

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

**IN THE MATTER OF THE DOVE TRUST (Charity No. 287401)
AND IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 78 OF THE CHARITIES ACT 2011**

Before Mr Justice Henderson

Dated 22 July 2014

B E T W E E N:

Case No. HC13C05520



THE CHARITY COMMISSION

Claimant

-v-

(1) PESH FRAMJEE

(the interim manager of Dove Trust, appointed pursuant to section 76 of the Charities Act 2011)

(2) BRYAN GUNN

(3) DONNA NAGHSHINEH

(4) KEITH COLMAN

(5) PETER FARLEY

Defendants

ORDER

UPON the Part 8 Claim of the Claimant issued on 22 December 2013 (the “**Claim**”)

AND UPON reading the evidence filed

AND UPON reading the submissions filed by or on behalf of charities, good causes, donors and other persons interested in the outcome of the Claim

AND UPON hearing Counsel for the Claimant (the “**Commission**”), Counsel for the First Defendant (the “**Interim Manager**”), and Counsel for the Fourth Defendant

IT IS DECLARED THAT in relation to monies donated via the website with the web address <http://www.charitygiving.co.uk> (the “**Website**”) (and as described in greater detail in the Judgment of Mr Justice Henderson of even date):

- (1) when monies were donated for a charity or good cause nominated at the time a donation was made or within a reasonable period thereafter:¹

¹ For the avoidance of doubt, nominations made pursuant to paragraph 1(c), below, are to be treated as having been made within a reasonable period.

- a. those monies were received and thereafter held by the trustees of the Dove Trust (the "Trustees") in a global sub-trust of the charitable trust established by deed of trust dated 16 June 1983 (the "Sub-Trust" and "Dove Trust" respectively). Each person who made a donation through the Website was a separate settlor of the Sub-Trust in relation to the funds which originated from that person (the "Donor(s)"). The terms of the Sub-Trust were that the Trustees would as soon as reasonably practicable ensure that the funds donated were paid to the charity or good cause nominated by each Donor (the "Beneficiary(ies)"); and
 - b. those donations also gave rise to contractual obligations owed by the Trustees to each Donor to pay a sum equal to the amount of the relevant donation to the appropriate Beneficiary within a reasonable period of time. Such rights are enforceable by the Donors and (pursuant to s. 1 of the Contracts (Rights of Third Parties) Act 1999) the Beneficiaries.
- (2) whenever gift aid was received by the Dove Trust in relation to a donation made through the Website (and subject to the Trustees' right to deduct therefrom an administration fee of 3.99% of the amount of the donation):
- a. that gift aid became an accretion to the funds donated by the relevant Donor and was thereafter held in accordance with (1)(a) above; and
 - b. the Trustees assumed an additional contractual obligation (enforceable as provided for above) to pay to the relevant Beneficiary an amount equal to the gift aid received less the said administration fee.

AND IT IS DECLARED THAT all monies received by the Trustees as donations but which fall outside the scope of the previous declaration above shall be held on the same trusts and give rise to the same contractual rights as are declared above

AND IT IS DECLARED THAT, in the event that the monies held by the Interim Manager (the "Monies") are insufficient to meet all of the claims and entitlements of the Beneficiaries, the Monies shall be distributed amongst the Beneficiaries on a *pari passu* basis in accordance with the directions given below

AND IT IS DECLARED THAT in effecting such distributions the Interim Manager shall:

- (1) be entitled to rely upon the information contained in the Dove Trust's donation management system; and
- (2) be entitled to rely upon the bank account details held by the Dove Trust for each Beneficiary.

AND IT IS DECLARED THAT the checks which have been carried out and those checks which are to be carried out before distributions are effected by the Interim Manager in respect of the Dove Trust's records and data systems as set out in his witness statement dated 2 July 2014 are acceptable and sufficient

IT IS ORDERED THAT:

1. The Interim Manager shall, as soon as practicable, distribute the Monies to the Beneficiaries on a *pari passu* basis. In making such distributions, the Interim Manager shall:
 - a. not make any distribution to any Beneficiary where the costs associated with so doing are equal to or greater than the amount which would be distributed to that Beneficiary;
 - b. be permitted to leave out of account the claims which might be made by any Beneficiary which (i) cannot within a reasonable period be identified or (ii) appears to the Interim Manager to have ceased its activity;
 - c. make reasonable efforts to contact those persons who have made donations through the Website without nominating a charity or good cause to benefit from such donations to invite them, within 42 days (from the date upon which the communication is sent), to make such a nomination. For the avoidance of doubt:
 - i. the Interim Manager shall be under no obligation to contact such persons in the event that the costs associated with doing so are equal to or greater than the amount which would be distributed to any beneficiary they might nominate, and
 - ii. the Interim Manager shall, in the event that a nomination is not made within the said period, use the funds that might have been applied in accordance with such a nomination to augment the distributions to be made to the Beneficiaries.
 - d. be permitted to leave out of account any claims in respect of donations made to the Dove Trust itself.
 - e. not use the Monies to make any payments to trade creditors unless and until the Beneficiaries are paid in full; and
 - f. be under no liability in connection with distributions made according to the terms of this Order.
2. The Commission shall have liberty to apply (if necessary and if so advised) for an order that the costs of and associated with the appointment of the Interim Manager (which shall, for the

avoidance of doubt, include the steps taken by the Interim Manager) and/or the costs of and associated with these proceedings shall be paid out of future recoveries made in connection with the Dove Trust.

3. Liberty to apply as to any further questions which may arise in connection with the said distributions or in relation to any matter that may arise in connection with the discharge by the Interim Manager of his functions.
4. Save as aforesaid, no order as to costs.