

**CHARITY COMMISSION**  
**DECISION OF THE CHARITY COMMISSIONERS**  
**FOR ENGLAND AND WALES MADE ON 29 SEPTEMBER 2003**

**APPLICATION FOR REGISTRATION OF**  
**THE FINE LADY UPON A WHITE HORSE APPEAL**

**1. The issue before the Commissioners**

The Commissioners considered an application for registration as a charity of a prospective trust to be called “The Fine Lady Upon a White Horse Appeal” (“the Appeal”). If the Appeal were to be established as a charity, it should be entered on the Central Register of Charities under section 3(2) of the Charities Act 1993.

The Commissioners have made this decision in a final review under the Commission’s review procedures.

**2. Decision**

The Commissioners:

- having considered the case which has been put to them by the Appeal, including legal submissions and full supporting evidence; and
- having considered and reviewed the relevant law and the proposed governing document and activities of the Appeal

concluded that the Appeal would be established for exclusively charitable purposes and may be registered as a charity with the following objects:-

“..... in the town of Banbury in the County of Oxford (“the Area of Benefit”)  
(a) to promote the enhancement and improvement of the Area of Benefit for the benefit of its inhabitants; and  
(b) to advance art and education for the benefit of the public by the creation, erection and maintenance of a sculpture of a Fine Lady upon a White Horse in proximity to the Cross at Banbury and if the Trustees consider appropriate the provision and maintenance of such other artefacts in Banbury relating to the Nursery Rhyme “Ride a Cock Horse to Banbury Cross” as are capable of furthering these objects.”

**3. The proposed objects and activities of the Appeal**

3.1. The objects originally proposed by those setting up the Appeal, the proposed trustees (“the promoters”), were:

“..... in the town of Banbury in the County of Oxford (‘the Area of Benefit’):

*(1) To promote art, education and heritage for the benefit of the public by the creation and erection of a sculpture of a Fine Lady on a White Horse in proximity to the Cross at Banbury, Oxfordshire*

*(2) To further promote art, education and heritage for the benefit of the public by the creation and erection of such additional artefacts in Banbury relating to the Nursery Rhyme "Ride a Cock Horse to Banbury Cross" as may from time to time be considered to assist such objectives."*

- 3.2. The promoters' intention was to set up an appeal which would raise funds to be used for commissioning a statue of a "Fine Lady on A White Horse" from the nursery rhyme "Ride a Cock Horse to Banbury Cross" by a suitable artist and erecting it at a location a short distance away from the site of the Cross at Banbury. The local town council had already resolved to donate a legacy it had been given for the benefit of the people of Banbury to the Appeal.
- 3.3. The promoters were also minded to establish a trail through the town about other aspects of the nursery rhyme.
- 3.4. The promoters indicated they might carry out other activities such as preparing and distributing literature about the artistic and heritage value of the sculpture and also in connection with the nursery rhyme.

4. **Consideration of the extent to which the provision of a statue or memorial might be charitable within the current legal framework**

- 4.1. The Commissioners considered and reviewed the relevant law and the Commission's policy regarding in what circumstances the provision of a statue could be charitable. It was noted that the Commission had previously registered a number of charities which were set up to provide and/or maintain statues, monuments or memorials in furtherance of the charitable purpose of promoting good citizenship, for the reasons set out in the Commission's Annual Reports of 1981<sup>1</sup> and 1984<sup>2</sup> and from authority in the case of *Murray v Thomas [1937]*<sup>3</sup>.
- 4.2. As a result of these considerations, the Commissioners agreed to extend the Commission's policy in this area. The Commissioners concluded that it was possible within the existing legal framework to regard the provision and maintenance of statues, monuments and memorials as an activity in support of any charitable purpose, providing there is a sufficient link between the activity and the purpose, there is sufficient public benefit and any private benefit is legitimately incidental. This may be possible in a number of areas, including those set out below, although it may be more difficult to establish the link in some areas than others.

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<sup>1</sup> Page 24, paragraphs 68-70

<sup>2</sup> Page 10, paragraph 17

<sup>3</sup> 4 All ER 545. The court held that a war memorial of a substantial kind intended to commemorate the dead and serve a useful purpose for the benefit of the community (in that case a memorial hall) could be charitable.

4.3. **Promoting good citizenship**, by commemorating those who:-

- 4.3.1. have died in wars;
- 4.3.2. carry out other hazardous duties on behalf of the public. This could extend to commemorating those who offer up their lives for the benefit of others or provide valuable services to the public, not just those in the emergency services or armed forces. In addition, in the case of the armed forces, the provision of a regimental or unit memorial or a memorial commemorating specific military events might also be means of improving esprit de corps and therefore the efficiency of the armed services; or
- 4.3.3. are of sufficient historical or other significance to be capable of being an incentive to heroic or noble deeds or emulation of other desirable qualities.

These are examples of the application of the principles set out by the Commission in its Annual Reports of 1981 and 1984<sup>4</sup>.

4.4. **Promoting the benefit of an area including its physical enhancement (beautification)**. The Commissioners were directed by the promoters to the case of *Grant v Commissioners of Stamp Duties*<sup>5</sup> in which the Supreme Court of New Zealand concluded that a bequest of money left in a will to erect a statue or monument of Peter Pan in a public garden was charitable. Whilst of persuasive value in English law, the Commissioners noted that the court considered that the erection of statuary, fountains or other work of art tending to the beautification of a public park could be described as being beneficial to the community and therefore capable of being charitable.

The Commissioners noted that there were several cases in which the English courts had held that promoting the benefit of an area<sup>6</sup> including its physical enhancement (beautification)<sup>7</sup> could be charitable. The Commissioners concluded that in principle, the provision of a statue which could be said to improve and enhance the local environment for the benefit of the community could be capable of furthering this purpose. It may provide aesthetic benefit and/or contribute to the overall enhancement of the area in another way.

4.5. **Advancing education, if the statue, monument or memorial in itself is of a sufficiently high standard to be acceptable as a work of art, by promoting the appreciation of the arts (capable of raising the artistic tastes of the public)**<sup>8</sup>. The provision of one piece of art could in principle be capable of doing so although factors such as the identity and reputation of the artist and location of the statue are likely to be relevant in demonstrating this is the case.

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<sup>4</sup> Ibid

<sup>5</sup> [1943] NZLR 113

<sup>6</sup> See *Re Smith* [1932] 1 Ch 153 and various other cases cited in Picarda on the Law and Practice Relating to Charities (3<sup>rd</sup> edition) 145 and Tudor on Charities (9th edition) 113. See also the Commission's Annual Report 1980

<sup>7</sup> *Howse v Chapman* [1799] 4 Ves 542 (to the improvement of the city of Bath) and *Faversham Corporation v Ryder* [1854] 5 De GM & G 350 (43 ER 905) (for the benefit and ornament of the town of Faversham)

<sup>8</sup> *Royal Choral Society v IRC* [1943] 2 All ER 101 and *Re Pinion* [1965] Ch 85. See also Picarda Ibid. at 112

- 4.6. ***Advancing education, as a means of historical appreciation or encouraging further study or enquiry about the subject***, particularly where the subject (which may be a figure or an event or representational of a figure, event or era) is of significance in history or in religion<sup>9</sup>. For example, it might lead to greater appreciation of the social history or heritage of an area. It would need to be evident that the subject area was of sufficient educational value to be capable of benefiting the public and that the provision of the statue would be capable of being an educational resource leading to greater appreciation or encourage further study or enquiry. Factors such as the provision of information accompanying the statue or direction to additional information or resources could be relevant in determining whether this is satisfied.
- 4.7. ***Being of general public usefulness (utility)***<sup>10</sup> e.g. a hall or recreation ground.
- 4.8. ***Advancing religion***, where the statue is of a particularly holy figure or depicts a significant religious event or has other religious significance and would be used for or encourage religious worship or devotion<sup>11</sup>.
- 4.9. ***Relieving human distress and suffering in the context of a memorial relating to a local or national disaster by providing comfort to grieving relatives or members of the public.***<sup>12</sup> It may be possible to show in the case of a high profile local or national disaster, which is particularly tragic, that the provision of a statue or memorial in an appropriate location will aid those involved in or affected by it overcome mental distress and suffering and in some cases bereavement.
- 4.10. ***Promoting arts***<sup>13</sup>. As with advancing education, it would need to be evident that the statue was capable of conferring sufficient educational or aesthetic benefit on the public.
- 4.11. ***Promoting other charitable purposes***, such as promoting good race relations, equality and diversity or promoting human rights. It is likely that the figure would have a particularly strong identification with the purpose concerned and generally be considered worthy of admiration or emulation.

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<sup>9</sup> Falling within the spirit and intendment of the Preamble to the Statute of Elizabeth

<sup>10</sup> Murray v Thomas [1937] Ibid.

<sup>11</sup> Advancing religion involves “some positive step... to sustain and increase religious belief” per Donovan J in United Grand Lodge v Holborn BC [1957] 3 All ER 281. See also the Church of Scientology (England and Wales) Commissioners Decision 1999

<sup>12</sup> Gifts to victims of disasters can be charitable - Re North Devon and West Somerset Relief Fund Trusts [1953] 2 All ER 1032 and it is possible that the provision of advice or counselling can be a means of relieving mental suffering following a bereavement

<sup>13</sup> Royal Choral Society v IRC [1943] Ibid; Re Shakespeare Memorial Trust [1923] 2 Ch 398

**5. Consideration of whether the provision of the statue in the manner proposed by the promoters of the Appeal could be a means of promoting the benefit of the area**

- 5.1. The Commissioners noted that the proposed location of the statue was near the site of Banbury Cross and that the statue would be easily seen by and would be sufficiently accessible to the public.
- 5.2. The Commissioners had regard to the evidence which had been produced regarding the proposed statue's aesthetic value. They also noted the subject's connection with Banbury and its relevance in folklore and local heritage and traditions.
- 5.3. The Commissioners were persuaded that the provision of the statue which the promoters intended to erect could be capable of improving and enhancing the local environment for the benefit of the community, being both capable of providing aesthetic benefit and contributing to the overall enhancement of the area given the subject matter's connection with Banbury and its relevance in folklore and local heritage and traditions.

**6. Consideration of whether the provision of the statue in the manner proposed by the promoters of the Appeal could be a means of advancing education and art by promoting the appreciation of the arts**

- 6.1. The Commissioners noted the information which had been provided by the promoters about the process adopted for selecting an artist and that the promoters had considered the quality and merit of the artist's existing work. The Commissioners noted that a maquette of the proposed statue had been made and that the promoters had submitted evidence regarding the proposed statue's educational quality and artistic value.
- 6.2. The Commissioners noted the proposed location of the site on which the statue would be erected. The Commissioners also noted the information which the promoters had submitted regarding the lack of privately endowed public art in the locality.
- 6.3. The Commissioners were satisfied taking these factors into account that the proposed statue would be of a sufficiently high standard to be acceptable as a work of art, capable of promoting the appreciation of the arts.

**7. Consideration of whether the provision of the statue in the manner proposed by the promoters of the Appeal could be a means of advancing education as a means of historical appreciation or encouraging further study or enquiry**

- 7.1. The Commissioners considered the information which the promoters had provided about the relevance of the nursery rhyme in local social and cultural history, particularly given its connection with Banbury, including expert evidence of its educational and historical value.

- 7.2. The Commissioners noted that a possible study programme had been prepared for local school children setting out ideas for work based around or extracted from elements in the nursery rhyme. The Commissioners also noted the promoters' claims about the potential use of the statue by local schools and groups and more widely as a general educational tool about the area's social and cultural history.
- 7.3. However, the Commissioners doubted whether the mere provision of the statue in this case would in fact lead to greater historical appreciation or encourage further study or enquiry. Little evidence had been submitted about how the provision of the statue would serve to achieve this. It was not envisaged that the Appeal would carry out any educational activities itself. The Commissioners noted that the promoters had mentioned they might prepare and distribute literature about the nursery rhyme but were not satisfied that this would be sufficient for these purposes. They also noted that there were no plans to supplement the provision of the statue with additional material or signposting to other information or resources.
- 7.4. The Commissioners concluded that they were not satisfied on the information available to them that the provision of the statue in the way proposed by the promoters would advance education for the benefit of the public as a means of historical appreciation or encouraging further study or enquiry. However, since the Commissioners are satisfied that the Appeal is charitable on other grounds, this does not affect the outcome of this review.

## 8. **Conclusion**

- 8.1. The Commissioners agreed, after careful consideration, that creating, erecting and maintaining a statue of a Fine Lady on A White Horse from the nursery rhyme, "Ride a Cock Horse to Banbury Cross" in the manner proposed by the promoters was capable of (1) enhancing and improving the locality and being for the benefit of its inhabitants and (2) advancing art and education for the benefit of the public by promoting the appreciation of the arts. The Commissioners also agreed that the provision of other appropriate artefacts in connection with the nursery rhyme might also be capable of furthering these objects.
- 8.2. The Commissioners therefore concluded that, subject to the changes to the objects which had been identified, once the proposed trust deed had been executed, it would be established for exclusively charitable purposes and should be registered as a charity pursuant to Section 3 of the Charities Act 1993.