

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

Between:-

MERMAIDS

Appellant

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

First Respondent

THE TRUSTEES OF LGB ALLIANCE

Second Respondent

---

ANNEX A:

SECOND RESPONDENT'S RESPONSE TO THIS APPEAL

---

Introduction

1. By Order of Tribunal Judge Moira Macmillan, dated 23 September 2021, LGB Alliance was made the Second Respondent in this matter.
2. This follows its Application to Intervene, made on 4 August 2021 pursuant to The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended) rule 33(2)(a) and (b) ("the Tribunal Rules").
3. The Second Respondent sought permission to attend and take part in this matter, given that LGB Alliance is the subject of these proceedings. At §16.d of the Second Respondent's application, it sought permission to provide written submissions to the Tribunal on any matters it saw fit. Accordingly, this is the Second Respondent's written response to this Appeal.
4. The Second Respondent opposes the Appellant's appeal.

Standing

5. The Second Respondent raised substantial issues, relating to the Appellant's lack of standing to bring this appeal, in its Application to Intervene [§21-37, Application to Intervene]. For brevity, those submissions on standing are not repeated herein, but remain adopted.

6. The First Respondent is in alignment with the Second Respondent - the issue of the Appellant's standing is "*of fundamental importance in this matter*" [§7, First Respondent's Response].
7. The First Respondent concurs that the Appellant does not fall within the category of "*any other person who is or may be affected*" by its decision. They add that neither the legal rights or financial capability of the Appellant have been impinged or affected by their decision to register the Second Respondent. The Second Respondent agrees.
8. The issue of standing must therefore be dealt with as a preliminary issue. If – as the Respondents submit – the Appellant has no standing, it therefore follows that the Tribunal has no jurisdiction to hear this appeal.
9. The Second Respondent considers that for reasons of costs, proportionality and jurisdiction, the issue of standing should be resolved by way of Preliminary Issues Hearing, rather than at the outset of a two-day listed hearing.
10. The Second Respondent intends to provide its final views as to whether a preliminary hearing is required, per Judge Macmillan's Order, by 19 November 2021.

#### The Second Respondent

11. The Second Respondent comprises the trustees of LGB Alliance. LGB Alliance was formed in October 2019.
12. LGB Alliance is a company limited by guarantee and incorporated by Memorandum and Articles of Association on 28 November 2019, with company number 12338881 ("the Company"). The Company is a charitable incorporated organisation with registered charity number 1194148.
13. LGB Alliance's trustees are Eileen Gallagher OBE (Chair), Professor Robert Wintemute, Katharine Harris, Lord Tony Young, Beverley Jackson, Conrad Roeber, Professor Kathleen Stock OBE and Malcolm Clark (together "the Trustees").
14. The Company is established for exclusively charitable purposes and seeks to promote the equality and human rights of lesbians, bisexuals, and gay men.
15. LGB Alliance is organised around a definition of same-sex attraction underpinned by the meanings of "sex" and "sexual orientation" as conferred by the Equality Act 2010. Sex is a protected characteristic and refers to a male or female of any age (sections 11 and 212, Equality Act 2010). "Male" and "Female" are terms in reference to biology<sup>1</sup>. Sexual orientation is also a protected characteristic and refers to a person's sexual orientation towards persons of the same sex, the opposite sex, or either sex (section 12, Equality Act 2010).
16. Charities to support the rights of lesbian, gay and bisexual people are commonplace. Many mainstream charities that support lesbian, gay and bisexual people have, however, shifted to a

---

<sup>1</sup> Corbett v Corbett [1971]; Chief Constable of West Yorkshire v A (No.2) [2005] 1 AC 51 HL

different definition of same-sex attraction, based on attraction to someone's gender or gender identity, rather than someone's biological sex. Gender identity in this context refers to a sense of identity and/or to a social construct. A person may have the gender identity of a man, or a woman, regardless of their biological sex.

17. Same-*gender* attraction is, for some, one – or the only legitimate – way of defining homosexuality, to the exclusion of a definition based on biological sex. It was partially in response to this exclusionary view of homosexuality, which its Trustees did not share, that LGB Alliance was founded.
18. LGB Alliance thus represents all lesbian, gay and bisexual people, including those with the belief or perspective that same-sex attraction is, and should be, defined and organised by biological sex – male or female - and not by gender or gender identity. These are people who, as set out above, subscribe to the Equality Act 2010 definitions of sexual orientation. LGB Alliance also represents those who are agnostic on the issue. By virtue of the fact that LGB Alliance campaigns on LGB issues more broadly, they also represent LGB people who do not share their outlook on sex and gender at all.
19. Since the First Respondent's Decision in April 2021, the Employment Appeal Tribunal ("EAT") has concluded the belief that biological sex is real, important, immutable, and not to be conflated with gender identity is protected under the Equality Act 2010 and Article 9 of the European Convention on Human Rights. Holding such beliefs is thus a protected characteristic under the Equality Act 2010.<sup>2</sup> The EAT substituted a finding that the claimant's "gender critical" beliefs are protected in law. The EAT found these to be beliefs that are widely shared, including amongst respected academics, and beliefs that are also consistent with the law on sex and gender. The first instance decision in this case was relied upon by the First Respondent – the decision was described as decision as "informative" and that it "provides a helpful analysis of the Tribunal's approach to consideration of [gender-critical] views" [Decision, para 31].
20. LGB Alliance's values are published online, and set out as follows:<sup>3</sup>
  - a. **“Respect:** We engage with others respectfully. We discuss, propose, and oppose ideas; we do not attack individuals. Disagreement does not equal hate. We do not condone, endorse, or encourage any abusive or discriminatory behaviour towards any group or individual.
  - b. **Solidarity:** We work collaboratively, standing together, sharing information, and building connections with like-minded groups and individuals, curating community and resilience, to achieve positive outcomes.
  - c. **Evidence:** Facts matter. Our approach is to consider the evidence to make informed decisions and communicate in a factual and honest way. Legislation, policy, guidance and decisions that affect lesbians, gay men and bisexuals must also be based on evidence.
  - d. **Clarity of meaning:** We communicate ideas, and engage in debate, based on clear and accurate definitions. We uphold the legal and scientific definition of homosexuality as sexual orientation towards people of the same sex, and of bisexuality as sexual orientation towards people of either sex.

---

<sup>2</sup> Forstater v CGD Europe & others UKEAT/0105/20/JOJ, 10 June 2021

<sup>3</sup> About - LGB Alliance

- e. **Reality of biology:** We recognise that sex is binary, female and male, and that (for the vast majority of people) sex is determined at conception, observed at birth (or in utero), and recorded. It rejects the co-opting of rare medical Differences in Sexual Development (DSDs/intersex conditions) in order to cast doubt on the binary nature of sex.
- f. **Individual freedom:** We support women’s reproductive rights and bodily autonomy. We stand with lesbians in rejecting pressure to accept as sexual partners, or admit into lesbian spaces, males who define themselves as women. We stand with gay men in rejecting pressure to accept as sexual partners, or admit into gay men’s spaces, females who define themselves as men.
- g. **Non-partisan:** We are non-party political. We engage with organisations and publications with diverse political views. However, we do not, and will not, forge links with, or accept funding from, any organisation that does not share our values or whose aims we consider to be fundamentally hostile to the rights of lesbians, gay men and bisexuals, or that seeks to undermine women’s reproductive rights.”

- 21. LGB Alliance applied to the First Respondent to register as a charity on 13 March 2020.
- 22. Following a rigorous and transparent public process, where members of the public were freely able to voice their support or objection, the Company was registered as a Charity on 20 April 2021.
- 23. The First Respondent’s decision was published online, setting out at length the rationale for its ruling (“the Decision”).
- 24. The First Respondent lawfully exercised its statutory power to determine LGB Alliance’s objectives to be exclusively charitable, falling squarely within the definition in Section 3 of the Charities Act 2011, and that those purposes were and remain for the public benefit. They continue to do so in defending this Appeal. The Second Respondent supports, as would be expected, the First Respondent’s decision.

Issues for Determination

- 25. The Second Respondent agrees that the issues for determination in this matter are:
  - a. **Whether the Appellant has standing for the purposes of bringing an appeal against the Second Respondent’s registration as a charity (which should be dealt with by way of Preliminary Issues Hearing);**

Then, *only* if the issue of standing is determined in the Appellant’s favour:

- b. **What are the purposes of the Company?**
- c. **Are the purposes exclusively charitable?**
  - i. **Do they fall within the descriptions of charitable purposes in section 3 of the Charities Act 2011 (the “2011 Act”)?**
  - ii. **Are the purposes for the public benefit?**

### The Second Respondent's Response

26. The Second Respondent agrees, in general terms, with the First Respondent's Response, as the sole decision-maker in this case. LGB Alliance is the subject of that decision.
27. The Second Respondent adopts the First Respondent's submissions, and adds as follows:
28. LGB Alliance's charitable objects are listed, in full, at §18 of the First Respondent's Response. In deciding to register LGB Alliance, the First Respondent concluded that all these charitable objects, as expressed, are clear, certain and are neither indefinite nor ambiguous. They do not call for further clarity. [§24]
29. LGB Alliance's purposes plainly fall within the definition of charitable purposes at section 3(1)(h) Charities Act 2011: i.e.: "*the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity*".
30. Further, the requirements for Public Benefit were and continue to be met. [§25] There are clear and identifiable benefits, related to LGB Alliance's charitable objects.
31. The First Respondent has also balanced those public benefits against unsubstantiated allegations by the Appellant (and others) of LGB Alliance causing detriment or harm to others. At the heart of the Appellant's appeal is the contention that the Second Respondent has other "true" purposes. This unfounded and malicious allegation is denied.
32. The First Respondent received a large number of objections from members of the public to the effect that the purposes contained within LGB Alliance's Articles of Association were not "true" objects; the First Respondent, however, found no evidence to support such allegations. The First Respondent also received supportive messages from members of the public.
33. Even though the views held by LGB Alliance are considered by the Appellant to be 'unpalatable', the First Respondent made it clear that, even if this is the Appellant's opinion, this does not mean an organisation cannot be registered if the statutory tests are duly met.
34. Religious and secular charities, and human rights charities, will often have conflicting and competing beliefs and objects. Charities, and those individuals and groups running them, will often have diverse and opposing views and opinions on an infinite number of matters.
35. By way of illustration, the below charities all exist simultaneously on the Charities Register, despite representing opposite poles of belief:<sup>4</sup>
  - a. *The Roman Catholic Diocese of Westminster* (Charity number: 233699) seeks to establish schools with religious character as schools for Roman Catholics under s69(3) of the School Standards and Framework Act 1998. *The British Humanist Association* (Charity number: 285987) seeks to end religious discrimination in school admissions and campaigns against the establishment of schools with religious character. By virtue of its existence, arguably the objects of the British Humanist Association undermine the

---

<sup>4</sup> Evidence of which is in the public domain and on the Charity Register.

aims of the Diocese – yet both are entitled to exist on the Register and operate as charities with opposing objects.

- b. *Life 2009* (trading as Life Matters) (Charity number: 1128355) is a pro-life organisation. *The British Pregnancy Advisory Service* (Charity number: 289145) is a pro-choice organisation. Again, both charities are entitled to exist on the Register and operate as charities despite their diametrically opposing objects.

36. Recognition of the plurality of belief systems in society is evidenced by the definition of “religion” in section 3(1)(c) Charities Act 2011 – “religion” also includes a religion which involves belief in more than one god, and a religion that does not involve belief in a god at all.
37. Charities are also entitled, by law, to limit their aims to advancing the rights of particular groups of people at the exclusion of other groups. Section 193 of the Equality Act 2010 allows charities to lawfully organise around meeting the needs of those with a particular protected characteristic. Benefits can lawfully be restricted by reference to persons sharing a protected characteristic in pursuance of a charitable instrument, and where this is either a proportionate means of achieving a legitimate aim, or is for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic.
38. For example, the Appellant *Mermaids* is a charity with the following charitable objects: “*to relieve the mental and emotional stress of all persons aged 19 years and under who are in any manner affected by gender identity issues, and their families, and to advance public education in the same.*”<sup>5</sup> *Mermaids* is set up as an exclusively trans-focused charity. It has the right to do so. There is no requirement on *Mermaids* to extend in its charitable objects to include any other protected characteristic or class of people. Yet this is precisely the criticism it makes of LGB Alliance as its basis for this Appeal.
39. It is therefore hypocritical for *Mermaids* to suggest that LGB Alliance’s objects are illegitimate or too narrow, or that it cannot lawfully organise itself around its chosen objectives, because the Appellant organises itself in precisely the same way. It is an abuse of process to found an Appeal on such grounds.
40. Charities also habitually compete for funds within the same sphere of activity. The Appellant has provided zero evidence that they are negatively affected by any financial impact caused by the Second Respondent being registered.
41. Even if this were the case, there is no reason at all to challenge the Decision on this basis. It is also highly unlikely that funds that would have reached *Mermaids* would now, in any event, be diverted to LGB Alliance, given the fundamental differences in the two charities’ aims and perspectives of sex and gender. Further, another charity’s success in, for example, awareness-building or fundraising does not justify calls to deregister it by another charity.

---

<sup>5</sup> [MERMAIDS - 1160575 \(charitycommission.gov.uk\)](http://MERMAIDS-1160575.charitycommission.gov.uk)

Conclusion

42. The Appellant does not have the necessary standing to challenge the registration decision of the First Respondent. Accordingly, the Tribunal does not have jurisdiction to hear this Appeal.
43. The Second Respondent agrees with the First Respondent that the statutory criteria for registering the Company as a charity were duly satisfied at the time of the decision and remain satisfied.
44. The Appellant's Appeal is misconceived, wholly unmeritorious and should be dismissed by this Tribunal.
45. The Second Respondent reserves the right to refer to further and other authorities in its skeleton argument and at the hearing.

ALICE de COVERLEY

3PB

7.10.21

*I believe that the facts stated in these Response are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.*

Signed: \_\_\_\_\_

*Kethanis*

On behalf of the Trustees of LGB Alliance

Dated: 8 Oct 2021