Neutral Citation Number: [2015] EWHC 2875 (Admin)

Case No: CO/524/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/10/2015

Before :

MR JUSTICE DOVE

- -

Between :

THE QUEEN (on the application of) ENGLISH BRIDGE UNION LIMITED	**Claimant**
- and -	
THE ENGLISH SPORTS COUNCIL	**Defendant**
- and -	
(1) THE SCOTTISH SPORTS COUNCIL **(2) THE SPORTS COUNCIL FOR WALES** **(3) THE SPORTS COUNCIL FOR NORTHERN IRELAND** **(4) THE UNITED KINGDOM SPORTS COUNCIL**	**Interested Parties**
- and -	
THE SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT	**Intervener**

- -

Richard Clayton QC & Alexander Dos Santos (instructed by **Irwin Mitchell**) for the **Claimant**
Kate Gallafent QC (instructed by **Fieldfisher**) for the **Defendant**
Ben Jaffey (instructed by **Government Legal Department**) for the **Intervener**

Hearing dates: 22nd & 23rd September 2015

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MR JUSTICE DOVE

MR JUSTICE DOVE :

Introduction.

1. Bridge is a card game played by four participants in two partnerships of two players. It is one of the whist family of card games. It is played competitively in a form known as duplicate bridge. In duplicate bridge any chance involved in the random distribution of the cards is eliminated by the requirement that each of the competing partnerships plays with the same hands of cards so that a proper evaluative comparison of the relative skills of the partnerships can be made and a winner declared whose success has not been contingent on how the cards have been dealt. It is, in language which has gained a relatively wide currency, a "mind sport". The claimant is the National Governing Body for bridge in England.

2. The question that arises in this case is not the broad, somewhat philosophical, question as to whether or not bridge is a sport. The question is whether or not the defendant (and for that matter the interested parties) erred in law in adopting a policy containing a definition of sport derived from the European Sports Charter which incorporates physical activity within the definition, leading to the conclusion that the defendant would be unlikely to recognise bridge as a sport for its purposes applying that definition. The legal error alleged by the claimant relates to a misconstruction both of the Royal Charter which created the defendant and also s3 of the Physical Training and Recreation Act 1937.

3. The definition deployed in the defendant's policy and which is derived from the European Sports Charter Article 2(1) provides as follows:

> "1. "Sport" means all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels."

This definition is not very different from that adopted by the United Nations which provides as follows:

> "All forms of physical activity that contribute to physical fitness, mental wellbeing and social interaction, such as play, recreation, organised or competitive sport, and indigenous sports and games."

4. All parties accept that it is possible to construct a definition of sport that would include "mind sports" like bridge. Indeed the International Olympic Committee and other international organisations recognise bridge as a sport. Further, in the field of charities, Parliament has chosen to define sport within section 3(2)(d) of the Charities Act 2011 as follows:

> " "sport" means sports or games which promote health by involving physical or mental skill or exertion."

Within *Sports Law* by Beloff, Kerr, Demetriou and Beloff at paragraph 5.10 the authors proffer a definition containing the following four elements:

> "(i) an activity, human or animal,
>
> (ii) in which two or more players, human or animal, compete against each other
>
> (iii) according to predetermined rules
>
> (iv) pursuant to which someone wins, and which determine who wins."

5. Against the background of this material it becomes clear that the question of whether or not bridge is a sport for a particular purpose or organisation depends critically upon the definition of sport which is adopted. That brings us back to the legal question which arises in this case, namely whether or not the defendant lawfully adopted a definition of sport which effectively excludes "mind sports".

The circumstances leading to the claim.

6. It is apparent from the evidence in the case that there is some history to the question of whether or not the defendant should recognise "mind sports" as sports. It is unnecessary for the purposes of this decision to delve into that history but it suffices to set out the circumstances that gave rise to this claim for judicial review. On 26th June 2014 Mr Petrie wrote to the defendant in his capacity as treasurer of the claimant asking why the defendant had chosen "to use the definition of sport in the European Sports Charter which is specifically aimed at *physical* sports only and hence mind sports are excluded". The defendant responded by email on 1st August 2014 through its Senior Grants Manager, Mr Clarkson. He pointed out that the adoption of the definition of sport in the European Sports Charter was in line with the recommendation from the Council of Europe that Member States should adopt the Common Charter for Sport. He went on to make observations about potential sources of funding.

7. It appears that this reply then led Mr Petrie to write to the Recognition Panel of the fourth interested party. In the letter he indicated that the claimant wished to challenge the policy of the fourth interested party and its constituent home-country bodies' policies only to accept registration applications from sports which met the European Sports Charter definition and which thus included only physical sports. It appears that the letter of 22nd August 2014 from Mr Petrie was considered not simply by the fourth interested party but in fact also by the defendant and the first, second and third interested parties. Following consideration the defendant replied on 3rd November 2014 in the following terms:

> "The four sports councils and UK sport considered your challenge at a recent meeting and asked me to respond to you in general terms about the recognition policy and more particularly from the viewpoint of Sport England since it has the most direct line of jurisdiction in respect of the English Bridge Union.

> As you will know, the European Sports Charter dates from 1992, and its origins go back to the European Sport for All Charter launched in 1975. The Charter is part of the enlarged partial agreement on sport with which 35 member states of the Council of Europe are currently associated. The definition for the European Sports Charter is therefore in line with a wide body of international thinking over a considerable period of time, and represents a rational and reasonable basis for a UK, and therefore an English, definition.
>
> We have considered the points set out in your letter carefully, but they have not displaced our view as to its appropriateness. The fact that other countries within the European Union may choose to act differently does not render our approach incorrect, or otherwise provide a sustainable basis for challenge.
>
> Importantly, the adoption of the definition also aligns with the underlying legal framework provided to support Sport England and other Royal Charter sports councils. The articles of the underpinning Charters refer to the enhancement of sport and **physical** recreation. It is clear from these governing frameworks that Sport England's engagement with sport relates only to sport which involves physical activity. The fact that the Charities Act may include "mind sports" does not imply or provide any power for Sport England to fund activities without a physical element: our duty is to operate within the confines of our Charter and the legal convention on the interpretation of its terms is to do so narrowly.
>
> Accordingly after careful consideration of your challenge we have determined that our adoption of the definition of sport taken from the European Sports Charter is both legally correct and aligns with the policy intent which is endorsed by all the sports councils."

8. It is this letter which has been taken as the decision for the purposes of these judicial review proceedings. There was an attempt subsequent to the letter by the claimant to bring an appeal in respect of the issue but this was met with the contention by the defendant that there was no jurisdiction to do so under its procedures and that the only means of resolving the dispute was by way of an application for judicial review in the High Court. This led to the commencement of these proceedings.

The evolution of the defendant and its adoption of the European Sports Charter definition.

9. The ancestry of the defendant can be traced back to the establishment in 1935 of the Central Council of Recreative Physical Training which subsequently became known as the Central Council of Physical Recreation (and which for the purposes of this judgment will be referred to as the "CCPR"). The CCPR was a voluntary association of the national bodies in the UK concerned with the development of physical recreation and is described in the "Report of the Wolfenden Committee on Sport"

(published by the CCPR in 1960) as comprising representatives of a wide range of national organisations including the National Playing Fields Association, the governing bodies of numerous sports and representatives from associations concerned with outdoor activity and dancing and rhythmical movement. The defendant's evidence is that the CCPR was established in contemplation of the enactment of the Physical Training and Recreation Act 1937.

10. In January 1937 the UK Government published a Memorandum on Physical Training and Recreation. It described the steps that the Government proposed to take to develop and extend physical facilities together with financial and other assistance to foster physical training and recreation. The Memorandum records the membership of the CCPR as including:

> "Representatives of more than one hundred organisations falling under heads (a) [associations concerned solely with physical training and recreation] and (b) [national associations not solely concerned with physical training and recreation] above. It is concerned to advise as to the provision of suitable facilities for recreative physical training, to facilitate the supply of competent teachers and leaders and to conduct propaganda."

11. In section 4 of the Memorandum the Government set out questions of policy which they regarded as fundamental. The third of those was described as follows:

> "(c) What should be included within the scope of physical training and recreation?
>
> While the Government fully appreciates the vital importance of physical training of a more or less formal character, they consider that a scheme confined to physical training would fail to recognise the wide variety of the demands for physical recreation and the important part which games, swimming and other physical activities have to play in promoting physical fitness. They have accordingly decided that any scheme must embrace the whole field of physical culture and should therefore include arrangements for increasing the supply not only of gymnasia, but also of playing fields, swimming baths and other means of healthy physical recreation. Moreover, it has to be recognised that many may desire opportunities for physical exercise and recreation not solely as such, but as part of a fuller club or community life, and the scheme will accordingly extend to combined provision of this character."

12. Part of the regime promoted by the Government required primary legislation in the form of the 1937 Act. As originally enacted (and as relevant to these proceedings) the Act provided as follows:

> "1. (1) There shall continue to be two National Advisory Councils for Physical Training and Recreation, the one for England and Wales and the other for Scotland, consisting in each case of such persons as the Prime Minister may from time

to time appoint, whose principal duty it shall be to investigate, and advise His Majesty's Government with regard to, matters relating to the maintenance and improvement of the physical well-being of the people by means of exercise and recreation…

3. (1) The Board of Education (hereafter in this Act referred to as "the Board") may, in accordance with recommendations made by the committee appointed for the purposes of this Act by the Prime Minister (hereafter in this Act referred to as "the grants committee") and in accordance with arrangements approved by the Treasury, make grants –

(a) towards the expenses of a local authority or local voluntary organisation in providing, whether as a part of wider activities or not, or in aiding the provision of, facilities for physical training and recreation, including, but without prejudice to the generality of the foregoing words, the provision and equipment of gymnasiums, playing fields, swimming baths, bathing places, holiday camps and camping sites, and other buildings and premises for physical training and recreation;

(b) towards the expenses of a local authority or local voluntary organisation in respect of the training and supply of teachers and leaders; and

(c) to the funds of any national voluntary organisation having such objects as aforesaid, either in aid of its work as a whole, or in aid of any specified branch of its work.

The powers of the Board under paragraph (a) of this subsection shall not extend to the making of a grant in aid of the maintenance of such facilities as aforesaid, except that, if the Board after considering a recommendation of the grants committee certify that the circumstances of a local voluntary organisation are such that special hardship or difficulty would be occasioned if such a grant were not made to it, the Board may make such a grant…

4. (1) A local authority may acquire, lay out, provide with suitable buildings and otherwise equip, and maintain lands, whether situate within or without their area, for the purpose of gymnasiums, playing fields, holiday camps or camping sites, or for the purpose of centres for the use of clubs, societies or organisations having athletic, social or educational objects, and may manage those lands and buildings themselves, either with or without a charge for the use thereof or admission thereto, or may let them, or any portion thereof, at a nominal or other rent to any person, club, society or organisation for use for any of the purposes aforesaid. The authority may also provide and, where necessary, arrange for the training of, such wardens, teachers and leaders as they may deem requisite for securing

> that effective use is made of the facilities for exercise, recreation and social activities so provided."

13. The effect of the 1937 Act was therefore, amongst other things to enable the making of grants for "physical training and recreation" by virtue of s3. It also extended the powers of local authorities in respect of the acquisition of land and buildings for "athletic" and also "social or educational objects". Prior to the publication of the Wolfenden Report s1 and parts of s3 of the 1937 Act were repealed or amended by the Education Act 1944. The current version of s3 of the 1937 Act is set out below.

14. The Wolfenden Report made a number of recommendations in relation to the governance and promotion of sport in the UK. In 1962 a Minister for Sport was appointed and in 1965 an Advisory Sports Council was formed in order to advise the Government on the distribution of funding to meet sporting requirements. On 22nd December 1971 that Advisory Sports Council was replaced by the Sports Council which was an executive body established by Royal Charter. So far as relevant for the purposes of this judgment the objects and powers contained within the Royal Charter were as follows:

> "WHEREAS matters relating to sport and physical recreation are the concern of departments of our Government.
>
> AND WHEREAS it has been represented unto Us that there should be established an independent Sports Council with the objects of fostering the knowledge and practice of sport and physical recreation among the public at large and the provision of facilities therefore, building upon the work in this field of the Central Council of Physical Recreation and others…
>
> NOW THEREFORE KNOW YE that We by virtue of Our Prerogative Royal and of Our especial grace, certain knowledge and mere motion have willed and ordained by these Presents do for us Our Heirs and Successors will and ordain as follows:…
>
> (2) In furtherance of its objects the Council shall have the following powers
>
> (a) to develop and improve the knowledge and practice of sport and physical recreation in the interests of social welfare and the enjoyment of leisure of the public at large in Great Britain, and to encourage the attainment of high standards in conjunction with the governing bodies of sport and physical recreation;
>
> (b) to foster, support or undertake provision of facilities for sport and physical recreation;
>
> (c) to carry out itself, or to encourage and support other persons or bodies in carrying out, research and studies into matters concerning sport and physical recreation; and to disseminate knowledge and advice on these matters…

> (f) to carry on any other activity for the benefit of sport and physical recreation."

15. It appears from the defendant's evidence that after the establishment of the Sports Council the assets of the CCPR including its staff were transferred across to the Sports Council and the role of the CCPR changed to that of a representative body for organisations related to sporting and physical recreational activities. Subsequently it was concluded that it would be appropriate to split the Sports Council into the defendant and the fourth interested party. The fourth interested party has particular responsibility for elite international sport, whereas the defendant represents a comparable body to that of the first, second and third interested parties but solely for England.

16. The defendant was established at the time of its creation by Royal Charter. The objects and powers of the defendant were described in the Royal Charter:

> "WHEREAS we, by Royal Charter dated the fourth day of February in the 20th year of our reign, constituted a body corporate by the name of "the Sports Council" with perpetual succession and with power to sue and be sued by the same name and the use of a common seal:
>
> AND WHEREAS it has been represented to Us that it is expedient to distinguish more clearly between those activities undertaken by the Sports Council for the benefit of Our United Kingdom as a whole and those undertaken for the benefit of England, and to do this by the replacement of the Sports Council with two new bodies one of which should be an independent English Sports Council with the objects of fostering, supporting and encouraging the development of sport and physical recreation and the achievement of excellence therein among the public at large in England and the provision of facilities therefore…
>
> NOW THEREFORE KNOW YE that We by virtue of Our Prerogative Royal and of Our especial grace, certain knowledge and mere notion have willed and ordained and by these Presents do for Us, Our Heirs and Successors will and ordain as follows:…
>
> (2) In furtherance of its objects the Council shall have the following powers:
>
> (a) to develop and improve the knowledge and practice of, and education and training in, sport and physical recreation in the interests of social welfare and the enjoyment of leisure among the public at large in England;
>
> (b) to encourage and develop higher standards of performance and achievement of excellence among persons or teams from England participating in sport and physical recreation;

> (c) to foster, support and undertake provision of facilities for the benefit of sport and physical recreation in England;
>
> …
>
> (i) to advise and assist, and to cooperate with, Departments of Our Government, local authorities, the United Kingdom Sports Council, the other Home Country Sports Councils and other bodies, on any matters concerned whether directly or indirectly with its objects
>
> …
>
> (m) to carry on any other activity for the benefit of sport and physical recreation in England."

17. A key function of the defendant since its inception has been the distribution of both funding provided by the intervener under the powers contained in the 1937 Act, and also Lottery funding which has been provided by virtue of the National Lottery Act 1993. Under s21 of the 1993 Act a fund called the National Lottery Distribution Fund or Distribution Fund was created. Pursuant to s22(3)(b), 16 2/3% of the distribution fund "shall be allocated for expenditure on or connected with sport". "Sport" is not defined within the 1993 Act. Of that money allocated for sport, 75.6% is identified by s23(2)(a) as being for distribution by the defendant. Whilst further submissions were made initially by the claimant in respect of the effect and content of s24 and s25 of the 1993 Act these were not pursued at the hearing and it is not necessary for me to rehearse them.

18. In 1999 the then Minister for Sport Mr Tony Banks, responding to an adjournment debate in the House of Commons, expressed his enthusiasm for recognising chess as a sport. He identified that the advice that he had received from his officials was that since amongst the criteria used by the defendant to assess suitability for recognition were physical skill and physical effort it would be difficult to recognise chess within that definition. He expressed the view that the definition was too restrictive and went on to observe as follows:

> "The main barrier in terms of definition appears to be the Physical Training and Recreation Act 1937. The legal advice received by my Department concludes that chess does not fall within the meanings of "physical training and recreation" in section 3(1) of that Act my Department has invested nearly £150,000 over the past three years to help The British Chess Federation to promote the development of chess, and we recently committed a further £50,000 per annum over the next three years. My Department makes over that money to the BCF under the Annual Appropriation Acts because of the restrictions imposed by the 1937 Act.
>
> It cannot be sensible in 1999 to have the issue of recognition tied to a definition struck in 1937. The world of sport and our attitudes towards sport have changed dramatically during the

> intervening 62 years. As if the 1937 Act were not enough of a problem, there is worse to come: chess does not fall within the meaning of the word "sport" in the context of the Sports Council's current Royal Charters; and it appears unlikely that chess will be regarded as a sport under the National Lottery etc Act 1993.
>
> Let me set out the problems facing us. First, to gain recognition for chess, we would need primary legislation to change the 1937 Act; secondly, we would need to amend the Royal Charters, which would need to be promulgated by the Sports Councils themselves; and, thirdly, we would probably need primary legislation to amend the National Lottery etc Act 1993. Think about that. Who was it who said that the job of the Minister for Sport was all about free tickets and lager? However do not despair – I have a cunning plan, which I shall announce in due course…
>
> As I said, recognition is not an academic issue: it would bring tangible benefits for the development of chess. Therefore, I can inform the House that the Secretary of State has proposed to broaden the scope of the 1937 Act to enable chess and other mind sports to be funded by the UK Sports Council. We will do that as part of the new cultural framework Bill for which we are seeking legislative time. Once that is achieved, the Sports Council, in turn, will need to promulgate the appropriate amendments to its Royal Charters, which I feel certain it will want to do following our amendments to the 1937 Act. That would secure the recognition of chess."

19. The proposed amendment to the definition of the 1937 Act so as to include chess and other mind sports found its way into a draft Regulatory Reform Bill in 2000. The Second Report in relation to that Bill identified that "the Government has decided as a matter of policy not to proceed with this proposal".

20. The evidence is unclear as to whether or not there was a formal policy in order to assist in the determination of applications for recognition of sports prior to the defendant's creation. All that has been found from this time is an application form dated 13th March 1992 which included within its questions "what physical skills are involved in the activity?", "how important are physical skills for successful participation in the activity?", "what physical effort does the activity involve?" and "does the activity present a physical challenge to the participant?". The evidence is, however, clear that following the defendant's creation thought was given to the establishment of a recognition policy.

21. On 24th June 1999 (after the adjournment debate which has been described above) a paper was presented to the defendant's Board in relation to the recognition of activities as sports and amongst other matters it had a section dealing with "Recognition of "mind" games". Having noted the role of the 1937 Act the board report continued as follows:

> "13. The Physical Training and Recreation Act is intended to: "provide for the development of facilities for, the encouragement of, physical training and recreation, and to facilitate the establishment of centres for social activities."
>
> 14. As such, it sets out the structure and membership of two National Advisory Councils (one for England and Wales and one for Scotland), local committees and sub committees; defines the powers of the Board of Education and local authorities and makes provision for the Board to establish, maintain and aid a National College of Physical Training for England and Wales.
>
> 15. The principle duty of the Advisory Councils was defined as being "to investigate, and advise His Majesty's Government with regard to, matters related to the maintenance and improvement of the physical wellbeing of the people by means of exercise and recreation." However, nowhere in the Act is there a definition on physical training, recreation, physical wellbeing or exercise.
>
> 16. Indeed, the definition of sport adopted by Sport England is that set out in the Council of Europe's European Sports Charter in which "sports means all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental wellbeing, forming social relationships or obtaining results in competition at all levels".
>
> 17. The recognition policy developed inter alia by the five Sports Councils is not intended to define what is and what is not a sport but rather to identify those activities with which the Councils wish to be associated and which they consider should be assisted to develop."

22. Following this there appears to have been the publication of revised processes for recognition in May 2000 and then further discussion in relation to producing a review of the recognition policy. This led to the approval by the defendant and the interested parties of a policy in 2006 to apply to all new applications that embraced the European Sports Charter definition. After further discussion (including the implications of the alternative definition of sport contained within what was at the time of the discussion the Charities Bill), and in the light of perceived complexities in the recognition process, the current policy operated by the defendants for recognition was introduced in October 2010. This policy traverses a large amount of ground in respect of, for instance, governance requirements for a National Governing Body seeking recognition and the process to be adopted for consideration of an application. Of central importance for present purposes is the definition of sport which is used by the policy. Under the heading "Principles of the new recognition policy" at paragraph 13 the policy makes clear that:

> "The decision on what is a sporting activity will be based on the 1993 European Sports Charter."

23. Within Appendix 1 which describes the pre-application process (a process to evaluate whether or not there is a genuine case for full consideration of an organisation for recognition) the following is set out:

> "Criteria
>
> The following criteria will apply to pre-application, all of which must be satisfied:
>
> - **Sporting activity:**
>
> - Where a new sporting activity is being considered it must meet the definition of sport contained in the Council of Europe's European Sports Charter 1993 which is:
>
> "Sport means all forms of physical activity which, through casual or organised participation aimed at expressing or improving physical fitness and mental wellbeing forming social relationships or obtaining results in competition at all levels"
>
> As guidance, the Sports Council's will place an emphasis on the human physical activity when the sporting activity takes place and not activity in preparation for the sporting activity, or on its conclusion."

24. This was the version of the policy current at the time when the correspondence that led to the instigation of these proceedings occurred. It appears that in August 2014 a revised draft of the current policy was produced but the revisions do not bear upon the definition of sport contained in the policy. As set out above it is the adoption of this policy which is at the heart of the claimant's case.

The claimant's grounds

25. It is not contended on behalf of the claimant that the defendant's adoption of the European Sports Charter definition of sport was Wednesbury unreasonable, that is to say it is not argued that the adoption of the definition was so unreasonable that no reasonable decision-maker could have adopted it. Whilst arguments were developed as part of the written submissions in the case alleging that the defendant's adoption of that definition unlawfully fettered its discretion, again these were not pursued at the hearing. There were two arguments central to the claimant's case which were as follows, and which were directed to demonstrating that the defendant's adoption of the European Sports Charter definition was based on a legal misdirection as to the proper effect of the 1996 Royal Charter and s3 of the 1937 Act.

26. Firstly, by Ground 1, it was contended on behalf of the claimant that the defendant had misconstrued its Royal Charter in adopting in the recognition policy a definition that incorporated the requirement of physical activity for a sport to be recognised. The focus of this argument was on the objects contained in the Royal Charter and in particular the words: "sport and physical recreation". It was accepted on all sides that the word "and" in this phrase can be interpreted as "and/or". However, the claimant disputed the defendant's contention that by virtue of s3 of the 1937 Act, and the factual context surrounding the creation of the Royal Charter, this phrase should be read as including only physical activities within the objects of the Royal Charter. The claimant contended that the defendant's approach rested upon a misconstruction of s3 of the 1937 Act (see Ground 2 below). Further, the claimant submitted that the word "sport" within this phrase should be construed so as to include mind sports since, on their approach to its ordinary natural meaning, it should not be confined to activities which comprise a physical component.

27. During the course of oral argument Mr Richard Clayton QC who appeared on behalf of the claimant contended that the defendant's misdirection was compounded or corroborated by legal errors in the 1999 Board Report and also the defendant's evidence lodged in response to the claim by Ms Jennie Price when in paragraph 8 of her witness statement she stated as follows:

> "8. Sport England's strategy for distributing funds it receives is guided by and aligned to the framework set for it by the Department of Culture, Media and Sport ("DCMS") which includes Directions on distributing Lottery Funding. Sport England's strategy must also be within the scope of the powers and duties conferred by Sport England's Royal Charter and the legislation under which the funds are provided to Sport England. Therefore Sport England only has vires to provide funding to activities that amount to "sport and physical recreation". There is no definition of "sport" in the Royal Charter or relevant legislation."

28. Mr Clayton's submissions focused on the penultimate sentence of that paragraph. He contended that the use of the word "vires" demonstrated a legal misunderstanding of the defendant's abilities and entitlements as an organisation created by a Royal Charter.

29. The claimant advanced subsidiary arguments to support their contentions in relation to the defendant's misconstruction. In particular the claimant argues that the defendant's emphasis in adopting the definition on the question of the distribution of funding (illustrated for instance within paragraph 8 of Miss Price's witness statement) is misconceived when there are other benefits which would be derived by the claimant of a non-pecuniary character were they to be recognised. For instance, in the evidence it is contended that recognition would make it easier for the claimant to secure support for its events and competitions from local authorities. In addition to this argument the claimant draws attention to the fact that whilst the construction of the phrase "sport and physical recreation" in the Royal Charter has been heavily dependant upon s3 of the 1937 Act that statutory provision does not confer any duty on the defendant, it only confers a duty on the intervener. Thus it is submitted that there was no necessity

of the kind claimed by the defendant to confine the definition of the objects of the Royal Charter to the terms of s3 of the 1937 Act.

30. In Ground 2 of the claimant's claim it is submitted that the defendant has misconstrued the phrase "physical training and recreation" which appears in s3 of the 1937 Act. On behalf of the claimant it is submitted, firstly, that in arriving at their construction of s3 the defendant has erroneously relied upon parts of the 1937 Act, and in particular s1, which have now been repealed. It is contended that this is illegitimate, and that it is not proper to approach the construction of extant legislation on the basis of language appearing in the same statute that has now been repealed. Secondly, it is contended that the defendant has fallen into error in seeking to construe the phrase "physical training and recreation" as matters stood in 1937. The claimant contends that approaching the construction of that phrase in 2015 requires a different interpretation of the statutory language because time has moved on. A modern interpretation, alighting in particular on the word "recreation", would include bridge and, most importantly, would not require an interpretation of s3 of the 1937 Act requiring the inclusion of an element of physical activity as part and parcel of qualification for inclusion within funding provided under s3 of the 1937 Act.

Law

31. The first issue that arises is the question of the correct approach to the construction of the Royal Charter. The background to Royal Charters was helpfully set out by Mitting J in R (on the application of Project Management Institute) v The Minister for the Cabinet Office [2014] EWHC 2438 in which he summarised the position as follows:

> "2. This is, I believe, the first time that the grant or refusal of a Royal Charter has been the subject of litigation. I propose, therefore, to begin by a brief analysis of the history and nature of Royal Charters and the process by which they are granted. A Royal Charter is granted in the exercise of prerogative powers – "the residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the crown": Dicey, The Law of the Constitution page 424. It has the essential qualities of an executive, rather than legislative act, and is "best not described as legislation": Craies on Legislation 10th edition paragraph 3.7.8. Its original purpose was to grant corporate personality to bodies of persons conducting activities for public or private benefit. The first Royal Charter in the first category was granted to the University of Cambridge in 1231 and the second to the Sadlers Company in 1272. Numerous grants have been made to educational institutions and livery companies ever since. The first grant of a Royal Charter to a group of persons carrying on a profession was to the Royal College of Physicians of London in 1518. At the turn of the 17th and 18th centuries, Royal Charters were granted to institutions which played a major part in the economic life of the country, notably the Bank of England in 1694 and the South Sea Company in 1711. The puncturing of the South Sea bubble in 1720 caused Parliament to prohibit the formation of joint stock companies except by Royal Charter in the Bubble Act 1720. Thereafter

> until the early 19th century, the grant of Royal Charters in the economic field was limited to a small number of banks and insurance companies. Between the enactment of the Chartered Companies Act 1837 and the Limited Liability Act 1955, the grant of a Royal Charter was the principle means by which economic activity could be carried on by an incorporated body without putting at risk the entire assets of those who've subscribed capital to it. In consequence, a large number of trading and mining companies were incorporated by Royal Charter between those dates. Few were afterwards. From then on, the great majority of bodies incorporated by Royal charter have been educational, charitable or professional. Lord Diplock was not quite right when he identified this function of the Privy Council as "the grant of corporate personality to deserving bodies of persons" in Council of Civil Service Unions v Minister for the Civil Service (1985) AC 374 at 410B, because almost all of the grantees have already been incorporated under legislative provisions. Grants are still made to un-incorporated groups of persons – for example livery companies and, in 2012, Marylebone Cricket Club – but current practice is accurately stated by the Privy Council on its website: "new grants of Royal Charter are these days reserved from imminent professional bodies or charities which have a solid record of achievement and are financially sound".
>
> 3. An organisation seeking the grant of a Royal Charter must petition Her Majesty the Queen in Counsel. On its website, the Privy Council office invites informal approaches before a petition is lodged, to afford that office the opportunity of giving advice about the chances of success. Petitioners are advised to take soundings amongst other bodies which may have an interest in the outcome. Once a formal petition has been lodged, it is advertised in the London Gazette. Any objector is entitled within six weeks to lodge a counter-petition. The petition is considered by a sub-committee of the Privy Council, comprising ministers of the departments most closely connected with the activities of the petitioner. Unanimity amongst the members of the committee is required before a recommendation for the grant of a Royal Charter will be made.
>
> 4. A petitioner is required to submit a draft of its charter and by-laws. Both must be approved by the Attorney General. Once a Royal Charter is granted, the Charter and by-laws cannot be amended without the consent of the Privy Council."

32. The claimant says that the approach to construing a Royal Charter should be analogous or closely aligned to the principles employed in construing a contract (see Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896 per Lord Hoffman at 912G to 913E). By contrast Ms Kate Gallafent QC who appears on behalf of the defendant contends that the construction of the Royal

Charter should be undertaken along the lines of construing a statute (see below paragraph 34). In my view neither of those analogies is entirely apt bearing in mind the nature of a Royal Charter and the process by which it is produced. It is not a contract where attempting to discern the intentions of the parties in striking their bargain may play a significant role in interpreting the document. Unlike a statute, which is preceded by the publication of a Bill, there is not an enacting history behind the emergence of the terms of the document to potentially examine to assist in its construction. In my view the approach to establishing the legal meaning of a Royal Charter as a legal instrument is to seek to understand that which the document would convey to a reasonable reader with knowledge of the factual background of how it came into being, alongside its purpose and the purpose of the body which it incorporates. Such a meaning will not be contingent upon dictionary definitions of its individual words. What needs to be examined is the use of the words within the overall factual context and what a reasonable person with knowledge of that context would understand the meaning of the document to be. A Royal Charter incorporating organisations such as the defendant does not arise or exist in a vacuum. There will have been relevant circumstances surrounding the need for the Royal Charter to be granted and they will form part and parcel of a reasonable person's understanding of the objects and powers as defined within the Royal Charter.

33. The second legal issue that arises in the case is the proper approach to statutory construction in particular in respect of the 1937 Act. I have set out in full above the 1937 Act as it stood so far as is relevant at the time when it was enacted. So far as it is presently in force it provides as follows:

> "3. (1) The Secretary of State may, in accordance with…arrangements approved by the Treasury, make grants—
>
> (a) towards the expenses of a…local voluntary organisation in providing, whether as a part of wider activities or not, or in aiding the provision of, facilities for physical training and recreation, including, but without prejudice to the generality of the foregoing words, the provision and equipment of gymnasiums, playing fields, swimming baths, bathing places, holiday camps and camping sites, and other buildings and premises for physical training and recreation;
>
> (b) towards the expenses of a…local voluntary organisation in respect of the training and supply of teachers and leaders; and
>
> (c) to the funds of any national voluntary organisation having such objects as aforesaid, either in aid of its work as a whole, or in aid of any specified branch of its work.
>
> The powers of the Secretary of State under paragraph (a) of this subsection shall not extend to the making of a grant in aid of the maintenance of such facilities as aforesaid, except that, if the Secretary of State . . . certifies that the circumstances of a local voluntary organisation are such that special hardship or difficulty would be occasioned if such a grant were not made to it, the Secretary of State may make such a grant."

34. The essential requirements of statutory construction were set out by Lord Bingham in R (Quintavalle) v Secretary of State for Health [2003] 2 AC 687 as follows:

> "8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulties. Such an approach not only encourages immense preliminary complexity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutia of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish or effect some improvement to the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provision should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

35. Thus, whilst the starting point for ascertaining the meaning of statutory provisions is to consider the ordinary meaning of the words or phrase in question it is also permissible, if not essential, to have regard to documents such as any Explanatory Memorandum published alongside the legislative provisions. Regard should be had to the historical context of the situation leading to its enactment. I have no doubt that the 1937 Memorandum, which by way of being an amalgam of what would in current parlance be an Explanatory Memorandum and a White Paper, is a document to which recourse should be had in seeking to understand the intention of Parliament.

36. More controversial is the consideration of parts of the statute that have been repealed when undertaking the task of interpreting those parts of the statute that remain. In support of the contention that no regard at all should be had to any elements of the statute which have been repealed in undertaking the task of interpretation, the claimant cited a number of cases including Surtees v Ellison (1829) 109 ER 278 and In the matter of the Mexican and South American Company, Grisewood and Smith's case, De Pass's case (1859) 45 ER 211. These were cases that demonstrated the cessation of substantive effect of any legislative provision upon repeal of that provision. That is a different question from whether or not in seeking to understand the intention of Parliament in interpreting a part of an Act, other parts of the Act which have been repealed prior to the occasion when the statutory construction is being undertaken can be disregarded. In response to the claimant's contentions the defendant and in particular Mr Ben Jaffey, who appears on behalf of the intervener, placed reliance on section 210 of *Bennion on Statutory Interpretation 6th Edition* which provides as follows:

> "Section 210 The Pre-Act Law

> (1) It follows from the basic rules set out in code section 209 that the interpreter of an enactment must take into account the state of the law at the time the enactment was passed.
>
> (2) Under the doctrine of judicial notice, the court is taken to know the law prevailing within its jurisdiction. This applies both to past and present law. Accordingly there can be no restriction on the sources available to the court for finding itself as to the content of any rule of law which prevails or has prevailed, within its jurisdiction."

37. I am entirely satisfied that it is permissible to have regard to parts of an Act which have been repealed in seeking to understand the will and purpose of Parliament in enacting a part of the Act which remains in force. At the time when an Act is passed it is meant to be read and understood as a whole. Thus reading the Act as a whole, and as passed, will properly assist in an understanding of the will of Parliament in enacting each individual part of it. Defining the intention of Parliament in respect of each individual ingredient of the legislation can and should be legitimately undertaken having regard to the meaning of each ingredient within the context of how the statute was enacted in its entirety. Whilst upon repeal of a part of the statute that part will cease to have substantive legal effect, there is in my view no reason in principle why it should not continue to be regarded as part of the context of the enactment of the statute as a whole and therefore a legitimate aid to construction.

38. The second issue of statutory construction which arises is in relation to the need to bear in mind that a statue is "always speaking". This principle was considered by Lord Bingham in the Quintavalle case as follows:

> "9. There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs it could not properly be interpreted to apply to cats: but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now. The meaning of "cruel and unusual punishments" has not changed over the years since 1689, but many punishments not then thought to fall within that category would now be held to do so. The courts have frequently had to grapple with the question whether a modern invention or activity falls within old statutory language…"

39. An example of a statutory term changing and developing over time is the case of Yemshaw v Hounslow LBC [2011] UKSC 3. The case concerned the meaning of the term "violence" in the context of homelessness. Having quoted from a version of the "Homelessness Code of Guidance for Local Authorities" Baroness Hale giving the leading judgment in the Supreme Court explained the correct approach to questions of the kind which arise in this case as follows:

> "25 However, it is not for government and official bodies to interpret the meaning of the words which Parliament has used.

That role lies with the courts. And the courts recognise that, where Parliament uses a word such as "violence", the factual circumstances to which it applies can develop and change over the years. There are, as Lord Steyn pointed out in R v Ireland [1998] AC 147, at p 158, statutes where the correct approach is to construe them "as if one were interpreting it the day after it was passed". The House went on in that case to construe "bodily harm" in the Offences Against the Person Act 1861 in the light of our current understanding of psychological as well as physical harm. The third reason given by the Court of Appeal in Danesh was that it was impermissible to construe the meaning of one phrase by reference to the meaning of another. This I accept.

26 However, as Lord Clyde observed in Fitzpatrick v Sterling Housing Association Ltd [2001] 1 AC 27, at p 49, which was concerned with whether same sex partners could be members of one another's "family" for the purpose of succession to Rent Act tenancies, it is a "relatively rare category of cases where Parliament intended the language to be fixed at the time when the original Act was passed". In other cases, as Lord Slynn of Hadley explained at p 35:

"It is not an answer to the problem to assume … that if in 1920 people had been asked whether one person was a member of another same-sex person's family the answer would have been 'No'. That is not the right question. The first question is what were the characteristics of a family in the 1920 Act and the second whether two same-sex partners can satisfy those characteristics so as today to fall within the word 'family'. An alternative question is whether the word 'family' in the 1920 Act has to be updated so as to be capable of including persons who today would be regarded as being of each other's family, whatever might have been said in 1920…"

27 "Violence" is a word very similar to the word "family". It is not a term of art. It is capable of bearing several meanings and applying to many different types of behaviour. These can change and develop over time. There is no comprehensive definition of the kind of conduct which it involves in the Housing Act 1996: the definition is directed towards the people involved. The essential question, as it was in Fitzpatrick, is whether an updated meaning is consistent with the statutory purpose – in that case providing a secure home for those who share their lives together. In this case the purpose is to ensure that a person is not obliged to remain living in a home where she, her children or other members of her household are at risk of harm. A further purpose is that the victim of domestic violence has a real choice between remaining in her home and

> seeking protection from the criminal or civil law and leaving to begin a new life elsewhere.
>
> 28 That being the case, it seems clear to me that, whatever may have been the position in 1977, the general understanding of the harm which intimate partners or other family members may do to one another has moved on."

Conclusions

40. Since it is central to both of the Grounds advanced on behalf of the claimant in my view it is convenient to start the consideration of the issues with the correct interpretation of s3 of the 1937 Act and, in particular, the words "physical training and recreation". Does an understanding of that phrase, and the will of Parliament in enacting it, require it to include physical activity?

41. As set out above in order to understand the intention of Parliament at the time when the Act was passed it is entirely permissible to have regard to the 1937 Memorandum. In the passage set out above directly bearing on the scope of the phrase "physical training and recreation" it is perfectly clear that that phrase is focused upon physical activity and was intended to encompass physical recreation, rather than any other kind of recreation. Thus in my view the 1937 Memorandum is strongly supportive of the defendant and the intervener's construction of s3 which is limited to pursuits involving physical activity.

42. Further, as I have set out above, it is in my view entirely permissible to have regard to any relevant parts of the Act which were part of the Act as originally passed but were subsequently repealed in seeking to understand the intention of Parliament. In that respect s1(1) is clearly relevant to an understanding of Parliamentary intention. It is noteworthy that s1(1) established National Advisory Councils with a duty to investigate and advise in relation to "matters relating to the maintenance and improvement of the physical wellbeing of people by means of exercise and recreation". Again this is in my view supportive of the defendant and the intervener's construction of s3 as being solely related to physical activity and physical recreation. I consider that s4(1) is also of some relevance when dealing with the question of the extension of local authority powers which were not confined to athletic objects but also included within those powers "social or educational objects". In my view there is force in Mr Jaffey's submission that the wider scope of s4, including social and educational objects beyond purely physical activities, reinforces by contrast the focus on physical activities provided for in s3(1)(a).

43. All of these matters taken together present in my view a compelling case in support of the contention that the phrase "physical training and recreation" within s3(1)(a) is to be interpreted as meaning physical training and physical recreation. This construction is supported by the 1937 Memorandum identifying the Government's aim as "promoting physical fitness" and embracing "the whole field of physical culture". It is also supported by the elements of the Act enacted alongside s3(1)(a) which have since been repealed for the reasons which have been set out above. I am therefore unpersuaded that there was any error on behalf of the defendant in the way in which they (and for that matter the intervener) have interpreted s3(1)(a).

44. I am equally unpersuaded by the suggestion that "physical training and recreation" is a phrase whose general understanding has moved on or which exists within a factual or social context where its meaning may have developed and changed since the 1937 Act was enacted. Beyond the fact that some international organisations have recognised bridge as a sport it is difficult to identify anything which might justify giving a different meaning to this phrase to the one which I have concluded was intended in 1937. The importance of supporting physical training and physical recreation remains a significant element of public policy, and the desirability of the specific promotion of physical activities remains as relevant today as it was at the time the 1937 Act was passed. That is not to say that there may not be good reason for public policy to promote mental activity and agility, but in the light of the originally intended meaning of the phrase remaining both relevant and appropriate there is no warrant for the phrase to be reinterpreted to include activities not involving a physical element. There is therefore no warrant in this case to reinterpret this phrase as a result of the passage of time: inclusion of activities promoting mental activity and agility would in my view undoubtedly require amendment of the legislation.

45. The second suite of issues which arise for determination relate to the correct interpretation of the phrase in the Royal Charter "sport and physical recreation". In the light of the observations set out above as to the appropriate approach to construction it is important to examine that phrase in context, and I reject the contentions which were advanced on behalf of the claimant that the contextual evidence provided by the defendant and set out above was irrelevant or that the weight to be attached to it should be diminished by virtue of the passage of time. As I have observed, in my view the meaning of the 1996 Royal Charter can only properly be derived from an examination of the text alongside the circumstances which gave rise to its existence.

46. The commencement of the consideration of the 1996 Royal Charter's context will be a proper understanding of s3 of the 1937 Act. Whilst the correct interpretation of the 1937 Act will not in and of itself be determinative of the correct interpretation of the Royal Charter, it is nevertheless an important starting point for consideration as to whether or not the phrase in the Royal Charter has been misunderstood. In so far as the defendant has understood the Royal Charter phrase "sport and physical recreation" to be confined to physical activities they have in my view applied the correct legal understanding of relevant provisions of the 1937 Act. In other words it is consistent with the correct interpretation of s3(1)(a) of the 1937 Act to understand the phrase in the Royal Charter as being similarly limited to physical activity.

47. It is also necessary to look at the wider context within which the 1996 Royal Charter emerged. The history of its evolution has been set out above in some detail. A construction of the phrase "sport and physical recreation" which is limited to physical activity is consistent with the 1937 Memorandum and the activities to which the phrase "physical training and recreation" was directed. Confining the understanding of the phrase in the Royal Charter to physical activities is also consistent with the scope of the work and objects of the defendant's predecessors. As is clear from the history, the work of the CCPR was confined to the sphere of physical activities. The predecessor to the 1996 Royal Charter, the 1971 Royal Charter, drew attention within its objects to "building upon the work in this field of the Central Council of Physical Recreation". There is in my view a continuous unbroken history from 1937 to the

present day of the defendant and its predecessors' work being confined to engaging with physical activities. That history and its consistency is an important element in understanding the phrase "sport and physical recreation" when it re-emerges in 1996 Royal Charter. There is no reason to suppose that the phrase was to be understood differently from when it appeared in the context of the 1971 Charter, or that when it appeared in the 1971 Charter associated with the work of the CCPR that it was to embrace activities other than the physical activities with which the CCPR had been engaged. The history and context of the 1996 Royal Charter is therefore all of a piece and strongly supportive of the approach taken by the defendant and the intervener namely that the phrase "sport and physical recreation" is confined to physical activity.

48. I am satisfied that the proper interpretation of the 1937 Act and the surrounding factual context of the 1996 Royal Charter are of far greater significance than any help which is to be derived from dictionary definitions of the individual words comprising the phrase in question. Read in context therefore, the word "sport" as it appears in the 1996 Royal Charter phrase "sport and physical recreation" connotes and requires an essential element of physical activity. In this connection the decision of the defendant to adopt the European Sport Charter definition of sport which requires an element of physical activity was entirely consistent with the proper understanding of their Royal Charter. Thus, whilst the word "sport" may have other definitions in other contexts, the correct interpretation of the operative phrase in the 1996 Royal Charter incorporates in this instance an essential element of physical activity.

49. As has been observed other subsidiary arguments were raised by the claimant in support of the contention that the defendant's decision to use the European Charter definition was infected with legal error. The first of those is that the defendant was incorrect when choosing the definition to focus on its function of distributing funds and therefore limiting its recognition of sports to only those which it believed could be funded through s3 of the 1937 Act. There are other benefits of a non-pecuniary character which it is submitted the claimant could benefit from were they to be recognised. Whilst the existence of these benefits was disputed by the defendant in my view the claimant's point cannot be dismissed out of hand. It is true that some of the benefits which they sought to rely upon, such as their admission to other international competitions, are contingent on the acts of others (namely the entities organising those competitions) but there are other non-pecuniary benefits which the claimant could potentially realise. It is not difficult to envisage that, for instance, recognition may ease the claimant's ability to access local authority assistance in respect of competitions and events. However, in my view the scope of such non-pecuniary benefits and their existence do not detract at all from the correct construction of the 1996 Royal Charter which I have set out above. The fact that a broader definition of the phrase "sport and physical recreation" might enable a wider range of activities to benefit cannot in my view gainsay the limitations on the phrase which necessarily arise from its legal and factual context. Having concluded as I have that the legal and factual context leads to an understanding of the phrase which incorporates only physical activities the claimant's argument in relation to potential non-pecuniary benefits is unable to assist them in demonstrating the adoption of the European Charter definition was legally wrong. The focus on taking a definition of sport which would only include activities which fell within those which could be funded under s3(1)(a) of the 1937 Act was a legitimate approach.

50. The second subsidiary argument is the point that the duty created by section 3 of the 1937 Act applies to the intervener but not to the defendant. So much is obviously correct. However, this point again takes the claimant's case no further against the findings that I have reached. Whilst, unlike the intervener, the defendant is not under a statutory duty to distribute funds solely in accordance with the scope of s3 of the 1937 Act, were it to distribute funds outwith the scope of s3 of the 1937 Act it can be envisaged that the source of those funds would rapidly dry up. The fact that the defendant may not be under the s3 duty does not detract from the point that the s3 duty is an important part of its day to day business of distributing funds provided to it by the intervener under s3 of the 1937 Act. It is, therefore, legitimately part of the context for interpreting and understanding the phrase "sport and physical recreation" in the 1996 Royal Charter.

51. The centrality of the correct interpretation of the 1937 Act and also the 1996 Royal Charter also disposes, in my view, of the arguments raised by the claimant in relation to why other activities such as darts or model aircraft flying have been recognised. Whatever the rights or wrongs of those decisions, they cannot impinge upon the correct determination in law of the meaning of the 1937 Act and the Royal Charter. Similarly the fact that other international organisations, applying their own distinctive approaches and definitions, have recognised bridge as a sport, has a very limited relevance in determining the legal questions which arise in this case and does nothing to deter me from the conclusion that the defendant's approach to the 1937 Act and the Royal Charter was legally correct.

52. During the course of oral argument Mr Clayton on behalf of the claimant relied upon what he submitted were errors evidenced in the documentation which showed that the defendant had failed to properly understand the legal framework created by the 1996 Royal Charter and had therefore misinterpreted the Royal Charter as part of the decisions in relation to establishing the 2010 recognition policy. Firstly, within the 1999 board report Mr Clayton submitted that there was an error in paragraphs 14 and 15 which essentially set out the content of s1 of the 1937 Act which had been repealed and which therefore could not be relied upon in order to reach a properly directed conclusion as to the scope of the Royal Charter. Further in relation to paragraph 8 of Ms Price's witness statement he contended that use of the word "vires" was a clear misdirection and misunderstanding of the position of the defendant as an organisation operating under a Royal Charter. He drew attention to the fact that, as distinct from an organisation created by statute which can only do such acts as are authorised by the statute creating it, a body incorporated by Royal Charter can "speaking generally, do anything that an ordinary individual can do" (see *Wade and Forsyth Administrative Law 11th Edition* page 181). In that the defendant as a body operating under a Royal Charter can do anything that an ordinary individual can do it was incorrect, he submitted, for Ms Price to speak about them only having "vires" to provide funding to activities amounting to "sport and physical recreation". They could in truth do anything that an individual could do.

53. So far as the first of these points is concerned I am satisfied that it adds little or nothing to the claimant's case. Even placing the matter at its height and assuming in the claimant's favour that it was predicated on a misunderstanding that s1 of the 1937 Act had not been repealed there is no evidence to suggest that such an assumption underpinned the settling of the contents of the recognition policy. In truth paragraphs

14 and 15 read in context are seeking to understand the meaning of, amongst other terms, "physical training and recreation". For the reasons which I have set out above looking at s1 in order to understand the meaning of that phrase was legitimate and therefore the claimant's concern in relation to this aspect of the board report does not assist them.

54. So far as the second point is concerned in my view, again, it adds little or nothing to the claimant's argument. The point that is being made by Ms Price in paragraph 8 of her witness statement is that to fund activities that were not "sport and physical recreation" would take the defendant beyond the scope of the objects contained within their Royal Charter. There is little doubt that such would be a public law error related to the objects and powers with which the defendant is provided by virtue of the Royal Charter. Whilst any transaction undertaken by the defendant beyond the powers contained in the Royal Charter would not (unlike such an act of a statutory body) be void from the start, it would nevertheless still be beyond the powers conferred upon the defendant and the use of the word "vires" which was the focus of the claimant's concerns was apt. In any event, in the light of the conclusions which I have set out above as to the proper understanding of the phrase "sport and physical recreation" the claimant's concern in respect of this point takes their case no further forward.

55. For the reasons which I have set out above I am satisfied that the defendant's adoption of the definition of "sport" contained in the European Sports Charter was in line with both a proper interpretation of s3 of the 1937 Act and also a proper construction of the objects and powers contained within their Royal Charter. It follows that the claimant's application for judicial review must be dismissed.