

**CHARITY COMMISSION**  
**DECISION OF THE CHARITY COMMISSIONERS FOR ENGLAND AND**  
**WALES MADE ON 19 FEBRUARY 2004**

**APPLICATION FOR REGISTRATION OF THE AITC FOUNDATION**

**1. The issue before the Commissioners**

The Commissioners considered an application for registration as a charity of a trust called the AITC Foundation (the “Foundation”). If the trust was established as a charity it should be entered on the Central Register of Charities under section 3(2) Charities Act 1993.

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

**2. Decision**

The Commissioners:

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

concluded that the Foundation, being established for the relief of poverty among a defined beneficiary class, namely persons who had suffered financial loss in investing in split level investment companies and their dependants, and for other charitable purposes, was established for exclusively charitable purposes for the benefit of the public.

In consequence, the Foundation should be registered as a charity.

**3. The objects and activities of The AITC Foundation**

3.1 The Foundation was established by a trust deed executed on 15<sup>th</sup> April 2003 with the following objects:

*1. To relieve in cases of poverty, need, hardship or distress:*

- (a) any person who has suffered financial loss through investing in split level investment companies or other investment trust companies as defined by the Trustees (“a Primary Beneficiary”);*
- (b) any widow, widower, children or relatives of a Primary Beneficiary;*
- (c) any person co-habiting with a deceased Primary Beneficiary at the date of his or her death or during the preceding six months;*

2. *Insofar as the Trustees are satisfied that the charitable objects in clause (1) are substantially fulfilled or otherwise provided for (but not otherwise) for such charitable purposes as the Trustees may from time to time decide*
- 3.2 The Foundation had been established in response to the collapse of split capital investment companies in late 2001. The circumstances of the collapse are the subject of an investigation by the Financial Services Authority. The failure of the companies coupled with a further fall in the stock market in 2002 had led to hardship on the part of some investors.
- 3.3 A Treasury Select Committee considering the matter had called upon fund managers to compensate investors before the FSA inquiry had been concluded. It became clear however that compensation would not be paid without any findings of liability and that any immediate relief would have to be provided through a hardship fund.
- 3.4 The trustees have received six hundred and sixty nine enquiries about payments and eighty one formal applications. The trustees have no means of assessing the number of potential beneficiaries but their best estimate is that it would be between two and three hundred.
- 3.5 Each applicant is required to complete a full financial declaration setting out the amount of his or her investment, the amount of the loss and details of income, outgoings and other capital. Expendable capital in excess of £16,000 disqualifies an investor from receiving an award but capital to that sum may be disregarded in assessing hardship. The value of an applicant's house may be disregarded if an award would allow an applicant to remain in his or her own home: to require a sale or to go into debt by borrowing against the security of the house may in itself be considered a hardship. The Commissioners noted that it was emphasised that each case was considered on its merits.

#### **4. The framework for the issues considered by the Commission**

The first object was the relief of poverty hardship need and distress, which is recognised as a good charitable purpose. The Commissioners considered whether

- the criteria adopted by the trustees in assessing applications was consistent with a charitable purpose for the relief of poverty
- the size and composition of the beneficial class was sufficient to constitute public benefit
- the operation of the Foundation reflected its declared purpose of relieving poverty for the public benefit as opposed to the provision of compensation for investment losses .

Each of these issues was considered in turn.

## **5. The Relief of Poverty**

The Commission's interpretation of poverty or financial hardship is explained in the Charity Commission publication "Charities for the Relief of Financial Hardship".<sup>1</sup> The Commissioners considered the following extract to have particular relevance to the Foundation:

"Someone suffering a temporary period of financial hardship due to a sudden change in circumstances might also be eligible for assistance. Generally speaking anyone who does not have access to the normal things in life which most people take for granted would probably qualify for help."

The Commissioners also considered the caselaw that makes it clear that "poverty" is a relative term and is to be interpreted in accordance with changing social standards. A person may be poor if "he is in generally straitened circumstances and unable to maintain a very modest standard of living for himself and the persons dependant upon him".<sup>2</sup> Alternatively it may be expressed as having to "go short" in the ordinary acceptance of that term.<sup>3</sup>

The Commissioners considered the financial information required of applicants and the policy of the trustees upon the question of disposable and less liquid capital (i.e. an applicant's house). It was noted that the level of acceptable disposable capital had been set at approximately the amount that an elderly person may retain whilst a local authority meets the cost of residential care. The Commissioners also considered a number of case studies of applications<sup>4</sup> and were satisfied that the approach of the trustees accorded with the interpretation of poverty set out in its publication CC4.

Accordingly the Commissioners concluded that the trust did in fact relieve poverty or hardship.

## **6. Public benefit**

The beneficial class was small and connected through investment in a particular type of financial services product.

There was concern that the small size of the beneficial class meant the trust could not be said to be for the benefit of the public or for a section of it. The Commissioners considered that the numerical size of a class was only one factor to be taken into account in assessing whether it could fairly be said to constitute a section of the public. The purpose of the trust and its relationship to the size of the class are equally relevant.<sup>5</sup> In view of the purpose of the Foundation, its potential beneficiaries were a section of the public.

The Commissioners considered that the nexus between the beneficiaries was tenuous, being based upon investment in a financial product marketed by a number of different

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<sup>1</sup> CC4, published August 2003

<sup>2</sup> Re De Carteret [1933]Ch 103

<sup>3</sup> Re Coulthurst [1951] 1Ch D 661

<sup>4</sup> All such studies omitted the names and addresses of the applicants or any other identifying features.

<sup>5</sup> Dingle -v-Turner [1972] AC 601

companies. The Commissioners also noted that, in any event, a connection between beneficiaries is not determinative of the issue of public benefit in cases concerning the relief of poverty<sup>6</sup>. The Foundation had been established to relieve poverty amongst all members of the public who had invested in split capital investment funds and the connection between the beneficiaries, such as it is, should be disregarded.

The Commissioners noted that they had accepted for registration the Lloyd's Support Fund (Registered Charity No. 109661) with objects for the relief of poverty among persons who were suffering severe financial hardship as a result of meeting or attempting to meet their respective underwriting liabilities at Lloyds on being satisfied that it was established for the public benefit.

In conclusion the Commissioners were satisfied that the Foundation was established for the public benefit

## **7. Compensation**

There was concern that the purpose of the Foundation was to compensate for the consequences of a bad investment, which would not be a charitable purpose, rather than for the relief of poverty. The concerns had arisen for the following reasons:

- The Foundation had been established because fund managers had not responded to a call from a Treasury Sub-Committee considering the collapse of split capital investment trusts for fund managers to compensate investors in advance of any finding of liability by the FSA investigation.
- The application forms asked for evidence of the amount that had been lost and in the initial case studies there was some evidence of a correlation between the amount lost and the amount of any payment.

The Foundation provided evidence that of the forty-three cases in which an award had been made the average amount claimed was 26.6% of the losses and the average amount of the award was 18.1% of the losses. It was noted that the maximum award was £10,000 and that many investments had been in excess of that sum. It was also noted that some eighteen cases had been rejected in which there was clear evidence of a loss but it was decided that no award should be made.

The Commissioners accepted that the request for information about the amount lost by an applicant was only to determine whether the applicant fell within the beneficial class. It did not serve to determine the amount that might be awarded other than as some evidence of the likely extent of the financial hardship. The further information supplied by the Foundation demonstrated an overall picture in which the amount of any award was not determined by the amount that had been lost. The Commissioners noted that the written material which had been produced by the Fund to publicise its work made it clear that it was a hardship as opposed to a compensation fund.

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<sup>6</sup> Dingle-v-Turner [1972] AC 601

## **8. Conclusion**

The Commissioners were satisfied that the Foundation was established for the relief of poverty. The beneficial class was a sufficient section of the public and the criteria adopted by the trustees to determine poverty or hardship were consistent with a contemporary interpretation of those terms. The further information supplied by the Foundation demonstrated to the satisfaction of the Commissioners that it had not been established to provide compensation.

It was therefore agreed that the Foundation should be entered on the Central Register of Charities pursuant to Section 3 Charities Act 1993.