

PRESS SUMMARY – issued 17.10.13

1. The First Tier Tribunal (Charity) has issued its Decision on the applications by Mountstar (PTC) Limited (“Mountstar”) to quash the decisions by the Charity Commission (“the Commission”) to (i) open a statutory inquiry and (ii) appoint an interim manager in respect of The Cup Trust (“the Charity”) which had appointed Mountstar its trustee.
2. This press summary is not intended as a substitute for the reasons for the Decision which are only to be found and fully understood by reading the Decision as a whole. It is merely intended to summarise the background and the Tribunal’s findings.
3. The background is that the Charity, acting by its sole corporate trustee Mountstar, had adopted a fundraising scheme in 2010 which purported to generate over £176 million in donations from higher rate taxpayers, enabling the Charity to claim £46 million in gift aid from HMRC and the donors £55 million in higher rate tax relief (“the Scheme”). The gift aid and higher rate tax relief claims are presently subject to scrutiny by HMRC.
4. If successful, the Charity will receive £46 million and the higher rate taxpayers £55 million from the Revenue for a “cash outlay” by the higher rate taxpayers of £155,000. If unsuccessful, the Charity will have received only £155,000.
5. Owing to concerns about the Scheme, the Commission (the statutory body responsible for regulating charities) opened a non-statutory investigation into the Charity in March 2010 which it closed in March 2012 principally because it concluded that the tax efficiency of the Scheme fell within the remit of HMRC, not the Commission. It was therefore decided to await the outcome of the gift aid claims which the Charity had made to HMRC before re-engaging with the Charity unless new concerns arose about the Charity in the meantime.
6. Following press coverage of the Charity, the Scheme, the Commission and HMRC at the end of January this year, the Commission took another look at the Charity. It initially decided that the only steps it would take would be to publish a report of the first investigation and scrutinise the most recent accounts of the Charity.
7. However, in April this year the Commission received information from HMRC that the Charity, acting by Mountstar, had not been providing requested information relating to the gift aid claims. The Commission decided that that, amongst other things, was sufficient to justify opening a statutory inquiry on 12th April as a precursor to the appointment of an interim manager which took place on 26th April.

8. Mountstar applied to the First-tier Tribunal (Charity) for both of those decisions to be quashed so that it could resume management of the Charity. It was Mountstar's case that the Commission had acted unlawfully when deciding to open the inquiry, principally because it was exercising its statutory powers for the improper purpose of vindicating its own reputation, tarnished by adverse publicity; and that it had acted unlawfully when deciding to appoint the interim manager, there having been no mismanagement or misconduct of the Charity by Mountstar necessary to found such an appointment. Overall, it was said that both decisions were disproportionate.

9. The Tribunal decision, issued in writing after the hearing, has rejected both of Mountstar's applications. It found no evidence that the Commission had acted for any purpose other than the due regulation of the Charity. It found that Mountstar had mismanaged and misconducted itself in relation to the administration of the affairs of the Charity with sufficient seriousness to warrant the continued appointment of the interim manager to hold the ring pending the outcome of the statutory inquiry as Mountstar, particularly with its present composition of directors, was incapable of properly discharging its duties as charity trustee to the Charity.

10. The Tribunal found that there is an overwhelming public interest in having a full and open statutory inquiry, with continued appointment of the interim manager, which should include addressing the questions of whether the Mountstar had properly discharged its duties as charity trustee to the Charity when adopting the Scheme in 2010 and whether the decisions to adopt the Scheme and submit and maintain the gift aid claims were proper decisions for the Charity to make.

11. The Tribunal found that the Commission had fallen into error in not being prepared to consider those questions in 2010 and 2013 for the stated reason that the tax efficiency of the Scheme was for HMRC not the Commission to determine. Whilst the Tribunal agreed that it is not within the remit of the Commission to adjudicate upon the tax efficiency of the Scheme, it found that it is within the Commission's remit and is its duty as regulator of charities to inquire into and determine whether a charity trustee in adopting a fundraising scheme such as the Scheme has acted as an ordinary prudent man of business. This requires a rigorous and vigorous investigation by the Commission into the Scheme and its participants within the context of the gift aid legislation. That the Commission had not done.

12. The Tribunal considered there should be a full investigation into any conflicts of interest between the various participants in the Scheme, with particular attention focused upon the founder of the Charity, the promoter of the Scheme to the Charity and the principal director of Mountstar Matthew Jenner, as well as those associated with him and whether any fees or benefits received should be disgorged to the Charity.

13. The Tribunal decision states that that the Commission's inquiry should not be confined to those issues but should revisit the question of whether the Charity was established for public benefit or to serve or predominantly serve the private interests of HNWTAP, Mr Jenner, the donor clients and others.

14. The full background and reasoning of the Tribunal is to be found in the Decision which has been published her [link].