Neutral Citation Number: [2018] EWHC 3313 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
On appeal by case stated from liability orders made by
District Judge Celia Dawson sitting in South Suffolk Magistates' Court
following her judgment on 15 May 2017

Date: 5/12/2018
Rolls Building, 7 Rolls Buildings
Fetter Lane, London, EC4A 1NL

Before:
MR JUSTICE WALKER

- -

Between:

MY COMMUNITY SPACE	Appellant
- and -	
IPSWICH BOROUGH COUNCIL	Respondent

- -
- -

JENNY WIGLEY (instructed by asb law llp) for the Appellant
TOM GOSLING (instructed by Greenhalgh Kerr Solicitors Ltd) for the Respondent

Hearing date: 13 June 2018

- -

Judgment

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Mr Justice Walker:

A. Introduction

A1 Introduction: general

1. This appeal by case stated concerns liability orders for national non-domestic rates. The orders were made by District Judge Celia Dawson ("the judge") in the South Suffolk Magistrate's Court sitting at Ipswich following an adjudication by the judge in a written judgment on 15 May 2017.

2. The appellant, My Community Space ("MCS") is a registered charity and was the tenant of properties ("the properties") forming part of St Clare House, Princes Street, Ipswich. The liability orders required MCS to pay Ipswich Borough Council ("Ipswich BC") £87,773.49 as the balance of national non-domestic rates for the period 23 March 2016 to 31 March 2017.

3. The judge found, and it is not now disputed, that MCS was in actual occupation of the property from 21 June to 9 August 2016 inclusive and 30 November 2016 to 25 January 2017 inclusive ("the occupation periods"). As to the occupation periods, MCS advanced a contention ("the MCS occupation periods contention") that during those periods the properties were wholly or mainly used for charitable purposes. The basis for this contention lay in assertions that during the first and second occupation periods the properties were used for exhibitions in pursuance of MCS's charitable objects. If the MCS occupation periods contention were right then during those periods the chargeable amount would be 20% of what it otherwise would have been. On this aspect the judge concluded that MCS had not satisfied her that the use of the properties was, during the occupation periods, wholly or mainly for charitable purposes. The broad question arising on the appeal is whether the judge was entitled to reach that conclusion.

4. As to the remaining periods ("the empty periods") the judge found, and it is not now disputed, that the properties were unoccupied during those periods. MCS advanced a contention ("the MCS empty periods contention") that when next in use the properties would be wholly or mainly used for charitable purposes. If that contention were right then during those periods the chargeable amount would be zero. On this aspect the judge concluded that MCS had not satisfied her that when next in use the properties would be wholly or mainly used for charitable purposes. This conclusion inevitably followed from the judge's rejection of the MCS occupation periods contention. Thus on this aspect, too, the question arising on the appeal is whether the judge was entitled to reach the conclusion that MCS had not satisfied her that the use of the properties during the occupation periods was wholly or mainly for charitable purposes.

5. The appeal initially came on for hearing before Mrs Justice Lang on 13 February 2018. The matter did not proceed that day, however. This was because the case stated had not incorporated the judge's written judgment of 15 May 2017, with the consequence that the parties' skeleton arguments had not addressed findings in that judgment. Mrs Justice Lang directed that the case stated be amended and set a timetable for revised skeleton arguments.

6. By the time of the hearing before me the case stated had been duly amended so as to incorporate the written judgment dated 15 May 2017. At the hearing before me Ms Jenny Wigley appeared for MCS and Mr Tom Gosling appeared for Ipswich BC, as they had done before the judge. I have been much assisted by their revised skeleton arguments and by their oral submissions.

A2 Introduction: Ipswich BC's "sham" position statement

7. Ipswich BC was the complainant at the hearing below. It produced an undated position statement in advance of that hearing. I set out below paragraph 8 of that position statement, with the last sentence italicised by me:

> 8.The purported exhibitions arranged by the Respondent at the Properties from 21 June 2016 to 9 August 2016 and from 1 December 2016 to 25 January 2017 do not amount to rateable occupation of the Properties by the Respondent, and there is no evidence that such purported occupation was wholly or mainly for charitable purposes. *Rather, these purported exhibitions were shams, set up for the purpose of trying to justify the Respondent's claim for mandatory charitable rates relief, ...*

A3 Introduction: MCS's position statement

8. On 3 February 2017 MCS produced a position statement for the hearing below. It referred to the properties as "the Property". Paragraphs 2 to 8 stated:

> 2. MCS is a registered charity (registration number 1125415). Its charitable objects include (but are not limited to) the following:
>
> *"To provide suitable buildings for the public benefit primarily in the United Kingdom for the provision of:*
>
> *[...]*
>
> *For the public benefit, the promotion of the efficiency and effectiveness of charities and the effective use of charitable resources, in particular, but not limited to, the provision of premises and work space for charitable use;*
>
> *[...]*
>
> *To promote any charitable purpose (charitable under English Law) for the benefit of the public as the trustees see fit, in particular, but not exclusively by the following means:*
>
> *[...]*
>
> *providing opportunities for individuals to volunteer, in particular, but not limited to communications, exhibitions and promotion events in general helping charities convey the opportunities, community contribution and benefits of volunteering."*
>
> 3. MCS is a tenant of the Property pursuant to a lease with a start date of 23 March 2016. Since 23 March 2016, the Property has been unoccupied save as set out below.
>
> 4. Pursuant to its charitable objects, MCS has held exhibitions at the Property from 22 June 2016 to 9 August 2016 inclusive and again from 1 December 2016 to 25 January 2017 inclusive.
>
> 5. The exhibitions were advertised in the local press and publicised elsewhere (as will be detailed in evidence).

> 6. During the periods of exhibitions, MCS was both in rateable occupation of the Property and was using the Property "wholly or mainly for charitable purposes".
>
> 7. The effect of this in terms of rating liability is that for the periods of the exhibitions, MCS was entitled to mandatory charitable relief from occupied rates under s.43(6) Local Government Finance Act 1988 ("LGFA 1988") and so was liable to pay only 20% of the full charge. These amounts have been paid.
>
> 8.In terms of liability to unoccupied rates, during the periods when the Property was unoccupied MCS is entitled to zero rating under section 45A of [LGFA 1988].

A4 Introduction: MCS's April 2017 skeleton argument

9. MCS's skeleton argument for the hearing below ("MCS's April 2017 skeleton") was dated 11 April 2017. In paragraph 29 it referred to previous decisions of the Court of Appeal and the High Court in order to justify the following propositions:

> 29. Whether or not a party is arranging its affairs in a particular way so as to avoid tax is not a relevant matter and cannot be accorded any weight by the Judge in determining whether the charitable relief provisions apply … . Nor can it be accorded any weight in considering whether an exemption from unoccupied rates … should apply. …

10. At paragraph 36 MCS's April 2017 skeleton argument added:

> 36. … the Applicant's case is flawed by it placing weight on its perception that the use of the Property was a sham attempt to minimise rates liability (see para 8 of Applicant's Position Statement …). It is emphatically denied that the use was a "sham" and, in any case, the suggestion of a "sham" has no legal implications: it is clearly established that whether or not the use of a property is arranged so as to minimise or avoid tax is not a relevant matter when considering whether such tax has been minimised or avoided in accordance with the law (see para [29] above).

A5 Introduction: Ipswich BC's April 2017 skeleton argument

11. Ipswich BC's skeleton argument for the hearing below ("Ipswich BC's April 2017 skeleton") was dated 13 April 2017. Paragraph 20(g) of Ipswich BC's April 2017 skeleton accepted that:

> (g) When determining whether the [charitable use] exemption … applies or not, it is immaterial that the purpose of the arrangement between landlord and the charitable tenant is to reduce or avoid the payment of business rates … .

12. Paragraph 21 of Ipswich BC's April 2017 skeleton argument stated:

> 21. The First and or Second Exhibitions do not amount to use of the Properties wholly or mainly for charitable purpose, nor would any future use of the Properties for such exhibitions satisfy this test, for the following principal reasons:

(a) The simple placement of photos and basic information about charities does not constitute "*for the public benefit, the promotion of the efficiency and effectiveness of charities and the effective use of charitable resources*" for the purposes of Article 3(d) of the Respondent's objects … .

(b) The Respondent's Amendment to its charitable objects to include at Article 3(e) "*promoting, encouraging and supporting volunteering…*" only took [effect] from 6.12.2016.

(c) There is no evidence that the Properties were ever used or offered for use in fulfilment of the Respondent's primary charitable objective of the provision of suitable buildings for public benefit for the defined charitable uses.

(d) There is limited evidence of any communications with, let alone approval of, the Charities purportedly seeking to promote themselves and volunteering opportunities at the exhibitions by way of the posters.

(e) Access to the "exhibitions" and "open days" were restricted to appointment only.

(f) On 6.7.2016 there was no access to Podium Floor.

(g) There is evidence of only very minimal attendance, whether by officers, employees or agents of the Respondent or members of the public during the First and/or Second Exhibitions. The full extent of this will be explored with the Respondent's witnesses in cross-examination.

(h) The "posters" occupy a minimal amount of the total area of the Properties.

(i) it is apparent that there was significant duplication of photo and information "posters" across the different Properties.

A6 Introduction: the judgment agreed facts section

13. The judgment below said in paragraph 8 that the majority of the facts in the case were agreed. What the judge understood to be relevant agreed facts were then set out in paragraphs 9 to 18 ("the judgment agreed facts section"). For convenience, I set them out here:

> 9. [MCS] is a charity registration number 1125415. Its original charitable objects were registered as:
>
> 10. *"To provide suitable buildings for the public benefit primarily in the United Kingdom for the provision of…The promotion of efficiency and effectiveness of charities and the effective use of charitable resources in particular, but not limited to, the provision of premises and work space for charitable use subject to such changes as the directors in their absolute discretion shall determine…"*
>
> 11. Following correspondence with the Charity Commission on 21/10/2016 MCS added an additional object:

12. *"To promote any charitable purpose (charitable under English law) for the benefit of the public as the trustees see fit in particular but not exclusively by the following means… providing opportunities for individuals to volunteer, in particular but not limited to, communications, exhibitions and promotion events in general helping charities convey the opportunities community contribution and benefits of volunteering."*

13. MCS held various leases in respect of the property for the relevant periods.

14. The properties were included on the ratings list; demands and reminder notices for non-domestic rates were duly served by the applicant; the respondent did not satisfy those demands, save for … [a] payment … made on 17/1/17, the day of the first court hearing for liability orders.

15. On 8/7/16 the respondent's agents Sanderson Wetherall advised the applicant by e-mail that the respondents had taken leases of the properties for 3 years from 23/3/16, the property had remained vacant from that date and that as a registered charity they requested rate relief.

16. On 27/7/16 Sanderson Wetherall sent a further e-mail to the applicant stating that the respondent had been in occupation since 22/6/16 and was holding open days on 8th and 9th August.

17. On 22/12/16 Sanderson Wetherall sent a further e-mail to the applicant advising that the respondent had been in occupation since 1/12/16 and that open days would be held on 24th and 25th January 2017.

18. An advertisement appeared in the local evening paper on 6 occasions in total, in the "What's On" classified section. It was headed "Thinking of volunteering?" and gave details of a "Charities in the Community Exhibition" from 22nd of June 2016 to 9th August 2016 / 1st December 2016 to 23rd January 2017. It also advertised two open days on 8th and 9th of August 2016 / 24th and 25th January 2017. Each open "day" lasted for 3 hours, from 1-4pm on the first day and 9am to 12 noon on the second. It invited people to phone a number to book viewings by appointment. Some of the advertisements appeared after the exhibition dates had passed.

A7 Introduction: the case stated non-disputed facts

14. The case stated said at paragraph 15:

> 15. The following facts were not disputed before me:

15. The facts which the judge regarded as "not disputed" ("the case stated non-disputed facts") were then set out in paragraphs 16 to 26:

> 16. MCS held various leases in respect of the property for the relevant periods.
>
> 17. The non-domestic rate had been duly made and published by the council.

18. The properties were included on the rating list.

19. Demands and reminder notices for non-domestic rates were duly served by the council upon MCS.

20. MCS did not satisfy those demands, save for the payment … made on 17/1/17.

21. MCS is a charity, registration number 1125415. Its original charitable objects were registered as:

22. *"To provide buildings for the public benefit primarily in the United Kingdom for the provision of… The promotion of the efficiency and effectiveness of charities and the effective use of charitable resources in particular, but not limited to, the provision of premises and work space for charitable use subject to such changes as the directors of in their absolute discretion shall determine…"*

23. On 8/7/16 MCS's agents Sanderson Wetherall advised the council by e-mail that [MCS] had taken leases of the properties for 3 years from 23/3/16, the property had remained vacant from that date and that as a registered charity they requested rate relief.

24. On 27/7/16 Sanderson Wetherall sent a further e-mail to the council stating that MCS had been in occupation since 22/6/16 and was holding open days on 8th and 9th/8/2016.

25. On 22/12/16 Sanderson Wetherall sent a further e-mail to the council advising that MCS had been in occupation since 1/12/16 and that open days would be held on 24th and 25th/1/2017.

26. An advert appeared in the local evening paper on 6 occasions in total, in the "What's on" classified section. It was headed "Thinking of Volunteering?" and gave details of a "Charities in the Community Exhibition" from 22/6/2016 to 9/8/2016 and 1/12/2016 to 23/1/2017. It also advertised two open days on 8 and 9/8/2016 and 24 and 25/1/2017. Each open "day" lasted for 3 hours, from 1-4pm on the first day and from 9am to 12 noon on the second. The advert invited people to phone a number to book viewings by appointment. The first advert appeared a few days after the first exhibition opened, the last appeared after the last exhibition had closed.

B. The judge's findings

B1 The judge's findings: introduction

16. In this section I set out additional things which were said in the judgment below, and in the case stated, on relevant matters.

B2 MCS's charitable objects

17. The original charitable objects of MCS were set out in paragraph 10 of the judgment agreed facts section, and in paragraph 22 of the case stated non-disputed facts. It will be seen from sections A6 and A7 above that the original charitable objects of MCS made no express reference to volunteering.

18. The revision adding an additional object is described in paragraph 11 of the judgment agreed facts section (see section A6 above) as having been made on 21 October 2016. In fact both sides agree that it was made by special resolution on 29 October 2016. The addition expressly said that MCS had, as one of its objects, "to promote" any charitable purpose by providing opportunities for individuals to volunteer. It also expressly said that MCS might provide opportunities for individuals to volunteer through communications, exhibitions and promotion events in general helping charities convey the opportunities, community contribution, and benefits of volunteering.

19. As to how this revision came about, the judgment below:

    (1) in paragraph 44 (see section B4.5 below), said simply that Mrs Mann had not disputed that MCS on 29 October 2016 amended its charitable objects to include "the promotion and encouragement of volunteering"; and

    (2) in paragraph 82 (see section B8 below), said that the charitable objects were not changed until after Mrs Mann noted that the use of the exhibition space did not fit MCS's current charitable objects.

20. The case stated said on this aspect:

    (1) at paragraph 30:

    > 30. On 26/10/16 Mrs Mann on behalf of the council wrote to MCS pointing out that their charitable objectives covered warehousing and transhipment of goods for charities; premises for use in disaster relief and provision of workspace for charitable use, not providing exhibition space.

    (2) at paragraph 31, that the revision adding the additional object was achieved by MCS passing a special resolution on 29 October 2016;

    (3) in paragraphs 33 and 34:

    > 33. On 4/11/16 Sanderson Wetherall, on behalf of MCS replied to the council indicating that Ms Mann had "raised a valid point" and the charity were in the process of amending their objects to be more explicit.
    >
    > 34. I found that the charitable objects of MCS were changed in response to Ms Mann's letter.

    (4) in paragraph 36:

    > I found that MCS had been reactive, not proactive in its actions … in changing its charitable objects … .

B3 The properties

21. The judgment below noted that the properties comprised 8 separate hereditaments. All were in St Clare House. The first comprised the podium floor. The second comprised the rear of the first floor. The remaining hereditaments each comprised an entire floor of St Clare House. Thus the third, fourth, fifth, sixth, seventh and eighth hereditaments comprised respectively, the second, fifth, sixth, seventh, tenth and eleventh floors of St Clare House.

B4 Evidence of Ms Theresa Mann

B4.1 Ms Theresa Mann: general

22. At the hearing below Ms Theresa Mann provided a witness statement for Ipswich BC. The judgment below recorded that she is a revenue officer who works for Ipswich BC.

B4.2 Visit by an inspector, 6 July 2016

23. The judgment below said at paragraph 37:

> 37. [Ms Mann states] that a business rates inspector from the local authority attended the office block on 6/7/16 as a routine check to assess occupation. The report (exhibited) notes that part of the building is used as Government offices and it is not possible to enter without reporting to security. Floors 1, 2, 5, 6, 7, 10 and 11 were unoccupied, save for some easels with promotional activity on them. Access to the podium was blocked due to building work. The doors to all of the offices were locked and no one was on site. There was no signage or promotional material in the communal areas of the building.

B4.3 Visit by Ms Mann, 8 August 2016

24. The judgment below stated in paragraph 38:

> 38. On 8/8/16, an advertised open day [Ms Mann] attended the building and on arrival was informed by security that the property was not open to the public. Visits were by appointment only. [Mr] Jeff Powney and [Ms] Ronnie Lindbergh then arrived, said they were representatives of [MCS] and had to obtain door codes from security to enable access to the various floors. The floors were empty save for posters on easels. Some posters were duplicates, with several copies placed on multiple floors. Some posters related to charities based a significant distance from Ipswich. She particularly notes one organisation based in Cardiff.

B4.4 Visits by Ms Mann, 9 and 24 January 2017

25. The judgment below stated in paragraph 39:

> 39. On 9/1/17 [Ms Mann] visited again after making an appointment, and again on 24/1/17, one of the open days, when she noted that some of the posters had been changed. Having checked with reception she and her colleague were the only names listed as expected visitors that day. However, Mr Powney told her they had three attendees that day and three more were expected the next day. In her evidence in chief she said she had not observed any members of the public present on any of her visits.

B4.5 Cross examination of Ms Mann

26. At paragraphs 40 to 44 the judgment below summarised the evidence given by Ms Mann when she was cross examined at the hearing before the judge:

> 40. In cross examination [Ms Mann] was directed to email correspondence 168-219 of the bundle. This is exhibited to the statement of Mr Cook. She agreed that this was a generic email sent out from

someone called Janet Mills to various local charities and organisations such as libraries and parish and district councils. She agreed that there had been a response from Sue Joy of St Elizabeth hospice, who wanted to display some posters and provided the artwork for this on 13th and 14th July 2016 (p. 170-172); from Roger Eyre of "Tools with a Mission" who supplied leaflets for the exhibition on 28th November 2016 (p. 185); from Daniel King of Community Action Suffolk who supplied some images and quotes for posters on 12/1/17 (p. 205); from the Ipswich branch of the Children's Society who wanted to drop off a poster and leaflets on 24th January 2017 (the last but one day of the exhibition period) and from Sadie Grimwood of Gainsborough library who on 16th January 2017 agreed to display some promotional material for the exhibition.

41. When asked about the posters she saw at the premises and shown [in] the various photos in the bundle (some of which she took herself) she said that many of the posters were just pictures, did not name charities and did not provide any information about volunteering opportunities or provide contact details; "if you saw the pictures you would not connect them with a particular charity or associate them with a volunteering opportunity".

42. She was also directed to a photo of a table with leaflets on it (p. 245). She said "I cannot remember seeing the table with leaflets on in any of my visits" but agreed she could not say for certain that it wasn't there.

43. She was asked to look at p. 287 which was a photo of a visitor's book. She said she was not shown a visitor's book or invited to sign it on any of her visits.

44. She did not dispute that MCS was a registered charity and that on 29/10/16 it had amended its charitable objects to include "the promotion and encouragement of volunteering". However from her observations of its work it was not operating in a charitable manner.

B5 Evidence of Mr Jeffrey Powney

B5.1 Mr Powney: general

27. At the hearing below, on behalf of MCS, Mr Jeffrey Powney provided a witness statement which I shall refer to as "Powney 1". This witness statement did not describe his job title. However in cross examination he said that he was a "logistics manager". In paragraphs 1 and 3 of his statement Mr Powney said he had worked for MCS since November 2016. He added that previously he worked for another charity, during which time he was sub-contracted to MCS, including for the purposes of setting up premises in readiness for "Charities in the Community" exhibitions promoting volunteering. During those exhibitions, he said, display boards were used to provide information about various charities. He said he was told that all such charities were contacted before the boards were made up, as they had to provide photos and text as well as their permission for MCS to create and display the boards.

B5.2 Powney 1: the first occupation period

28. Powney 1 stated as regards the first occupation period, at paragraphs 4 to 9, that the display boards were stored at MCS's premises at Aylesford in Kent, that he collected

294 boards and easels from that location and drove them in a van to St Clare House, and that he set out the display boards and easels in a sequence of groups of similar charities, with display boards for local charities being placed together.

29. In paragraphs 9 to 15, Powney 1 stated that viewing had to be arranged by telephoning in order to make a mutually convenient appointment, that there were open days on 8 and 9 August 2016 on which viewing was again to be arranged by appointment, and that when visitors arrived he and his colleagues showed them around the exhibition, explaining what MCS was about, telling them a little bit about the other charities on display, and handing to visitors any leaflets that had been provided by relevant charities.

30. Powney 1 in the same paragraphs described the visit by Ms Mann on 8 August, and added that Ms Ronnie Lindenberg had been present on 8 August 2016 in order to oversee the exhibition. Exhibit JMP 3 to Powney 1 was a copy of an attendance record for the open days on 8 and 9 August 2016. The record for 8 August did not include the representatives from Ipswich BC. It included 4 other visitors, one of whom represented a charity based in Ipswich. The record for 9 August 2016 showed no visitors attending that day.

B5.3 Powney 1: the second occupation period

31. Paragraphs 17 to 33 of Powney 1 described similar arrangements for the second occupation period. The "open days" were on 24 and 25 January 2017. Exhibit "JMP/6" was a copy of an attendance record indicating that the same representative of a local charity had attended on 24 January, as had Ms Mann and another representative from Ipswich BC along with representatives of two other charities. The record for 25 January showed attendance by a community volunteer coordinator and a representative of the Citizens Advice Bureau, along with other individuals.

B5.4 Cross examination of Mr Powney

32. At paragraphs 46 to 54 the judgment below summarised the evidence given by Mr Powney when cross examined about the first occupation period. Relevant for present purposes are paragraphs 50 to 54:

> 50. [Mr Powney said that he] was there on the 8th and 9th August for the open days and dismantled the easels at 12 noon on the second day. No one attended on either of the days. When pressed for more specific detail about those two days he was vague, saying "I would probably have stayed in a local hotel" but could not remember.
>
> 51. When asked to look at his statement he then contradicted himself by saying that the council officers had made an appointment and attended on the 8th August 2016 and that "3 or 4" or "4 or 5" other people attended on that day and that their details would be in the attendance book, as they were required to sign in and out of the building. He did not know where the attendance book was. He was then asked to look at p303, a document exhibited to his statement, which is a spread sheet that has 4 names and phone numbers against 13.00 on 8th August. He said he did not know who these people were or what the document was, although it appeared to be an appointments diary. So far as he could remember one of the names, Janet Heywood, visited the exhibition in December, not August.

> 52. He said what he expected to see exhibited to his statement was an e-mail from people requesting an appointment, the email confirmation coming from the office and the corresponding entry from the visitor in the attendance book, which they required to sign. The visitor's book was separate book from the attendance book. He could not understand why the documents were not exhibited, or explain where they were.
>
> 53. He then went on to give a detailed description of showing people round on the 8th August. He said that he thought the 4 people named were representatives from the charities themselves, and no members of the public attended.
>
> 54. He agreed when referred to the emails that the boards for St Elizabeth hospice were not available when he first set up the exhibition, so he must have set them up later.

33. At paragraphs 55 to 57 the judgment below summarised the evidence given by Mr Powney when he was cross examined about the second occupation period:

> 55. [Mr Powney] was then cross examined about the exhibition in December. He said he set it up on 1st December so the advert was wrong, the exhibition ran from 2nd December.
>
> 56. He said in his statement and confirmed in evidence that he attended the property on 19th December to re-arrange the boards and remove some of the duplicated boards, as the council had commented on this. He was referred to p305, his exit report, which was exhibited to his statement. This says he gained access on 23/1/17 to re-arrange the boards. He said he did attend on the 19th, but ran out of time so had to go back on the 23rd. He could not understand why his exit report made no mention of the 19th, nor could he remember when he actually prepared and typed up the exit report.
>
> 57. He was then referred to p 312, an exhibit to his statement. It is a spread sheet with times, names and phone numbers on it, relating to the open days on 24th and 25th January 2017. He could recall that some people did not attend and that Sue Joy from the hospice was not there constantly from 11-2pm, as suggested by the spread sheet. These apparent times of attendance do not tally with the advertised times of the exhibition which were from 1pm-4pm on day one and 9am to 12 noon on day 2. He did recall Toby Smith attending; he was working as a contractor in the building and asked if he could look round. He took a photo of him looking at some leaflets (the photo is exhibited to Mr Cook's statement at p 245). He did the same with Shirley and Glenn Allen, a mother and son who attended on 24th January (photo at p 245). They were the only 3 members of the public who ever attended. The other people named on the spread sheet were all associated with charities that had posters displayed. He considered the exhibition to be a "great success".

B5.5 The judge's assessment of Mr Powney's evidence

34. At paragraphs 58 to 60 the judgment below set out the judge's assessment of Mr Powney's evidence:

> 58. I did not find Mr Powney's evidence to be convincing or credible. His oral evidence contradicted his written statement and when discrepancies were put to him, he contradicted what he had just said, or at times, for example regarding showing people round on the 8th August and the visits he said he made on the 19th and 23rd December, he appeared to me to be making his account up as he went along. A lot of the documents exhibited to his statement were produced by others or are formulaic and could have been produced at any time; certainly, he cannot say when they were produced. The e-mail chains he referred to i.e. enquiry, confirmation of appointment, then corresponding attendance book and visitor's book were missing. There is a lack of contemporaneous documentation e.g. his personal appointments diary, which was not exhibited or produced by him, to support what he says.
>
> 59. On the basis of the photographic evidence and the evidence of Ms Theresa Mann I am satisfied that the posters were set up and present when representatives of the applicant attended on 6/7/16, the 8/816 and the 9/1/17 and the 24/1/17. I am satisfied that Mr Powney and his colleague [Ms] Ronnie Lindbergh were present at the open days on the 8th August and 24th January, when Ms Mann visited.
>
> 60. Mr Powney's evidence was uncertain and imprecise, but taking his oral evidence, written statement and the advertised dates as a whole I find it more likely than not that Mr Powney set up each exhibition the day before its advertised opening date and dismantled it after it closed 12 noon on the last day. I therefore find on the balance of probabilities that the dates when MCS were in actual occupation of the premises were 21/6/16 to 9/8/16 and 30/11/16 to 25/1/17.

B6 Evidence of Mr George Cook

35. At the hearing below, on behalf of MCS, Mr George Cook ("Mr Cook") provided witness statements dated 7 March 2017 ("Cook 1") and 4 April 2017 ("Cook 2"). Cook 1 said that Mr Cook was the Chairman of the Board of Trustees of MCS, together with Michael Kevin Cook ("Mr Michael Cook") and Jonathan Edward Cook ("Mr Jonathan Cook"). The witness statement described Mr Cook as an inventor. It said that he was currently the "Chairman and Founder" of a number of charities and non-profit organisations including "The Cook Foundation UK".

36. The judgment below gave an extensive description of both evidence in chief and cross examination of Mr Cook. It is not necessary to set this description out here: relevant matters are dealt with in the judge's assessment at paragraphs 73 to 80:

> 73. Mr Cook's evidence was neither compelling or believable, for the following reasons:
>
> 74. All of the exhibits to his statement were produced by other people and he seemed to have no personal knowledge of them: the emails to and from his staff, the photos (taken by Mr Powney), the dates of the exhibitions, the actual leaflets provided.
>
> 75. For the chairman of a charity with 4 staff reporting directly to him, he professed to have little or no grasp of the funding and sources of income of the charity in terms of grant receipts, costs charged and whether they had or had not been paid by the Cook Foundation.

> Similarly he had no clear idea of the intended use of the property. He referred to being offered "warehousing" at low cost, then to acting as a letting agent for the landlord, then to holding exhibitions in response to specific requests (never produced) of charities and finally he referred to the "unpredictable nature of property…" implying some sort of interest in property business. There was no focus, clarity or forensic analysis of the charity's finances. Given that MCS purports to be a nationwide charity and according to Mr Powney is able to employ him to be on the road all day every day setting up and dismantling exhibitions all over the country this vague, "hands off" approach to charitable governance simply did not ring true and did not give me the impression that MCS was a genuinely active, purposeful charity.
>
> 76. His evidence was untruthful at times, for example saying that the managing agents had got the occupation dates wrong because they had only just been appointed in July whereas MCS own correspondence shows they were appointed in March.
>
> 77. His evidence was characterised by grandiose and self-serving assertions which were not supported by the exhibits to his statements, for example the posters all being bespoke, commissioned and approved by the individual charities, when in fact they consisted mainly of unspecific photos, some with no text and others with generic logos or statements. This also applies to the "leaflets" which he refers to as an exhibit to his statement, which all have the appearance of being cut and pasted, rather than being bespoke documents. There are four exceptions to this referred to at para 40 above [see section B4.5 above] to which I will refer, below.
>
> 78. The batch of e-mails he exhibited to his statement were sent by Janet Mills after the second exhibition was underway (on 4th January 2017). All of the 4 organisations who showed some interest did so after the exhibitions were underway and of the two that supplied images and quotes they did so at very late stage and could not have possibly been included in the original set up of the display, according to the timings provided by Mr Powney. The other two organisations simply provided a batch of leaflets, one of those, the Children's Society, on the last but one day of the last exhibition.
>
> 79. This documentary evidence, exhibited to Mr Cook's statement, completely undercuts his evidence that all of the artwork in the exhibitions was bespoke and commissioned by the individual charities concerned.
>
> 80. I note also that the first press advert appeared a few days after the first exhibition opened and the last one appeared after the last exhibition had closed. As Mr Cook said in his oral evidence they were a "block booking". The adverts themselves were small and insubstantial.

B7 Findings as to lack of appearance, purpose or intent

37. At paragraph 81 the judgment below turned to deal with the set up of the exhibitions. The paragraph began by commenting on the format:

> 81. I have considered the actual set up of the exhibitions. The photos show a series of easels with pictures on, displayed in a random fashion across the floors of the property. It is accepted by MCS that some were duplicates, although this was rectified later. They appear to have been arranged for quantity rather in a meaningful or inviting way. This format, reproduced over all 8 floors is repetitive and it is hard to see how it can have been designed to be stimulating or informative.

38. In the next sentence of paragraph 81 the judge identified matters which led her "to find", in words which I have italicised, a lack of "appearance, purpose or intent":

> The fact that there was no signage to get visitors around the building, and that the property was locked and could only be accessed by appointment, even on the four 3 hour "open" days, leads me to find that *this did not have the appearance, purpose or intent of a public exhibition for charities to obtain volunteers and for the public to seek opportunities to participate and contribute in charitable volunteering*.

39. In the final sentence of paragraph 81 the judge added:

> In my judgment it was purely fortuitous that two organisations dropped some leaflets off, two provided some artwork and text and one mother and son and a passing contractor expressed an interest and actually looked at the posters.

40. Turning to the case stated, the passage that I have italicised above appeared in paragraph 38 as part of the judge's conclusion. The reasoning leading to that conclusion was expressed in paragraphs 35 to 37 in this way:

> 35. Four local charities and a library were involved in providing or displaying materials for the exhibition. St Elizabeth's hospice provided art work on the 13th and 14/7/2016. Tools with a Mission supplied leaflets on 28/11/2016. Community Action Suffolk supplied images and quotes for a poster on 12/1/17. The Ipswich branch of the Children's Society sent a poster and leaflets on 24th January 2017. Gainsborough library offered to display promotional material for the exhibition on 16th January 2017. These dates were after the exhibitions were underway and the material could not have been included when Mr Powney set up exhibitions.
>
> 36. I found that MCS had been reactive, not proactive in its actions in promoting the exhibition and producing the materials, in changing its charitable objects and in notifying the council of its periods of occupation.
>
> 37. The exhibition consisted of a series of easels with pictures on, displayed in a random fashion. The majority of the posters were non-specific. Some were duplicated. They were arranged for quantity rather than in a meaningful or inviting way. The format, reproduced over all 8 floors was repetitive and uninformative. There was no signage to get visitors around the building. The property was locked and could only be accessed by appointment, even on the four "open" days which totalled 12 hours over the whole period of the two exhibitions.

B8 Findings as to reactive dealings

41. At paragraph 82 the judgment below stated:

> 82. Finally, I find that MCS has been reactive not proactive in its dealings. This applies to the promotion of the exhibition and production of materials as examined in detail above. It also applies to its dealings with [Ipswich BC]. The first letter from the agents saying the property had been unoccupied since March 2016 was only sent after [Ipswich BC] made its first visit in July 2016. The charitable objects were not changed until after Mrs Mann noted the use of the exhibition space did not fit their current objects.

B9 The judge's assessment of the evidence

42. At paragraph 85 the judgment below summarised the judge's assessment of the evidence:

> 85. To summarise my assessment of the evidence: the majority of the posters were non-specific. I cannot find that they met the original charitable objects which were in place at the time of the first exhibition. Nor do I find that when amended in time for the second exhibition they met the additional charitable object to promote volunteering, see paras 10 and 12, above [see section A6 above]. The posters and leaflets were held in locked rooms which could only be accessed by appointment. The "open days" totalled 12 hours over the whole period and prior notice was required to attend. For all the reasons set out above, taken together as a whole picture, the evidence does not satisfy me on the balance of probabilities that MCS was making active and extensive use of the property for charitable purposes.

43. In paragraph 86 the judgment below described the judge's conclusion as being that:

> 86 … MCS has not satisfied me to the required civil standard that the use of the property, when it was occupied by the posters, was wholly or mainly for charitable purposes …

C. Case stated questions & grounds of appeal

C1 Questions identified in the case stated

44. In the original case stated, dated 27 July 2017, the judge set out four questions reflecting those which MCS had identified when filing its application to state a case for the opinion of this court. I shall refer to them as Q1 to Q4. With additional numbering in square brackets in order to identify subparagraphs, I set them out:

> Q1. Was there an evidential basis on which I was entitled to come to the following factual findings?
>
> > [Q1.1] That the charitable objects were changed after and in response to Mrs Mann's letter dated 26/10/16.
> >
> > [Q1.2] That the adverts appeared in the local press on 6 occasions.

Q2. Was I entitled to come to the factual findings in 1 above without considering or giving reasons for rejecting or accepting the following documentary evidence?

> [Q2.1] Copies of an email exchange between Mr Cook and Mrs Westhead of the Charity Commissioners commencing 6/9/16.
>
> [Q2.2] Paragraph 33 of Mr Cook's witness statement and copies of 11 adverts in the press.
>
> [Q2.3] Paragraphs 22 and 25 of the witness statement of Theresa Mann and copies of letters from the council to MCS dated 11/8/8/2016 and 25/8/2016.

Q3. In determining that the [properties were] not used wholly or mainly for charitable purposes when occupied by the poster board exhibitions did I err in law by taking into account and placing weight on the following factors, when examining the evidence as a whole, on a broad basis?

> [Q3.1] The number nature and size of the advertisements for the exhibitions.
>
> [Q3.2] How the [properties] were arranged for presentational purposes during the exhibitions.
>
> [Q3.3] That the exhibitions were not stimulating or informative.
>
> [Q3.4] That MCS [was] reactive not proactive.
>
> [Q3.5] That the exhibitions were only open to the public by appointment.
>
> [Q3.6] There was no signage to direct visitors round the building.

Q4. In determining that the [properties] were not used wholly or mainly for charitable purposes when occupied by the poster board exhibitions did I err in law by applying a more stringent test than is required, namely by considering that the charity should "**actively** make extensive use of the [properties] for charitable purposes".

C2 Grounds of appeal

45. Grounds of appeal dated 11 August 2017 accompanied MCS's appellant's notice. Six grounds of appeal were identified. I shall refer to them as GA1 to GA6:

> GA1. In consideration of whether the [properties] were "wholly and mainly used" within the meaning of section 45A of the Local Government Finance Act 1988 (the "Act") the District Judge was not entitled to make findings of fact where was no evidential basis for doing so.
>
> GA2. The District Judge was not entitled to make findings of fact without apparently considering, or without giving reasons for apparently rejecting, documentary evidence before her at the hearing.

GA3. The District Judge erred in law in determining that the [properties] were not wholly or mainly used for charitable purposes when occupied by poster board exhibitions by taking account of placing weight on factors which were not relevant.

GA4. In determining that the [properties] were not "used wholly or mainly for charitable purposes" when occupied by poster board exhibitions, the District Judge erred in law by applying a more stringent test than is required by law, namely by considering that what is required is that "the charity **actively** makes extensive use of the [properties] for charitable purposes".

GA5. The District Judge was not entitled to find that the first exhibition did not meet the charitable objectives of [MCS] in place at the time without determining whether she accepted the evidence before her (being the witness evidence of George Cook) and without determining and/or giving reasons for:

GA5(a) whether the promotion of the availability of space for charitable use fell within the terms of the charitable objects of [MCS] in place at the time of the first exhibition;

GA5(b) Whether the promotion of volunteering opportunities in charities fell within the terms of the charitable objects of [MCS] in place at the time of the first exhibition.

GA6. The District Judge erred in law by considering the efficacy of the poster board exhibitions and applying a test of whether or not those exhibitions met the charitable objects of [MCS] instead of determining what the purposes of the use of the [properties] by [MCS] were and whether those purposes were in pursuance of any or all of [MCS]'s charitable objects which included:

GA6(a) "helping charities convey the opportunities, community contribution and benefits of volunteering";

GA6(b) "providing opportunities for individuals to volunteer"; and

GA6(c) "provision of premises and workspace for charities".

D. Issues said to arise on the appeal

46. The parties to the appeal, in response to a request from me, produced a list of issues and sub-issues arising on the appeal. I shall refer to them as "the listed issues and sub-issues" In Annex 1 to this judgment I set out this list, re-numbered in certain respects for ease of exposition.

E. Relevant legal principles

47. The statutory provision invoked below by MCS as to the occupation periods was section 43(6)(a) of the Local Government Finance Act 1988. Section 43(6) identifies circumstances where, by virtue of section 43(5), the chargeable amount is 20% of what it otherwise would have been. The circumstance set out in section 43(6)(a) is that on the day concerned:

> (a) the rate payer is a charity or trustees for a charity and the hereditament is wholly or mainly used for charitable purposes (whether of that charity or of that and other charities) …

48. As to the empty periods, MCS relied on section 45A(2) of the same statute. By virtue of section 45A(1), in certain cases the chargeable amount for an unoccupied hereditament on a chargeable day is zero. Section 45A(2) is as follows:

> 45A(2) The first case is where:
>
> (a) the rate payer is a charity or trustees for a charity, and
>
> (b) it appears that when next in use the hereditament will be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities).

49. There is no doubt that MCS satisfies the first part of the test in these two provisions: it is a charity. The second part of the test concerns "use" of the hereditament. I will refer to what the statute requires in these two cases as "a qualifying use". As regards occupation periods, under section 43(6) the qualifying use concerns the current use on a particular day. As regards empty periods, under section 45A(2) the qualifying use concerns what appears to be the position when the hereditament will next be in use. Materially identical words are used as to what that qualifying use requires: the charity must show that the current use or what appears to be the next future use, as the case may be, involves the hereditament being "wholly or mainly used for charitable purposes (whether of that charity or of that and other charities)".

50. These words originated in section 11 of the Rating and Valuation Act 1961, which was re-enacted in section 40 of the General Rate Act 1967. The leading case on what they mean is *Oxfam v Birmingham City Council* [1976] AC 126. Lord Cross of Chelsea, with whom Lord Simon of Glaisdale, Lord Edmund-Davies and Lord Fraser of Tullybelton agreed, noted at p.135 that the relevant provision was:

> … somewhat curiously worded. No body or trust can be a charity unless its objects are exclusively charitable and if it is using premises of which it is in occupation for purposes for which it is entitled to use them and not in breach of trust it must be using them for some purpose or purposes of the charity. Yet this subsection clearly contemplates that a charity may be properly using premises which it occupies for purposes which are not 'charitable' purposes of the charity. A line has therefore to be drawn somehow or other between the user of premises for purposes which are charitable purposes of a charity within the meaning of the subsection on the one hand and their user for purposes which though purposes of the charity are not charitable purposes of the charity on the other.

51. Lord Cross's conclusion at p.146 was that a line should be drawn:

> … so as to exclude from relief use for the purpose of getting in, raising or earning money for the charity, as opposed to user for purposes directly related to the achievement of the objects of the charity …

52. The result of drawing this line was that Oxfam's appeal failed. It had claimed relief for its "charity shops". Had those shops been used mainly for the sale of "village handicraft" articles made in the developing world in order to encourage village industries and provide employment in poor countries, then the shops would have been

entitled to relief. But because the shops were used mainly for the sale of clothing given to the charity in order to raise money for use in the charity's work, it followed that the shops were not entitled to relief.

53. The remaining member of the Appellate Committee was Lord Morris of Borth-y-Gest. He agreed with the result, but described the distinction in this way at pages 148 to 149:

> While care must always be taken to adhere to the statutory words and not to supplement them or to supplant them, I consider that user 'for charitable purposes' denotes user in the actual carrying out of the charitable purposes: that may include doing something which is a necessary or essential or incidental part of, or which directly facilitates, or which is ancillary to, what is being done in the actual carrying out of the charitable purpose. There may, on the other hand, be things done by a charity, or a use made of premises by a charity, which greatly help the charity, and which must in one sense be connected with the charitable purposes of the charity and which are properly within the powers of the charity, but yet which cannot be described as being the carrying out, or part of the carrying out, of the charitable purposes themselves. The nature of the user may not be sufficiently close to the execution of the charitable purpose of the charity. A charity may be entitled to occupy premises and to use them other than for its charitable purposes: only if to occupation by a charity there is added user 'for charitable purposes' will the benefit given by the section accrue.

54. Turning to more recent cases, MCS referred me to general principles permitting ratepayers or potential ratepayers to organise their affairs so as to avoid liability for rates. In this regard *R (Makro Properties Limited) v. Nuneaton and Bedworth BC* [2012] EWHC 2250 (Admin) concerned questions arising after a change in the law concerning liability for unoccupied property rates on warehouse hereditaments. As His Honour Judge Jarman QC explained in his judgment dated 28 June 2012, before 1 April 2008 unoccupied property rates were not payable upon such hereditaments. By 2007 there was concern that there was consequently a disincentive to let empty business properties, and in the budget report in that year it was announced that the government intended to modernise the rates payable in respect of such properties. The district judge found that Makro Properties had arranged for a subsidiary company to place a relatively small amount of documents in a warehouse with the intention that the subsidiary should incur liability for rates for a short period so that Makro Properties could avoid liability for a longer period. His Honour Judge Jarman QC held that the proper approach was to consider both use and intention. If there was clear evidence or inference of an intention to occupy, then such an intention taken together with user, albeit slight, might be sufficient to amount to occupation. Slight user without such evidence of intention might not be sufficient. For this and other reasons the district judge's order in favour of the rating authority was overturned by His Honour Judge Jarman QC on appeal.

55. Relevant for present purposes is paragraph 56 of His Honour Judge Jarman's judgment, dealing with a contention by Ms Wigley, then appearing on behalf of the rating authority:

> 56. Ms Wigley submitted that such an outcome means that a scheme to avoid paying rates for six months has succeeded. It appears that such a consideration may have had some influence on the district judge. She further submitted that such an outcome could not have been foreseen when the 2008 reforms were made. Insofar as that may be relevant I cannot accept that latter submission. It has been recognised for a

> considerable amount of time that ratepayers or potential ratepayers can and do organise their affairs as to avoid paying rates. In *Gage* [(1903) 67 JP 32], Alverstone CJ dealt with this question and stated that if the ratepayer thought that she would not be within the charging act by going out of possession, she was quite entitled to do so. In my judgment the same applies to going in and then out of occupation. It has often been emphasised that the court is not a court of morals, but of law. If the outcome of this case is seen as unacceptable then it is for the legislature to determine whether further reform is needed.

56. In *Sheffield City Council v Kenya Aid Programme* [2013] EWHC 54 (Admin), [2014] QB 62, the question which arose was whether 2 storage units in Sheffield were used by the Kenya Aid Programme wholly or mainly for charitable purposes under section 43(6) of the 1988 Act. The district judge held that the units did not fall within that subsection and made liability orders. An appeal by case stated was allowed by the Divisional Court (Treacy LJ and King J). The leading judgment in the Divisional Court was delivered by Treacy LJ, with whom King J agreed. At paragraph 60 of his judgment Treacy LJ accepted a submission by Ms Wigley, who on that occasion also was acting for the rating authority, that the district judge had been entitled to look at the whole of the evidence before him and decide on a broad basis whether the premises were being used wholly or mainly for charitable purposes. In that regard the district judge had been correct to take into account the extent which the premises were used. However the district judge had also taken into account the efficiency or otherwise of the furniture storage use at the premises, and whether it had been necessary for the charity to occupy both premises. At paragraph 61 of his judgment Treacy LJ held that both these considerations were irrelevant. In those circumstances the appeal was allowed and remitted to the district judge for further consideration.

57. In *Public Safety Charitable Trust v Milton Keynes Council* [2013] EWHC 1237 (Admin), [2013] 2 EGLR 133, Sales J dealt with 3 appeals by case stated from Magistrate's Courts, which together were said to constitute test cases. As in the present case, the question was whether under section 43(6) of the 1988 Act relevant hereditaments were wholly or mainly used for charitable purposes. Sales J described the factual background in paragraphs 2 to 4 of his judgment dated 14 May 2013:

> 2. The PSCT has a basic method of operation common across all three cases. It takes a lease of commercial premises in respect of which the owner would be liable to pay non-domestic rates (since there is a liability to pay rates in relation to unoccupied commercial premises). It claims to be entitled to relief from payment of rates in respect of the premises. The lease is for a nominal or peppercorn rent; it is subject to a short notice period (say, seven days); and the landlord pays the PSCT a "reverse premium" in respect of its occupation. In this way, the saving in terms of relief from liability for non-domestic rates is shared between the landlord and the PSCT, the loser being the public purse.
>
> 3. The PSCT arranges for a broadcasting transmitter or transmitters, each similar in size to a domestic broadband box, to be placed at the premises. This equipment takes up a minimal amount of physical space at the premises. It is connected to the existing power supply. It provides free wireless internet access ("wifi") to anyone within range of the transmitter or transmitters, and they also broadcast Bluetooth messages on crime prevention and public safety related themes to willing recipients who are in range and have a Bluetooth enabled mobile phone.

> The provision of such a free wifi service and free messages is a service which is charitable in nature: the PSCT is a registered charity.
>
> 4. The equipment remains in operation without human assistance, apart from occasional maintenance visits. The premises are otherwise unused.

58. At paragraphs 32 to 39 of his judgment Sales J dealt with a contention on behalf of the charity that he should depart from the decision in *Kenya Aid*. He noted that ordinarily the High Court would follow another first instance decision unless convinced that the decision was wrong. He continued, in paragraph 34 of his judgment:

> 34. Nevertheless, Mr Myerson QC for the PSCT did invite me to disagree with the ruling of the Divisional Court in Kenya Aid, and to adopt the purpose interpretation of section 43(6). I decline that invitation. Far from being convinced that the Divisional Court was wrong in adopting the extent of use interpretation of section 43(6), I think that it was right. It is worth mentioning that in my preparation for this case, before being referred to or reading the judgment in Kenya Aid, I had independently reached the same view as to the natural meaning of the words used as did Treacy LJ. In the context of this legislation and having regard to the language used, it is reasonable to infer that Parliament intended that the substantial mandatory exemption from rates for a charity in occupation of a building should depend upon the charity actually making extensive use of the premises for charitable purposes (i.e. use of the building which is substantially and in real terms for the public benefit, so as to justify exemption from ordinary tax in the form of non-domestic rates), rather than leaving them mainly unused.

59. In paragraphs 36 and 37 of his judgment Sales J dealt with what he regarded as the strongest of the arguments put forward by the charity for urging that, in place of the approach taken in *Kenya Aid* there should be a "purpose of use" interpretation:

> 36. To my mind, the strongest of the arguments put forward by Mr Myerson against this construction of section 43(6) was that the extent of use interpretation would strip the word "wholly" of all sensible meaning in the context of that provision. He submitted that on the extent of use interpretation the issue would always resolve into a question of whether the hereditament is "mainly used" for charitable purposes, since buildings would typically be left unused at night, or areas within them would not be in actual use all the time. If that were right, and the word "wholly" were rendered meaningless upon this interpretation, it could be a strong textual indicator in favour of the alternative, purpose of use interpretation.
>
> 37. However, I do not think that the argument can be sustained. A building may fairly and properly be described as being wholly used for a particular purpose even though not every square metre of floor space is in constant use all the time. For instance, the whole of a room used as an office can be described as being wholly used as an office, even though it is spacious and not crammed with people working. I also think it can fairly be described as being wholly used as an office, albeit it is closed and left vacant during the night. Even if that is not right, it is possible to imagine buildings which indeed are in constant use the whole time for charitable purposes (e.g. a permanent soup kitchen to feed the destitute or an office staffed 24 hours a day by the Samaritans to be available to

> give advice to people who feel suicidal). So it cannot be concluded that the word "wholly" in the phrase "wholly or mainly used for charitable purposes" has no meaning or proper function if the extent of use interpretation of section 43(6) is adopted.

60. The result was that in two of the three cases appeals by the charity against liability orders were dismissed, and that in the third case an appeal by a rating authority against refusal to grant a liability order was allowed with the matter remitted to the Magistrate's Court for further consideration.

61. In *South Kesteven DC v. Digital Pipeline Ltd* [2016] EWHC 101 (Admin), [2016] 1 WLR 2971, Grantham Magistrates Court had dismissed an application by the rating authority for liability orders in relation to premises which were leased by the charity. The background was that on occasional and infrequent days the charity held what were described as "appeal" days on which it actually carried out its charitable activities face to face with the public. The Magistrate's Court found that the purpose of the appeals was, in accordance with the charity's aim, to collect unwanted IT equipment from donors in the UK, process it and transport it to Africa with a view to providing access to functioning IT equipment to those who would otherwise not have access to computers in schools. The Magistrate's Court held that the appeals were well planned and advertised in advance in local newspapers and press releases. It added that letters were sent to local councillors, local schools, local businesses and libraries. The Magistrate's Court made a finding in paragraph 8 of the case stated that on the "appeal" days the charity used approximately 42% of the available space in the premises. This was clarified by both sides on an appeal to the Divisional Court (Elias LJ and Nicol J). The leading judgment was given by Elias LJ. At paragraph 8 of his judgment Elias J said that:

> 8. I interpose here what both counsel accept lay behind the judge's finding in para 8. The judge heard evidence from Mr Johnson, the revenues recovery team co-ordinator for the appellant. Mr Johnson visited the site on three occasions and gave evidence that the unused parts of the premises consisted in effect of four different elements: the mezzanine floor referred to by the judge; a similarly sized downstairs storage area which matched it; a reception/kitchen area; and that part of the sales floor which he considered was not actually used by the charity or the customers who were attracted into the hall. The first three areas could be seen to be distinct and separate from the sales hall itself, and no activities were going on in those areas. The fourth element, which I shall call the "notional unused area" was not marked out in any way but was the witness's own assessment of that part of the hall which was not in fact used by anyone in connection with the charitable activities.

62. In paragraphs 12 to 17 of his judgment Elias LJ noted that 3 propositions of law were common ground. The first of these was that the test is not whether the activity being conducted on the premises is wholly or mainly charitable. Instead, the test is whether the premises are being used wholly or mainly for charitable activity.

63. The second and third agreed propositions of law were set out in paragraphs 16 and 17 of Elias LJ's judgment:

> 16. Second, if as a matter of fact the premises are being used wholly or mainly for charitable purposes, it matters not that they could have been run more efficiently or that strictly only part of the premises need have been used: see the observations of the Treacy LJ in the *Kenya Aid case*

> [at] para 36. The test has to be applied to the facts as they are, not as they might have been.
>
> 17. Third, it is widely appreciated that the rules on charitable exemption can be manipulated to the advantage of both the owner of business premises and the charity leasing the premises. The landlord of unoccupied business premises will have to pay rates. However, if he lets it to a charity which carries on charitable activities, the landlord is no longer the ratepayer within the statutory definition in section 65. But the charity is able to take advantage of the charitable exemption. If, as is typically the case and is the position here, it simply has to pay a peppercorn rent and especially where the landlord pays a premium to the charity, both the charity and the landlord benefit. If the premium at least exceeds the 20% rate which remains payable for the appeal days, the charity is in profit, but so is the landlord who has avoided altogether the duty to pay rates. However, when determining whether the exemption applies or not, it is immaterial that the purpose of the arrangement between landlord and the charitable tenant is to reduce or avoid the payment of business rates: see the *Kenya Aid case* …, para 38. There is nothing unlawful in parties seeking to arrange their affairs so as to avoid paying taxes which they would otherwise have to pay, if they can lawfully do so.

64. The main issues in the case were discussed by Elias LJ at paragraphs 25 to 28 of his judgment:

> 25. I do not accept the appellant's submission that once the floor space in use was only 42%, it was perverse for the judge to make a finding that the premises were wholly or mainly used for the charitable purpose. Nor, in my view, was there a presumption to that effect which could only be rebutted by compelling evidence. In some cases the amount of floor space in use may be minimal, depending on the nature of the charitable activity. A charity may, for example, store books to be sent to Africa in the bookshelves around a room it leases. For much of the time the room will be empty. Even when the room is in use to shelve or remove the books, there is likely to be a portion of the middle of the floor which is virtually never in use. That would not prevent the inference that the room was used wholly for a charitable purpose, as Sales J, as he was, observed in the *Public Safety Charitable Trust case* ...: see para 19 above.
>
> 26. Moreover, if the appellant's approach were correct, it would sometimes have arbitrary results. In this case the area notionally deemed to be not in use was a space behind the boards which the charity had erected, where the public did not go or need to go. I would accept that if the boards are placed in a way which is clearly designed to hive off a particular part of a much wider space, that would justify treating the excluded space as an area not being used for charitable purposes. But if the boards are placed away from the wall for presentation purposes, so that it can reasonably be inferred that the whole space is being used as a discrete area, albeit that not all of the space is actually in use, it is not in my view legitimate to exclude the area not actually in use. The "wholly or mainly" question should not turn on the arbitrary decision how the premises are arranged for presentational purposes provided it can fairly be said that there is a clearly demarcated area in which the services are being provided, even if they are not all actually in use. … The courts

have emphasised that a broad-brush approach is required—the antithesis of the approach suggested by the appellant.

27. However, I accept the appellant's second argument, namely that the judge erred in placing as much weight as he did on the fact that there was no other activity taking place on the premises. I accept that had there been another activity sharing the same premises, this would have been material to the "wholly or mainly" question. If, for example, some public body had set up an official at a desk in the same hall as the respondent charity, giving advice to members of the public, that sharing of the premises would plainly be a factor to take into account when asking whether the premises were wholly or mainly used by the charity, since it would dilute the use by the charity. But I do not think that the converse is true. If, having regard to the nature and extent of the use, the conclusion was that the premises could not properly be said to be wholly or mainly used by the charity, this conclusion could not change simply because the rest of the premises were empty. It seems to me that the judge was assuming that this could be the case and that the fact that the premises were otherwise unused was a positive factor in the charity's favour.

28. If the judge's conclusion had been clear cut, I would not have considered this error to be material. But it is not self-evident on the facts whether a judge would find that the premises were used wholly or mainly for a charitable purpose or not. I would not go so far as the appellant in describing this factor as "decisive" but it plainly was seen by the judge as a matter of some weight. In those circumstances I cannot be sure that the decision would necessarily have been the same even if this factor had been ignored. Accordingly I would on this ground quash the decision and remit the matter to the judge.

F. Argument and analysis: case stated questions

F1 Case stated questions: introduction

65. Q1 asked whether there was an evidential basis for factual findings concerning what led to the change in MCS's charitable objects and the number of advertisements appearing in the local press. Q2 concerned the reasons given by the judge in relation to those two matters. The course taken in argument was to address in relation to each matter whether the judge's approach was sustainable in law. I shall take the same course. Accordingly I deal with these two matters in section F2 below. Section F2.1 below deals with the judge's findings as to MCS's change in its charitable objects. Section F2.2 below deals with the number of advertisements.

66. Q3 was whether the judge erred in law by into account and placing weight on certain specific factors. I deal with this in section F3 below.

67. Q4 asked whether the judge had applied a more stringent test than the law required. I deal with this in section F4 below.

68. When dealing with these questions I shall make reference to such of the grounds of appeal and listed issues and sub-issues as appear relevant to the question under

consideration. In section G below I turn to examine the grounds of appeal, and listed issues and sub-issues, more specifically.

F2 Q1 and Q2: argument and analysis

F2.1 Q1.1, 2.1 and 2.3: change of objects

69. The point which arises on MCS's revision to its objects is a short one. MCS says that the judge was not entitled to reach the conclusion that the charitable objects were changed in response to Ms Mann's letter dated 26 October 2016. It is not clear to me that the judge reached such a conclusion in the judgment below. However the case stated at paragraph 34 (see section B2 above) plainly records a finding that the change was made "in response to Ms Mann's letter". The only letter from Ms Mann referred to in the case stated as part of the judge's reasoning on this aspect is Ms Mann's letter of 26 October 2016: see paragraph 30 of the case stated as set out in section B2 above.

70. In my view there is no sustainable basis for the finding by the judge that the change took place in response to that letter. The change occurred by a special resolution on 29 October 2016. It is unreal to suggest that such a change could have taken place in response to a letter sent three days earlier.

71. Ipswich BC did not attempt to suggest otherwise. Its response was that MCS's complaint in this regard was predicated on an artificially narrow reading of the case stated, and had ignored an objectively ascertainable sequence of events which was not in dispute. As to the first point, for the reasons given earlier it seems to me that the case stated clearly records the judge as holding the view that the letter of 26 October bought about the change on 29 October 2016. As to the second, neither the judgment below nor the case stated makes any reference to the "events" which Ipswich BC wishes to rely upon. Nor do they suggest that any conclusion as to those events was common ground. It seems to me that Ipswich BC may well be right to say that the change was in response to communications from Ms Mann prior to her letter of 26 October 2016. That, however, does not make MCS's challenge to paragraph 34 of the case stated any less valid.

72. Even so, the fact that MCS has a valid challenge to paragraph 34 of the case stated, is not an end of the matter. For reasons given in sections F3 and F4 below, it does not seem to me that what was said in paragraph 34 of the case stated has any bearing on the outcome of the appeal.

F2.2 Q1.2 and Q2.2: number of advertisements

73. In paragraph 26 of the case stated the judge recorded that relevant advertisements had appeared in the local evening paper on six occasions in total: see section A7 above. This was the last of the case stated non-disputed facts. A similar passage appears as the last item in the judgment agreed facts section at paragraph 18: see section A6 above.

74. This is challenged by MCS on the basis of an assertion in Cook 1 that there were 11 advertisements, and by reference to copies of what were said to have been the relevant advertisements. Cook 1 claimed that there had been four advertisements between 24 June and 12 August 2016 inclusive, and that there had been seven advertisements during the period 9 December 2016 to 19 January 2017 inclusive. MCS added that Ipswich BC had not disputed what Mr George Cook had said as to the total number of advertisements.

75. Ipswich BC answered first, that the judge rejected Mr George Cook's evidence (see section B6 above) and second, that as regards the five additional advertisements copies of two of them were missing from the trial bundle and the copies of the remaining three were illegible. MCS did not dispute what Ipswich BC said about the trial bundle. Nor did MCS dispute the judge's finding (see section B6 above) that Mr George Cook's evidence was not believable. MCS nevertheless said that the judge had failed to give reasons for saying that the advertisements numbered a total of six. I disagree. The question which MCS seeks to have answered is, why did the judge not accept Mr George Cook's evidence that there were eleven advertisements? To my mind the answer is plain from paragraph 73 of the judgment below: the judge did not consider that Mr George Cook's evidence was believable. It did not matter in this regard that Ipswich BC had been silent as to the total number. Accordingly I conclude that MCS has no valid complaint about the judges conclusion that the total number of advertisements was 6.

76. Even if I were wrong however, that would not be an end of the matter. For reasons given in sections F3 and F4 below it seems to me that in this regard any error on the part of the judge was immaterial.

F2.3 An additional factual challenge?

77. In its skeleton argument MCS suggested that the judge misstated the advertised times of the second exhibition. Ipswich BC pointed out in response that no question had been raised in relation to the advertised times when asking for a case stated. Ipswich BC is plainly right in this regard, and at the hearing MCS did not attempt to suggest otherwise. It follows that there can be no question of an additional factual challenge in this regard.

F3 Q3: argument and analysis

F3.1 Q3 relevant factors: introduction

78. The full text of Q3 is set out in section C1 above. Key parts of Q3 asked whether the judge erred in law by giving weight to 6 specified factors ("the Q3 factors") in determining that the properties were not wholly or mainly used for charitable purposes.

79. Ipswich BC drew attention to what I have referred to as the judge's findings as to lack of appearance, purpose or intent: see section B7 above. Ipswich BC submitted that Q3 was an impermissible collateral attack on those findings. I deal with this primary response in section F3.2 below

80. Ipswich BC's secondary response was that the 6 factors were relevant to what MCS was or was not using the properties for, had formed the foundation for the finding of lack of appearance, purpose or intent, and that the finding of lack of appearance, purpose or intent was a finding of fact which had not been challenged. I deal with this secondary response in section F3.3 below.

F3.2 Ipswich BC's primary response

81. To my mind Ipswich BC's primary response puts the cart before the horse. Ipswich BC did not dispute that the judge had relied on the Q3 factors in the course of reaching her decision. Moreover, Ipswich BC's own case is that in certain circumstances the Q3 factors could be relevant. This necessarily acknowledges that in other circumstances the Q3 factors would be irrelevant. It follows, to mind, that it is premature to examine whether there is a finding of fact which Q3 would impermissibly attack. The appropriate course is to begin by analysing what Ipswich BC says about the

circumstances in which the Q3 factors could be relevant. I turn to this in section F3.3 below.

F3.3 Circumstances when Q3 factors could be relevant?

82. Ipswich BC accepts that previous decisions have identified certain factors in certain circumstances as being irrelevant to a charity's claim for charitable relief. Ipswich BC is right to accept this:

(1) It has long been established that ratepayers or potential ratepayers can lawfully organise their affairs so as to avoid paying rates: *Makro Properties* at paragraph 56, *Kenya Aid* at paragraph 38, *Digital Pipelines* at paragraph 17.

(2) In paragraph 61 of his judgment in *Kenya Aid* Tracey LJ held that it was irrelevant whether it had been necessary for the charity to occupy both premises, and it had also been irrelevant to take into account the efficiency or otherwise of the furniture storage use at the premises.

(3) As recorded by Elias LJ in *Digital Pipeline* at paragraph 16, the parties in *Digital Pipeline* agreed:

> 16. … if as a matter of fact the premises are being used wholly or mainly for charitable purposes, it matters not that they could have been run more efficiently or that strictly only part of the premises need have been used: see the observations of the Tracey LJ in the *Kenya Aid case* [at] para 36. The test has to be applied to the facts as they are, not as they might have been.

83. Equally, however, Ipswich BC is in my view right to say that there are qualifications. I set out below passages which, to my mind, are particularly important:

(1) Lord Cross in *Oxfam* described the user which would give rise to charitable relief in this way (see section E above):

> … user for purposes directly related to the achievement of the objects of the charity …

(2) Lord Morris in *Oxfam* said that in order to qualify for relief there must be:

> … user in the actual carrying out of the actual charitable purposes …

(3) By contrast, Lord Morris said that charitable relief would not be available as regards:

> … things done by a charity, or a use made of premises by a charity, which greatly help the charity, and which in one sense must be connected with the charitable purposes of the charity and which are probably within the powers of the charity, but yet which cannot be described as being the carrying out, or part of the carrying out, of the charitable purposes themselves. The nature of the user may not be sufficiently close to the execution of the charitable purpose of the charity. …

(4) In *Public Safety Charitable Trust* Sales J said in paragraph 34:

> … in the context of this legislation and having regard to the language used, it is reasonable to infer that parliament intended that the substantial mandatory exemption from rates for a charity in occupation of a building should depend upon the charity actually making extensive use of the premises for charitable purposes (i.e. use of the building which is substantially and in real terms for the public benefit, so as to justify exemption from ordinary tax in the form of non-domestic rates) …

(5) In *Digital Pipeline*, before commenting that it mattered not whether the premises could have been run more efficiently or that strictly only part of the premises need have been used, Elias LJ at paragraph 16 began with a qualification:

> … if as a matter of fact the premises are being used wholly or mainly for charitable purposes …

84. MCS's skeleton argument on the appeal did not specifically address the qualifications I have cited above. In the skeleton argument, and in oral submissions, it was suggested that the judge may been influenced by paragraph 8 of Ipswich BC's position statement. That paragraph had alleged that the use of the properties constituted a sham attempt to minimise rates liability. MCS emphatically denied the use was a "sham". It added that in the circumstances of the present case:

> … there would not be a cigarette paper between a finding of a "sham" and a finding that the purpose of the use was a scheme to avoid rates (there being no other conceivable purpose for any such alleged "sham").

85. Accordingly MCS submitted that a finding that there had been a "sham" driven by an intention to minimise or avoid tax would not be a relevant matter when considering whether such tax had been minimised or avoided in accordance with the law. However, all that was said by MCS about "sham" and about a purpose of minimising or avoiding tax, as it seems to me, was directed to reasoning which simply did not appear in either the judgment below or in the case stated.

86. MCS also relied upon a passage in paragraph 29 of Elias LJ's judgment in *Digital Pipeline*. In that passage Elias LJ said that whether the charity was successful or not in bringing in potential donors did not seem to him to be relevant to the extent of use. As it seems to me, however, Elias LJ in that passage is simply pointing out that if the use meets the test laid down by Lord Morris *Oxfam* then success in achieving the charitable objects does not matter.

87. If, as the judge held, this was a case where the use of the properties by MCS did not have the appearance, purpose or intent of a public exhibition for charities to obtain volunteers and for the public to seek opportunities to participate and contribute to charitable volunteering, then it seems to me that the qualifications I have cited above all have the result that MCS was not using the properties in pursuance of the carrying out of charitable purposes. MCS criticised the judge for failing to find what it was that she considered to bes the purposes of the exhibitions. Here, as it seems to me, MCS enters inadmissible territory. For the reasons given above, I have held that the judge's finding as to lack of appearance, purpose or intent puts MCS on the wrong side of the line: it has the consequence that the qualifications I have cited above are engaged, and the prohibition on taking account of efficiency or necessity does not apply. Thus the Q3 factors, which in the ordinary case would not be relevant, become factors which are highly relevant. It necessarily follows that the answer to Q3 is that the judge did not err in law.

88. This leaves no room for a complaint that the judge should have made a finding as to what the actual purpose of the exhibitions was. In Q3 MCS has confined its challenge to the relevance of the six specified Q3 factors. It does not raise any issue as to whether the law requires the judge to make an express finding of what the actual purposes were.

89. Similarly, Q3 does not raise any issue as to whether, if the Q3 factors are relevant, the findings of fact made by the judge can in law sustain her conclusion as to lack of appearance, purpose or intent. For that reason, even if the answers to both limbs of Q1 and Q2 were that the judge was not entitled to come to her factual findings on the change of charitable objects and on a number of advertisements, those answers would be irrelevant to the outcome of the appeal.

90. I add that I agree with Ipswich BC as to the nature of the judge's finding of lack of appearance, purpose or intent. Whether the "exhibitions" had the appearance of a public exhibition for charities to obtain volunteers and for the public to seek opportunities to participate and contribute to charitable volunteering is a question of fact. As MCS itself accepted, the judge's role did not involve the exercise of a discretion. Similarly, the judge's conclusion as to the relevant purpose and relevant intent involves a question of fact. Under rule 76(2) of the Magistrate's Court Rules 1981, if there were to be an assertion that there was no evidence on which the Magistrate's Court could come to its decision, then the particular finding of fact which it is claimed cannot be supported by the evidence must be specified when applying for a case stated. In the absence of any challenge in the case stated to the judge's finding of lack of appearance, purpose or intent that finding cannot be challenged.

91. It was suggested by MCS that what the judge said about lack of appearance, purpose or intent was no more than "a step in the judge's reasoning". I agree that it was a step in the judge's reasoning, but it was a step which involved findings of fact as to appearance, purpose and intent.

92. I also add that the judgment below did not end with the judge's finding as to lack of appearance, purpose or intent. The judge went on to consider whether she was satisfied that MCS was making active and extensive use of the property for charitable purposes. For the reasons given above, it does not seem to me that the judge needed to do this. Her finding of lack of appearance, purpose or intent necessarily had the consequence that MCS's use fell on the wrong side of the line.

F4 Q4 argument and analysis

93. Q4 asks whether the judge erred in law by applying a more stringent test than required, namely by considering that the charity should **actively** make extensive use of the properties for charitable purposes. As with other questions, Q4 reflects a question which MCS wished to be posed. The critical feature of the question appears from the emboldening of the word "actively".

94. For the reasons given at the end of section F3, however, I consider that Q4 does not arise. Once the judge had made her finding of lack of appearance, purpose or intent, the inevitable result was that MCS's use of the properties fell on the wrong side of the line. In these circumstances I deal only briefly with what were said, in the listed issues and sub-issues, to be sub-issues to arising on Q4.

95. The first sub-issue was whether there was any proper basis for a requirement that a charity must behave "actively" to satisfy the legal test. In fact no dispute arises in this regard: Ipswich BC concedes that the judge was in error in using the word "actively" when describing the legal test.

96. The second sub-issue was whether application of a test of "actively" by the judge had any material difference from a test of "actually" in the circumstances of the present case. For the reasons given in section F3 above, it appears to me that the answer to this question must be "no".

97. The third sub-issue was whether the reference to "extensive use" in previous decisions required something different and more stringent than that the property must be mainly in use and not "mainly unused". As to this, Ipswich BC objects that this does not form part of the case stated, and accordingly is not a matter that the court has jurisdiction to determine. I agree. For the reasons given above, it seems to me that Q4 as formulated is solely concerned with the judge's introduction of a test of "actively". I add that MCS's skeleton argument explained that MCS's complaint was that the judge misunderstood what had been said in earlier decisions concerning a need for "extensive use of the property", and had interpreted them as requiring that there be "extensive public benefit" or "extensive activity". To my mind, no such complaint is made in Q4.

98. The final sub-issue on Q4 was whether a charity, in order to be entitled to charitable relief, has "to actively meet or achieve its charitable purposes" or whether it would be sufficient for the use "to be in pursuance of charitable purposes". Here, too, Ipswich BC objected that this did not form part of the case stated. I consider that objection is well founded. As was acknowledged by MCS in oral submissions, Q4 makes no reference to a distinction between actively meeting or achieving on the one hand and use in pursuance of charitable purposes on the other.

99. The result is that if Q4 arose for determination, I would conclude that the judge erred in law by imposing a test requiring that MCS should "actively" make extensive use of the properties for charitable purposes, but that the use of this word rather than the word "actually" does not give rise to a successful ground of appeal.

G. The grounds of appeal and the listed issues

100. I have set out the grounds of appeal in section C2 above. Grounds of appeal 1 and 2 correspond to Q1 and Q2. They have been dealt with in section F2 above.

101. Grounds of appeal 3 and 4 correspond to Q3 and Q4. They are dealt with in section F3 and F4 above respectively. Grounds of appeal 5 and 6 do not appear expressly as part of the questions in the case stated. To the extent to which they fall within those questions, they have been dealt with in section F3 above.

102. Turning to the listed issues and sub-issues, I have set them out in annex 1 of this judgement. Issue 1 and its sub-issues have been dealt with in section F4 above. Issue 2 and its sub-issues have been dealt with in section F3 above.

103. Issue 3 is said to arise out of the judgment of Mrs Justice Lang and the amended case stated. For the reasons given in section F3, the points which MCS seeks to raise in issue 3 do not form part of the case stated. In any event, for the reasons given in that section, they criticise an approach which was not in fact adopted by the judge.

104. Issue 4 and its sub-issues are dealt with in section F2 above.

H. Conclusion

105. For the reasons given above, I answer the questions in the case stated:

Q1(a) no. Q1(b) yes.

Q2: as to the change of charitable objects, this question does not arise. As to the number of advertisements, the judgment below gave sufficient reasons for rejecting MCS's evidence.

Q3: no.

Q4: yes, but this has no impact on the outcome of the appeal.

Annex 1

The list of issues and sub-issues, with certain passages renumbered for ease of exposition, is set out below.

Issue 1

Did the judge err in law by failing to apply the correct legal principles by introducing additional requirements into the statutory test: Did she err by considering that what is required is that the charity **actively** makes **extensive** use of the property for charitable purposes and that the use **meets** the charitable objects;

Sub-issues under Issue 1

1.1 Is there any proper basis for a requirement that a charity must behave 'actively' to satisfy the legal test?

1.2 Did any application of a test of 'actively' by the judge have any material difference from a test of 'actually' in the circumstances of the present case?

1.3 (a) Does the reference to 'extensive use' in the authorities require something different and more stringent than that the property must be mainly in use and not 'mainly unused'?

(b) Does this issue form part of the case stated in respect of which the Court has jurisdiction to determine?

1.4 (a) Does the charity have to actively meet or achieve its charitable purposes in order to meet the requirements of the legal test or is it sufficient for the use to be in pursuance of the charitable purposes?

(b) Does this form part of the case stated in respect of which the Court has jurisdiction to determine?

Issue 2

2. In determining that the property was not used wholly or mainly for charitable purposes when occupied by the poster board exhibitions did the judge below err in law by taking into account and placing weight on the following factors:

2.1 the number, nature and size of the advertisements for the exhibitions;

2.2 how the premises were arranged for presentational purposes during the exhibitions and whether the arrangement was meaningful or inviting;

2.3 that the exhibitions were not considered by her to be stimulating or informative;

2.4 that MCS was considered to be reactive not proactive

2.5 that the exhibitions were only open to the public by appointment

2.6 there was no signage to direct visitors round the building.

Sub-issues under Issue 2

2(a) Is the degree of skill, effort, energy, activity, proactiveness, and success demonstrated by a registered charity relevant in law to whether or not its use of a property falls within the provisions entitling it to relief from non-

domestic rates, those provisions being whether or not the property is used "wholly or mainly for charitable purposes"?

2(b) Was the judge's view that the exhibitions 'did not have the appearance, purpose or intent of a public exhibition for charities to obtain volunteers and for the public to seek opportunities to participate and contribute to charitable volunteering' a separate finding of fact that is not separately challenged by the case stated and cannot now be impugned or was it a step in the judge's reasoning that was wrongly influenced by factors which related to the degree of skill, effort, energy activity, proactiveness and success demonstrated by the charity?

[Issue 3 (arising out of Lang J's Judgment and the amended case stated) (NB: this issue is put forward by the Appellant but not agreed as an issue by the Respondent)

3.1 If the pertinent facts relevant to the legal tests are established, is the court entitled to refuse relief on the basis of doubts about the charity's operatives' credibility on other matters or the genuineness or otherwise of the operatives' intentions or motives or the court's suspicions that the use of the property is a sham scheme to avoid rates?

3.2 If the court is entitled to refuse relief on this basis, is a clear finding of bad faith or a sham a prerequisite to such a determination?]

Issue 4

4. Did the judge make findings of fact that she was not entitled to make on the basis of the evidence before her, alternatively did she fail to give adequate reasons for making such findings of fact in the face of apparently contradictory evidence?

Sub-issues under Issue 4

4.1(a) Was the judge entitled to find the charitable objects were changed after and in response to Mrs Mann's letter dated 26 October 2016 and, if so,

4.1(b) were adequate reasons given for that finding?

4.2(a) Was the judge entitled to find that the adverts appeared in the local press on 6 occasions and, if so,

4.2(b) were adequate reasons given for that finding?