

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



CAMBRIDGE ISLAMIC COLLEGE V THE CHARITY COMMISSION FOR ENGLAND AND WALES [2017] FTT

First Tier Tribunal (Charity), General Regulatory Chamber, McKenna J, Ms Park, Mr Reynolds, 29 August 2017

The Charity Commission directed a charity to alter its name so to avoid confusion and allow the public to differentiate it from another.

Key words: Charity, England and Wales, Confusion, Name, Muslim, Islamic

1. The appellant registered charity (CIC) was directed by the Charity Commission for England and Wales (the Commission) to change its name due to its similarity to another registered charity's name, the Cambridge Muslim College (CMC). This was an appeal against the Commission's direction. The direction was issued on 12 September 2016, and required the CIC to change its name within four weeks. The reasons for the Commission's decision included that the names were too similar, that 'muslim' and 'islamic' were essentially interchangeable terms, and that there was evidence of public confusion about the names.
2. The power to require a name change is contained in section 42 of the *Charities Act 2011* (the Act). Section 42(2)(a) refers to a name being 'too like' another, but the term 'too like' is not defined in the Act. The Commission's published Operational Guidance (OG 330) provides at B7.1 that a main name is 'too like' another charity's main name if there is only a small difference between the two names, such that they could be mistaken for one another, or sound or look alike. Section 42(2)(d) refers to similar names giving rise to apparent connections that do not exist. This is explained in paragraph B11.3 of the OG 330:

The risk here is that the charity name might mislead the public about the charity's connections...Potential beneficiaries and grant-making bodies might also be misled about who or what the charity is connected with....the public may be misled into thinking that someone or some organisation is connected with a charitable cause when they or it is not.

3. CIC was incorporated as a company in August 2013 and registered as a charity in September 2015. Its objects are:

For the public benefit, the advancement of education, in particular but not exclusively through the provision of higher education in Islamic Studies.
4. CMC was incorporated as a company in September 2009 and registered as a charity in August 2010. Its objects are:

...to advance the religion of Islam for the public benefit in accordance with the beliefs and practices of the four recognised Sunni school of thoughts, including the provision of education and training of Muslim leaders and scholars to work in the United Kingdom and elsewhere, and through this to promote and advance religious harmony within the United Kingdom.

5. The Tribunal was satisfied that section 42 of the Act required the application of a two-stage test. In this case, the first stage involved an assessment of whether the criteria under section 42(2)(a)(ii) as to the names being too like were met, or under section 42(d) as to confusion were met. If that threshold was passed, then the second stage involved consideration of whether, in all the circumstances, discretion should have been exercised under section 42(1) to make a direction.

6. The Tribunal agreed with CIC that the section 42(2)(a)(ii) test was a simple visual and aural test (at [51]-[52]):

In considering the matter afresh as we are required to do, we find we are not satisfied that the words “Muslim” and “Islamic” are “too like” each other when applying a visual or aural test. They are obviously different words, which look and sound different. We accept that some confusion between them as terms is possible if one takes a conceptual approach, but that is not in our judgement the test to be applied. It seems to us that the very specific time frame for making the stage one assessment, being “the time when the registered name was entered in the register,” supports our interpretation of the test as a visual or aural one, as it seems unlikely that a view about conceptual confusion could reasonably be formed at that time. We acknowledge that the charities’ names in this case include two identical words, but there are many other organisations with the words “Cambridge” and “College” in their names and it has understandably not been suggested that the test is failed for this reason alone. In all the circumstances, we conclude that the first stage of the s. 42(2) (a) test is not met in the circumstances of this case.

7. As to section 42(2)(d), the Tribunal held that a test under that section required greater reliance on context (at [53]):

We note that this section goes wider than requiring an assessment of the risk of confusion with another charity and is directed at the risk of the impression of a connection with “any other body of persons”. Once again, we take the view that the Commission is able to take into account relevant evidence, but that evidence of generalised confusion would not be sufficient. If CIC had called itself Cambridge University Islamic College, then we can see that there was a likelihood of giving the impression that it was connected with Cambridge University when it was not. However, we find ourselves at a loss to see how CIC can reasonably have been thought to have given the impression that it is connected with CMC. We conclude that the first stage of the s. 42 (2)(d) test is not met in the circumstances of this case.

8. That being so, the Tribunal held that CIC did not have to change its name. The Tribunal did not consider the evidence of confusion advanced by CMC because it did not need to since the first stage of the section 42(2)(d) test was not met, and because the Tribunal said that the alleged instances of confusion put forward by CMC lacked evidential weight. The Tribunal also took the opportunity to comment upon the Commission’s role in this case (at [57]-[58]):

Whilst our task is to make the Commission’s decision afresh, rather than to critique the Commission’s decision-making, we record here our view that the Direction which was made on 12 September 2016 gave inadequate consideration to a number of important factors. These were, in no particular order, the failure to consider the time at which the s. 42(2) (a)(ii) test is required to be applied; the absence of any evidential basis for the conclusion that the words “Muslim and Islamic are essentially interchangeable”; and the reliance on evidence of general confusion as satisfying the test of one charity giving an impression that it is connected to the other. It also seems to us that the Commission elided the two-stage test, despite its own clear guidance in OG 330 paragraph E3.1, by considering second-stage evidence as relevant to the first stage of the test and finally that it failed to consider, when weighing the question of proportionality, the possible financial impact on CIC of the re-branding which would be required by its Direction. We note that the Commission’s internal review took a different approach to these issues in reaching the same conclusion, but that is not the decision now under appeal. Our conclusion is that the appeal against the Direction should be allowed and that the Direction made on 12 September 2016 should be quashed. We have gone on to consider whether we should make a fresh s. 42 Direction, or another Order, or no Order at all. In doing so, we have regard to the Commission’s stated approach in its OG that a s. 42 Direction is a last resort to be used in exceptional circumstances. We share that view.

9. The matter was not remitted to the Commission, but rather the parties were exhorted to settle the matter amicably themselves, and not to further commit charitable funds to litigation. The Commission has indicated that it may appeal this decision.

IMPLICATIONS



The ACNC does not have powers in relation to the name of a charity. Issues may arise with the registration of a company or association, fundraising or business name applications.

VIEW THE CASE



This case may be viewed at:

[http://charity.decisions.tribunals.gov.uk/documents/decisions/Decision%20\(29%20August%202017\).pdf](http://charity.decisions.tribunals.gov.uk/documents/decisions/Decision%20(29%20August%202017).pdf)

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Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

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