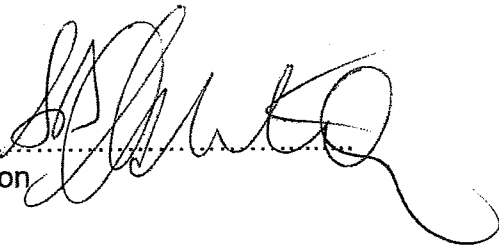
**Charities Commission's determination**

43. The finding of the Commission is that the Applicant has failed to meet an essential requirement for registration as a charitable entity in that the Trust is not 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.

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

Signed for and on behalf of the Charities Commission

.....  
Sid Ashton  
Chair



9-7-08  
.....  
Date

<sup>16</sup> Applicant's letter dated 12 February 2008.