

IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(CHARITY)

MERMAIDS

Appellant

And

(1) THE CHARITY COMMISSION FOR ENGLAND AND WALES

First Respondent

(2) LGB ALLIANCE

Second Respondent

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LGB ALLIANCE: SPEAKING NOTE

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1. This Note is to assist the Tribunal. LGB Alliance continues to rely on its Skeleton Argument, and it also adopts the submissions made by the CC.
2. The oral submissions will follow the order contained in the list of issues [Vol 4/3]. This means that although standing is logically the first question and might be determinative, it is dealt with last.

**ISSUE 1: WHAT ARE THE PURPOSES FOR WHICH LGB ALLIANCE IS ESTABLISHED FOR THE PURPOSES OF THE CHARITIES ACT 2011?**

3. LGB Alliance's purposes are identified in its Articles of Association [Vol 2/26-7]: (i) to promote equality and diversity for the public benefit; (ii) to promote human rights and particular the rights and freedoms of those who face discrimination on the grounds of sexual orientation (iii) to promote any other purpose that is charitable under the law of England and Wales. The Articles

contain particulars as to how LGB Alliance intends to pursue those objects, but the objects themselves are embraced by these three provisions.

4. The objects are clear and unambiguous as the CC found in reaching their decision [Vol 2/5, §6] and they fall squarely within s.3(1), CA 2011 [Tab 1].
5. There is no warrant for stepping outside the Articles to discern whether there is or are some other, different, purpose/s not apparent from the stated purposes, unless it is said that the Articles are a sham (*Snook v London and West Riding Investments* [Tab 8]). A sham will only be established where there is a common intention amongst the subscribers to hide the real objects of the organisation (Tudor [Tab 39/7-035]); that is, that “the document is no more than a piece of paper which the parties have signed with no intention of its having any effect, save that of deceiving a third party and all the court into believing that it is genuine” (Tudor [Tab 39/7-035]). While Mermaids’ insinuate this (see below) they at the same time resist any suggestion that that is their case. This case proceeds, then, on the basis that no one alleges that the Articles are a sham.
6. In those circumstances, it is not open to Mermaids to argue that LGB Alliance’s Articles do not declare its honestly stated, real, objects (*Hipkiss v Charity Commission for England and Wales* [Tab 29], §§104-5, p34).
7. As such, discerning whether LGB Alliance is established for charitable purposes is simply a matter of construction. The Tribunal is concerned primarily with the meaning and effect of the language employed in LGB Alliance’s written objects (Tudor [Tab 39/7–005]). Whether an institution is *established* (s.1, CA) for charitable purposes is to be answered by determining as matter of construction what the institution was set up to do, not by how it would achieve its objects or whether its subsequent activities are in accordance with what it was set up to do (*R (Independent Schools Council) v Charity Commission* [Tab 19/§§187-188]).

8. As part of the exercise of construing a document, a Tribunal is entitled to have regard to limited contextual evidence as to the objective circumstances to which the language relates (eg. *Shore v Wilson* [Tab 3] which concerned the meaning of “godly persons” and related terms: need to know who and what the testator was). This may include evidence about the *facts known or assumed by the parties at the time that the document was executed*, but not subjective evidence which goes to the intentions of any party (*Marley v Rawlings* [Tab 22/144], §19; Tudor [Tab 39/7.016]) (save where a sham is alleged).
9. However, such evidence cannot be used to contradict, vary, or add to the plain terms of the governing document (Tudor [Tab 39/7-016]).
10. Otherwise, save where there is ambiguity as to the stated purposes, that is the end of the matter (*Attorney General v Ross* [Tab 13/263D-H ]; *Helena v R & C Commissioners* [Tab 20/1317-8]), §21-22). In particular, a charitable purpose will not be deprived of its charitable nature by subsequent activities: where a charity engages in *ultra vires* or otherwise improper activities, these are matters for the CC exercising its regulatory compliance functions (*Attorney General v Ross* [Tab 13/263H]; *Hipkiss v CC* [Tab 29/25], §§110-111).
11. As to the cases that Mermaids rely upon in oral submissions:
  - a. *McGovern v Attorney-General* [Tab 12]: the trust deed was *not very clear or satisfactory* (344B-C) and was *ambiguous* (at 348H) and open to differing constructions. It was common ground that “in construing ... any ambiguous wording contained in the trust deed” the court could have regard to the statute of the unincorporated association, Amnesty International, which was *manifestly part of the factual matrix accompanying the execution of the trust deed* (at 348H-349A). The scope of the inquiry was very limited (Amnesty International Handbook and Statute: 325G-H and 326D, 348H-349A).

b. *Southwood v Attorney General* [Tab 14/134-5]: the educational organisation purported to carry out its activities in the field of militarism and disarmament, which was not well established and understood as a field of academic study and its meaning was “obscure”: it was necessary to look at the background material (upheld by the CA [Tab 15]).

12. There is no ambiguity in the purposes identified in LGB Alliance’s Articles: see by analogy: *Human Dignity Trust v CC* [Tab 21] in which the CC had refused an application for registration on two grounds: that HDT’s objects (at §6) were too vague and uncertain for the CC to be sure that HDT was established for charitable purposes only (and that it had no political purpose, said to be reflected in HDT’s work in seeking to change the law in foreign states (§3)). The CC argued that in the case of an institution established to promote human rights, it was generally necessary to consider extrinsic evidence, including the nature of the activities and proposed activities, because there was no particular meaning given to the expression human rights in charity law and the promotion of human rights was broad enough to embrace non-charitable purposes (§18). The FTT allowed HDT’s appeal, holding that the purposes were not unclear or ambiguous (and thus there was no need to consider extrinsic evidence: §§29-30).

13. There is, then, no ambiguity in LGB Alliance’s objects which are framed more precisely than those in HDT. The fact that LGB Alliance’s objects do not set out what is meant by lesbian, gay and bisexual people (Judge Neville’s question) does not give rise to any ambiguity. The way in which LGB Alliance interprets those terms will be informed by their beliefs and values. Another organisation may interpret them differently. But that does not mean that there is ambiguity and that an inquiry must be undertaken into the beliefs and values of the organisation, and which set of beliefs or values, if any, should be preferred or to engage in extensive argument as to the (sometimes contentious) legal meaning of those terms. Just as the objects do not need to set out what

LGB Alliance understands by the term “discrimination” (a developing meaning), or by the contents of relevant international instruments and so on, so LGB Alliance do not need to state what they understand is meant by lesbian, gay and bisexual people. That would require an unmanageable drilling down and introduce inflexibility. It does not create ambiguity. In HDT, for example, it was clear that the promotion and protection of human rights accommodated and was intended to litigation aimed at securing the interpretation of constitutional rights, that interpretation being the decriminalising of same sex sexual activity ([Tab 21] §8) though it was not stated in terms in the objects.

14. Even if extrinsic evidence were required to determine the meaning of the phrase lesbian, gay, and bisexual in LGB Alliance’s written objects (and it is submitted that this is not required), the extent of that extrinsic evidence could only be limited objective evidence. Any difficulty in construing the meaning of the phrase would not require an investigation into LGB Alliance’s subjective intentions, nor into its activities pre -and post-establishment.

15. Against this background, Mermaids have sought to reconstruct LGB Alliance’s objects:

a. In their grounds of appeal, Mermaids identify the “true, main or particular purposes” of LGB Alliance as or including [1/39], §8:

8.1 Promoting LGB Alliance’s beliefs, principally through social media;

8.2 Seeking or opposing changes in the law and/or lobbying government bodies in the United Kingdom, in order to restrict the legal rights and protections afforded to transgender people; and

8.3 Impeding the work of registered charities that work for the benefit of transgender people, including Mermaids in particular, by various means including

(a) promoting the view that they spread disinformation; and (b) seeking to deprive them of funding”.

b. In their Skeleton Argument, Mermaids argue that LGB Alliance was established for the purposes of [4/26], §70:

- (1) promoting its anti-trans worldview, principally through social media;
- (2) seeking or opposing changes in the law and/or lobbying government bodies on transgender issues (a goal which has been so dominant within LGB Alliance from the start that it cannot possibly be seen as merely ancillary);
- (3) impeding the work of registered charities that work for the benefit of transgender people (which it claims are engaged in eroding LGB rights).

c. In counsel’s speaking note (§18), it is argued that LGB Alliance’s purposes can be expressed in various ways, but they include:

- (1) promoting their particular gender critical beliefs.... by a range of means, including by the campaigning, by publications seeking to persuade the public, and by seeking to influence the education of young people.
- (2) campaigning for or against, as appropriate, changes in the law, (including in Scotland) and policies of government bodies (eg, the EHRC); and
- (3) impeding the work of organisations, particularly charities, that work for the benefit of trans people, including by promoting the view that they spread information, and by seeking to deprive them of funding.

16. Even on the most generous approach to the authorities and the most extravagant interpretative exercise, the various purposes contended for by Mermaids would not be legally permissible. Any recourse to contextual evidence would not permit the contradiction, variation or addition to the plain terms of LGB Alliance's Articles in this way.
17. Mermaids' arguments are in any event difficult to understand. It appears that they seek to show that LGB Alliance's activities since their establishment show that their purposes are something other than those stated. They acknowledge that they can only take account of *intra vires* activities (Mermaids Speaking Note §22). This does not help them. LGB Alliance's activities are consistent with their stated objectives (if they were not, this would mean they were, or might be, *ultra vires* and a regulatory matter). Ross, [Tab 13/ relied upon by Mermaids; Speaking Note, §22), was concerned with whether post-establishment activities could be taken into account when the establishment's constitution expresses some charitable objects, but it also permits non-charitable activities to be carried on (that is not the case here). In that event, be necessary to ask whether the main purpose of the organisation is charitable or non-charitable. The extent to which the organisation has carried on *intra vires* but non-charitable activities is capable of being admissible extrinsic evidence as to the real or main purpose for which the organisation was formed. This does not shed light in the issues here.
18. For completeness, if contrary to LGB Alliance's submissions, LGB Alliance's activities are to be taken into account, and it is LGB Alliance's submission that this is not legally permissible, the Tribunal is invited to note that the framing of this case by the way in which the appeal has been pursued has focussed on the relationship between gender ideology and gender critical beliefs, and the activities of the Mermaids and LGB Alliance on trans rights. Mermaids say that "[t]he centre of gravity of LGB Alliance's activities has always been essentially 'anti-trans', and not 'pro-LGB'" (App Skeleton Argument, §64.2 [4/23]). This is not so and, respectfully, the Tribunal should not be inadvertently induced into

viewing LGB Alliance's work through the prism of the conflict between those who subscribe to gender ideology and those with gender critical beliefs. LGB Alliance's work covers a breadth of activities and given their nascent being and the resources necessarily deployed to mount a defence to this appeal, they have achieved a significant amount (see, Eileen Gallagher's statements [1/234ff], in particular). As Eileen Gallagher said: "*It is regrettable that we have been distracted in this task and have had to spend a great deal of time and ask our supporters for a great deal of money to defend our charitable status in these proceedings*" ([1/245] EGWS2, §8). Notwithstanding, LGB Alliance has achieved a great deal.

19. In summary, LGB Alliance's purposes are clear. There is no basis in law for undertaking any inquiry into LGB Alliance's activities before or after its establishment by reliance of extraneous evidence and nor is there any evidence or allegation of a sham. LGB Alliance's purposes are those set down in its founding document.

**ISSUE 2: DO THE PURPOSES FALL EXCLUSIVELY WITHIN THE DESCRIPTIONS IN SECTION 3(1) OF THE CHARITIES ACT 2011?**

20. LGB Alliance's purposes fall squarely within s.3(1), CA: "the advancement of human rights [and] ...equality and diversity". It is not suggested by Mermaids that these purposes do not fall within s.3(1).

**ISSUE 3: IS THE NATURE OF THE PURPOSES BENEFICIAL TO THE COMMUNITY ('PUBLIC BENEFIT IN THE FIRST SENSE')?**

21. The benefit requirement has two "aspects"; the "benefit aspect" and the "public aspect" (*R (ISC) v CC* [Tab 19/235], §44).

22. As to the benefit aspect, "[n]o doubt in some cases a purpose may be so manifestly beneficial to the public that it would be absurd to call evidence" (*McGovern v Attorney General* [Tab 12/333]). The promotion of human rights and

equality and diversity is so manifestly beneficial to the public that it would be absurd to call evidence to demonstrate it. This is for two reasons:

For individuals whose human rights are thereby secured, the benefit is immediate and tangible. There is also a less tangible, but nonetheless significant, benefit to the whole community that arises from our perception that the fundamental rights of all members of the community are being protected. That provides sufficient benefit to the community to justify treating the promotion of human rights as a charitable purpose in its own right. (*The Promotion of Human Rights* (2005) Charity Commission RR12 [2/827], §12).

The Commissioners noted the considerable public harm caused by discrimination and the clear benefits arising from promoting diversity in society and considered that it was unnecessary to consider evidential proof on this point. They recognised that the overwhelming intangible benefit is a fairer and more just society in which people are valued for themselves." (*Promotion of Equality and Diversity for the Benefit of the Public*, [2/836], §6).

23. Mermaids argue that it should not be presumed that objects directed at promoting human rights and equality and diversity are beneficial to the public (speaking note, §28.4). They place reliance on the education cases in which the question of public benefit arose (*Re Hopkinson* [Tab 4/350], political propaganda; *Re Bushnell* [Tab 11/1605] essential object a political one; *Southwood* [Tabs 14/134-5] challenge to policies of Western governments). But the objects in these cases did not come close to LGB Alliance's objects. For

completeness, while educating the public is mentioned in LGB Alliance's Articles, it is a *means* by which LGB Alliance might pursue its objects, not a description of the objects themselves [2/26], §2.25).

24. It is submitted that self-evidently human rights and equality and diversity are beneficial to the public. Indeed, beyond a public inquiry as to the empirical value of promoting human rights and equality and diversity, it is difficult to see what evidence could be adduced to prove that benefit.

**ISSUE 3.1: DO THE PURPOSES INCLUDE ESSENTIALLY POLITICAL PURPOSES WHICH ARE NOT ANCILLARY TO RECOGNISED CHARITABLE PURPOSES?**

25. "Political purposes" do not satisfy the public benefit test (*McGovern v Attorney General* [Tab 12/334G]. This means that charities for "political objects" can never be legal charities. Political purposes may include objects which involve changes in the existing laws of England (at 334). Thus, an organisation the "principal object" of which "is to alter the law of this country cannot be regarded as charitable" (334G). However, political activities which are "merely subsidiary or incidental to a charitable purpose" are not inconsistent with charitable status (341E). It is only where political activities in themselves form part of the trust's purpose that the organisation is non-charitable (341F).

26. The CC's *Guidance: Campaigning and Political Activity Guidance for Charities* [Tab 42] advises that "political campaigning, or political activity, as defined in this guidance, must be undertaken by a charity only in the context of supporting the delivery of its charitable purposes. Unlike other forms of campaigning, it must not be the continuing and sole activity of the charity"; "There may be situations where carrying out political activity is the best way for trustees to support the charity's purposes. A charity may choose to focus most, or all, of its resources on political activity for a period. The key issue for charity trustees is the need to ensure that this activity is not, and does not become, the reason

for the charity's existence" "charities can campaign for a change in the law, policy or decisions where such change would support the charity's purposes. Charities can also campaign to ensure that existing laws are observed"; "legal requirement: however, a charity cannot exist for a political purpose, which is any purpose directed at furthering the interests of any political party, or securing or opposing a change in the law, policy or decisions either in this country or abroad"; "legal requirement: in the political arena, a charity must stress its independence and ensure that any involvement it has with political parties is balanced" (§1.1).

27. LGB Alliance's purposes are not political. LGB Alliance does engage in political activities, including campaigning work and work directed at law reform (whether advocating for or against it). But this is subsidiary or incidental to its purposes. There have been two main areas of political engagement by way of law reform activities:

- a. Firstly, conversion therapy and the proposed legislation (BJWS [1/180], §§59ff.): LGB Alliance's concern arises from the impact of a *de facto* ban on therapeutic interventions in the case of children in particular, given concerns about children identifying as trans, and the apparent preponderance of same-sex attracted children (Bev Jackson [1/182]; Cass Review: Independent Review of Gender Identity Services for Children and Young People: Interim Report [2/1914]; [2/1913])
- b. Secondly, proposed amendments to the Gender Recognition Act 2004 in Scotland and its impact on lesbians in particular because of the consequences for single sex spaces and on girls becoming aware of what it is to be a lesbian (BJWS [1/187], §80). Without a Gender Recognition Certificate, a person's sex is their biological sex, observed at birth. A transwoman without a GRC, then, can be excluded from a women's only service because for the law they remain male (see below). While a transwoman with a GRC can be excluded, this is only where the

threshold of proportionality is met. It matters, therefore. Amendments to the GRA will not amend the meaning of the EqA, as John Nicholson said in his evidence: but it will make it easier to change one's legal sex with a corresponding impact on single sex services.

28. The political activities in which LGB Alliance has been involved have always been cross party; in party political terms they are entirely neutral (EGWS [1/236], §10) and those activities are ancillary (Bev Jackson evidence 14.9.22: *"MG: A political thing BJ – In pursuit of our charitable object. IG – Puts it front and center rather than ancillary. BJ – Disagree. But difficult to do things for LGB people until we have secured LGB people with the definition we have been able to establish).*

29. While Mermaids' charitable status is not being assessed here, it is illustrative to compare LGB Alliance's political lobbying with Mermaids' political lobbying. Mermaids too engages in political activity, including campaigning for a change to the EqA to cover gender identity [**Supp bundle/3**], something LGB Alliance opposes. It was Belinda Bell's evidence that *BB: Meeting to lobby is part of what some groups do and part of what some charities do. KM – Do you do it. BB – Yes, not as much as we would like, but we try. To find in Mermaids' favour on this point, the Tribunal would have to conclude that gender critical beliefs are inherently political and contested whereas gender identity ideology is somehow neutral and settled. That is not so (indeed Paul Roberts accepted in cross-examination that there is a cohort of LGB people who agree with the position taken by LGB Alliance on sex and gender: 12.09.22).*

30. And there is no requirement of neutrality or balance when advocating for a particular interpretation of human rights and equality law; a charity is entitled to take a position on it (*Human Dignity Trust v CC [Tab 21/27-8, §83, §101]*).

31. Finally, John Nicholson's evidence on LGB Alliance's activities was vitriolic: but in cross examination he was forced to accept that LGB Alliance conducted themselves apparently respectfully and even "charming[ly]", "demure" but characterised this, revealing his hostility, as "coy", "passive aggressive" and

“pseudo respectful”. There is no evidence of inappropriate political activity or activity that crosses the line.

32. As the CC has said, public debate with a plurality of voices is of value, in particular in the context of fundamental rights. LGB Alliance’s voice is no less worthy of respect (and indeed shares much in common with the position of, for example, the Equality and Human Rights Commission: [2/2371] on the Scottish GRA reform Bill).

**ISSUE 3.2: IS THERE A COMMON UNDERSTANDING OF ENLIGHTENED OPINION THAT THE ATTAINMENT OF THE RELEVANT PURPOSES BY LGB ALLIANCE WOULD BENEFIT THE PUBLIC?**

33. As Mermaids’ speaking note states, under the “fourth head”, case law holds that there must be proof of objective benefit on the evidence: *National Anti-Vivisection Society v IRC* [Tab 5/41]. The fourth charitable head was “the advancement of objects of general public utility”. As the CC observed yesterday, this predated the CA 2006 and now CA 2011 which provides a list of heads, including the advancement of human rights and equality and diversity. It might be doubtful whether there is room now for “the approval by the common understanding of enlightened opinion test”. In any event, it is self-evident that there is a common understanding of enlightened opinion that attainment of human rights and equality and diversity would benefit the public.

34. This is so of human rights and equality and diversity generally. It is not necessary to go further than that. However, if it is necessary to “drill down” to LGB Alliance’s underlying beliefs, then the Tribunal should, with respect, take account of the evidence that a substantial number of people agree with LGB Alliance’s position (not least its numerous supporters: Kate Harris said in oral evidence that LGB Alliance had 6000 subscribers) and both John Nicholson and Paul Roberts accepted in evidence that there is a body of opinion amongst LGB people who agree with LGBA’s position in the sex and gender debate.

35. Further, those beliefs reflect legal norms (ss. 11, 212, EqA; *R (Elan-Cane) v SSHD* [2018] EWHC 1530 (Admin) [Tab 31/5147], §96 (“Although at one time the terms “sex” and “gender” were used interchangeably, (and confusingly still are on occasions), due to an increased understanding of the importance of psychological factors, (albeit these may be due to differences in the brain’s anatomy), sex is now more properly understood to refer to an individual’s physical characteristics, including chromosomal, gonadal and genital features, whereas gender is used to refer to the individual’s self-perception”). Despite the suggestion otherwise, the Supreme Court in *Elan-Cane* [Tab 35/] did not come to a different view.

36. Since the EqA does not change the definition of woman or sex (that is a matter for the GRA that deems sex changed in certain circumstances), transwomen do not fall within the definition of “woman” under the EqA because they are not biologically female (*For Women Scotland Limited v (1) The Lord Advocate and (2) The Scottish Ministers* [2022] CSIH 4, §§36, 39, 40) [Tab 37/299-300]. That does not mean that a different view would not attract “the approval by the common understanding of enlightened opinion”, but it does reflect the fact that the beliefs underpinning LGB Alliance’s work attract are equally worthy of respect and are respected.

**ISSUE 3.3: DOES THE PURSUIT OF THE RELEVANT PURPOSES BY LGB ALLIANCE GIVE RISE TO SIGNIFICANT DISBENEFITS WHICH OUTWEIGH ANY BENEFITS?**

37. It must be shown that any detriment or harm resulting from the purpose to any person is such as to outweigh the “benefit aspect” (*ISC v CC* [19/249], §96). However, a “clear case” would “have to be made out to show that an object which would ordinarily be charitable is not charitable because of the consequences which it has for society” ([19/252], §105); “great weight is to be given to a purpose which would, ordinarily, be charitable; before the alleged disadvantages can be given much weight, they need to be clearly demonstrated.

There is, we think, a considerable burden on those seeking to change the *status quo*" ([19/252], §106).

38. In undertaking that balancing exercise, it is important too to ensure that the Tribunal does not find itself drawn into making value judgments on particular social and political agendas ([19/252], §107) or into conducting a public inquiry into the same ([19/249], §96).
39. Mermaids in their speaking note point only to LGB Alliance's alleged "world view" that it says, offensively, is based on conflict and confrontation and consistently with that its approach fundamentally unpleasant, aggressive and corrosive of public discourse (§35). Firstly, this does not address the question: the question is whether the benefits of pursuing the charitable objects in LGB Alliance's Articles by a particular means is outweighed by the detriment of so doing to the community. The mere pursuit of objects in accordance with a particular belief system, where that is worthy of respect in a democratic society, is not detrimental and certainly not on the facts of this case. The approach of Mermaids is unfortunately not balanced, and they have not discharged the "considerable burden" identified in *ISC*.
40. In any event, Mermaids' characterisation of LGB Alliance's "world view" is unrecognisable. In evidence the LGB Alliance witnesses spoke of persistent attempts, which were rebuffed at every turn, to open a dialogue with organisations like Stonewall (e.g. Kate Harris 15.09.22: "*We had been blocked and blocked and blocked. I don't know if you read the correspondence between me and Stonewall for three years. You will see how far we went. I was working with former trustees of Stonewall, and we tried every angle. We got to the point of saying, if you Stonewall can't talk to us, let's have an independent facilitator. So I can't stress how much work went into over three years to try to get Stonewall to get involved*"). By contrast, it was the witnesses for Mermaids who displayed attitudes that were rooted in dogmatism and vitriol towards those who hold gender critical beliefs, as described above.

**ISSUE 3.4: DO THE PURPOSES BENEFIT THE PUBLIC OR A SUFFICIENT SECTION OF THE PUBLIC ('PUBLIC BENEFIT IN THE SECOND SENSE')?**

41. On the face of its objects, LGB Alliance serves all LGB people. It is entitled to restrict its services in this way (s194, EqA, [Tab 2]). It does not appear to be suggested that *that* restriction affects LGB Alliance's ability to satisfy this criterion.
42. Instead, Mermaids suggests that LGB Alliance restricts its services to a "sub-set" of LGB people, namely those that share its "world-view" (Mermaids' Skeleton Argument, §61). It does not do so and there is no evidence to suggest otherwise. Indeed, it is impossible to see how that would work on, for example, a help-line. It was put to Beverly Jackson in cross examination that LGBA's activities only benefit those LGB people who agree with gender critical beliefs. She denied this and said their activities were open to all (14.9.22). There is no evidence to the contrary and the suggestion is fanciful.

**ISSUE 4: AS A MATTER OF FACT, WHAT ARE THE EFFECTS OR POTENTIAL EFFECTS OF THE DECISION TO REGISTER LGB ALLIANCE ON THE APPELLANT? ARE THESE EFFECTS SUCH THAT THE APPELLANT "IS OR MAY BE AFFECTED BY THE DECISION" ON A PROPER APPLICATION OF SCHEDULE 6 TO THE CHARITIES ACT 2011?**

43. There can be only one meaning of "*a person who is or may be affected by the registration of an institution as a charity*" (Sch 6, Col 2) and the suggestion that it varies with the nature of the decision (registration/removal) is inconsistent with the scheme of the CA. Section 36, CA [Tab 1] applies to both registration and removal (objections) and the same test ("*a person who is or may be affected by the registration of an institution as a charity*") applies in both cases. The impact in both cases can be very severe.
44. As to an entitlement to appeal, the Attorney-General is given primacy (s319(2) appeal) and then the trustees and the institution itself (Sch 6, Col 2), the former

taking care of the public interest, and the latter necessarily will be closely and directly affected (*direct and immediate connection: Nicholson v CC* [Tab 25/22], §49).

45. There is no basis for distinguishing *Nicholson v CC* [Tab 25]. It dealt with the points made by Mermaids:

- a. if standing was given a narrow reach, decisions of this kind might go *unchecked* ([Tab 25/10], §15 and [Tab 25/15] §23).
- b. the fact that the Attorney-General rarely exercises her power does not affect the meaning of the provisions [Tab 25/21], §43). Indeed, the fact that the Attorney-General has a role in the *public interest militates against a wide construction* ([Tab 25/22], §48).
- c. *Crumley and Picton* [Tab 40] is of no assistance. Indeed, the authors themselves distinguish *Nicholson* (263ff).

46. Further,

- a. the focus must be solely on the particular decision [Tab 25/21], §§44-5).
- b. The decision itself must *relate to the person in some way* and *the person's legal rights must have been impinged or affected* by the decision and to be a person who may be affected, *there must be an identifiable impact on the person's legal rights which is likely to occur* ([Tab 25/21], §45).
- c. It connotes circumstances where the decision has direct, or the potential for a direct, effect on person's legal rights ([Tab 25/22], §49).
- d. It is insufficient that a person disagrees with the decision *emotionally, politically or intellectually* and as a result is *affected emotionally and/or socially, however sincere his concerns* ([Tab 25/22], §47)).

47. Mermaids have identified *no* legal right said to be affected or that might be affected. Instead, Mermaids state in their Grounds (and summarised in their speaking note in part) that:

- a. If LGB Alliance remains registered as a charity, this is likely to impede Mermaids and its trustees' efforts to pursue its own charitable objects because one of LGBA's core purposes is seeking to undermine Mermaid's charitable activities ([1/43], §14.1). This is addressed above. It is not one of LGB Alliance's charitable objects and nor does it identify a legal right that might be impinged upon by reason of these alleged matters.
- b. The decision *facilitates* LGB Alliance's *interference with* Mermaid's activities by giving access to tax relief and to charitable grants/donation and allowing LGB Alliance to portray it as an endorsement of their beliefs and Mermaids may suffer financial loss because may have to compete with LGBA for donations and grants ([1/43], §14.1). This does not identify a legal right that might be affected. The fact that Mermaids does not want to compete for funding with LGB Alliance, and funders may prefer to fund LGB Alliance, does not confer standing on Mermaids.

48. As the CC has said (Skeleton Argument: [4/41-2], §20.4) a dispute between two charities does not mean one of them has standing to challenge the other.

## CONCLUSION

49. Mermaids seek on the one hand to argue that LGB Alliance's objects are not true, and that those contended for in their various documents are the true objects, but recoil from arguing that LGB Alliance's stated objects are a sham; no doubt because they know they would not succeed. Instead, Mermaids' evidence insinuates conspiracy, without follow through, so their documents and witnesses speak of "hidden messages"; "agendas"; "a front to take away trans rights"; "transphobia" and a setting "out to deceive the CC about the true nature of their activities" (Paul Roberts 12.09.22 am). Further, Mermaids stigmatise LGB Alliance's use of terms such as "sexual orientation", "sex-based rights" and "lesbian, gay and bisexual people" which, it is said, "are used to

signal a particular position on trans rights in a way that is not obvious to the casual reader” (App Skeleton Argument, §64.3 [1/106]; Paul Roberts 12.09.22 am). This is deeply offensive to LGB Alliance’s founders and profoundly homophobic – it is again the love that cannot speak its name and it pushes LGB people who identify as same-sex attracted back in the closet if that stigma is to be avoided. Any expressed anxieties on the part of LGB Alliance about the approach of Mermaids are well founded and certainly not borne out of some hidden conspiracy.

50. It is clear that the objection to LGB Alliance is predicated on ideology alone. As Paul Roberts’ accepted in evidence, he would be happy enough with LGB Alliance’s objects if they were delivered in a way which was consistent with his own values and beliefs (notes of evidence 12.09.22). Dogmatism dominated the evidence of both Paul Roberts, who would not countenance an LGB gender critical organisation joining the Consortium, and John Nicholson who would not countenance any possibility of a genuine concern about a conflict of rights.

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