



Charity (Ordinary) Member

2015

**Assessment Centre – Situational Judgement
Exercise**

Applicant Booklet

Instructions to Applicants

You have 30 minutes to read and prepare your responses to the Situational Judgement Exercise (SJE).

Please read the information attached and prepare your answers to the questions provided. After your 30 minutes preparation time is up, the Selection Committee will allow you approximately 12 minutes to respond to the set questions.

The questions asked in the SJE are intended to primarily assess the following areas of the Personal Profile (but may also address other aspects of the Personal Profile):

Intellectual Capacity, Knowledge and Expertise – ‘An ability to quickly absorb and analyse information and extract relevant facts in accordance with applicable rules and procedure’ and ‘An ability to understand the underlying principles of and operate within unfamiliar areas (e.g. the law)’

Personal Qualities – ‘Sound judgement and decisiveness’ and ‘Objectivity’

Communication Skills – ‘An ability to express and succinctly explain matters...’, ‘An ability to engage constructively and effectively with colleagues and others, as part of a team’ and ‘An ability to contribute to timely, clear and reasoned decisions’.

The SJE involves the following two parties; Smith & Jones (Trustees of The Belfast Congregation of The Believers) who are the ‘Applicants’ and the Charity Commission for Northern Ireland who are the ‘Respondent’.

The applicants have requested a review of the respondent’s decision to open a statutory inquiry into the Charity.

The information provided sets out the background to the case and the issues that the Tribunal needs to consider. You are asked to read the information provided and

prepare your responses to the three questions in relation to the SJE (which will be asked at the beginning of the interview).

You may write notes during the 30 minute preparation time and bring them into the interview to aid you in responding to the questions.

SJE Questions

- 1(a) Please succinctly and accurately describe the case provided**
- 1(b) Please describe what you identify as the most important aspects of the information provided and explain why they are important to the case;**
- 1(c) How would you apply your own knowledge and experience if you were involved as a panel member in a case such as this;**

SMITH & JONES – Applicants

- AND -

THE CHARITY COMMISSION FOR NORTHERN IRELAND- Respondent

Background

1. The Applicants are charity trustees of The Belfast Congregation of The Believers, registered charity number 12345 (“the Charity”). The Charity is an unincorporated association governed by a constitution. It was registered as a charity in 1995, with objects as follows: “The practice and advancement of religious beliefs, as understood by the denomination known as The Believers”. The Charity’s income is around £6,000 per annum.
2. The Applicants’ application to the Tribunal is for a Review, pursuant to Schedule 3 of the Charities (Northern Ireland) Act 2008 (“the 2008 Act”), of the Respondent’s decision dated 30 May 2014. This was a decision to open a statutory inquiry into the Charity, pursuant to section 22 of the 2008 Act.
3. Reviewable decisions (including a decision to open an inquiry) involve a review by the Tribunal, applying the principles that the High Court would apply on an application for judicial review. The Tribunal may dismiss the application or, if it allows it, may (but need not) exercise the power in column 3 of schedule 3 to the Act, to direct the Respondent to end the inquiry.

The Respondent’s Engagement with the Charity

4. The Respondent’s engagement with the Charity arose from its concern about a former trustee, Mr Joseph Bloggs. The Respondent had initially engaged with the Charity when, in 2012, it was informed that Mr Bloggs was awaiting trial for sexual offences against children. The Respondent closed its operational case when it was informed that Mr Bloggs had resigned as a trustee and that the Charity had adopted a Safeguarding Policy prepared by the umbrella charity, Believers UK, (registered charity number 67890) (“Believers UK”).
5. In October 2013, Mr Bloggs was convicted of sexual offences against children who had been, at the time of the offences some ten years beforehand, beneficiaries of the Charity and members of The Belfast Congregation. Mr Bloggs was sent to prison for nine months.
6. In November 2013, the Respondent discovered that it had been alleged during Mr Bloggs’s trial that the Elders of the Congregation had been aware of

complaints of a similar nature about Mr Bloggs made in 1995. The Respondent opened a second operational case on the basis of this information in December 2013.

7. Following Mr Bloggs's release from his prison sentence in about February 2014, the Respondent heard from different sources, firstly, that Mr Bloggs had been accepted back into the Congregation/Charity and, secondly, that there had been an investigative hearing, at which Mr Bloggs's victims (now adults) had been forced to attend a public meeting and answer questions (including from Mr Bloggs himself) about the offences for which he had been convicted. The Respondent was informed that the purpose of this hearing was to allow the Elders/charity trustees to decide whether Mr Bloggs could remain a member of the Congregation/Charity, or should be expelled.
8. The Respondent's officers had initially asked to meet with the Charity in January 2014. The meeting did not take place until March 2014. The Respondent's officers did not produce prompt minutes of that meeting, with the result that the Charity produced its own minutes and sent them to the Respondent. The Respondent did not accept the Charity's minutes and produced a different set of minutes some time later. It follows that, by the time of the Tribunal hearing, there were two records of the meeting between the parties, neither of which was agreed to be accurate.
9. The Tribunal has seen copies of the correspondence between the parties following the March 2014 meeting. On 29 April 2014 the Respondent's officer wrote to the Charity (and to Believers UK in similar terms) as follows:

Further to my meeting with you on 20 March last, I have received a further complaint about your Congregation. The complaint relates specifically to Mr Joseph Bloggs, but is also about the conduct of the trustees.

I understand from the complaint that Mr Bloggs is out of prison and has been able to attend the Congregation's Hall without anyone managing his attendance there and that he has also been involved in preaching and knocking on doors in the community.

I wish to know if this is correct, or not and what conditions Mr Bloggs has in place in terms of the management of the Congregation; and what procedures the elders have placed on him?

I also wish to know if Mr Bloggs is still a member of the Congregation?

I was also quite alarmed to have heard that the elders have been holding meetings with the 3 victims and others at the Congregation's Hall; where the victims (all female) have 'had' to attend (without any support) to be spoken to by 8 male elders, plus Mr Bloggs, who led the meetings. Where he was able

to ask direct questions of their abuse by him; when the abuse has actually been discussed previously in a court of law, which found Mr Bloggs guilty and for which he was sentenced for.

I therefore wish to know, for what purpose were the meetings held; who was present; what was the outcome of the meetings; and confirmation as to whether Believers UK is aware of these meetings?”.

10. The Charity's reply of 5 May 2014 was as follows:

Since Mr Bloggs's release from prison he has not participated in our house-to-house ministry. Regarding supervision of Mr Bloggs at congregation meetings, our meetings are open to the general public and, as you observed when you visited the Hall, it is an open space where all can be seen. Mr Bloggs has attended meetings with his wife and children and has sat with them usually near the front of the Hall. Most of the trustees are present at each meeting and observe and manage the behaviour of all present.

We have not permitted Mr Bloggs to participate in meetings since his release.

We confirm that Mr Bloggs is no longer a member of the congregation and therefore has no share in the congregation's activities whatsoever. Mr Bloggs did appeal this decision and this could not be heard until his release from prison. A decision confirming the original assessment has recently been made and the congregation informed that he is no longer a member of The Believers. Procedures were in accordance with the long-standing practices of The Believers and questions regarding these may be directed to Believers UK's headquarters in London.

11. Believers UK's reply of 6 May 2014 was as follows:

First, we would like to confirm with you that Mr Bloggs has not been involved in any house-to-house preaching organised by the Congregation subsequent to his release from prison. We also wish to emphasise that the Congregation's trustees are well aware of their responsibilities in connection with any attendance by Mr Bloggs at religious services and will carefully apply the restrictions contained in the congregation's Child Safeguarding Policy. As this is a place of public worship, and hence open to the public they do not believe they can do more..

You ask whether or not Mr Bloggs is still a member of The Believers. We can confirm that he is no longer a member of The Believers and is therefore not able to share in any of the activities of the Congregation.

12. On receipt of these responses, the Respondent's case officer referred the case to its Pre-investigation and Monitoring Team. Consequently, an inquiry

was opened on 30 May 2014. The Charity was formally notified of the opening of the inquiry by letter dated 5 June 2014.

13. Subsequent to the opening of the inquiry, in a letter dated 10 July 2014, Mr Green of Believers UK informed the Respondent that the investigative hearing for Mr Bloggs had in fact been carried out by the Elders of a different Congregation, so the Charity had played no role in that process. Mr Green (who is the in-house solicitor at Believers UK) explained that the “Overseer” had taken advice from a body called “The Congregation of Believers” about this issue. In accordance with that advice, he says

The Trustees of the Belfast Congregation...did not select the elders who conducted the investigative meeting and had no control over the process they followed.

14. He comments further that

My letter told the Commission that the investigative process does not oblige victims to attend hearings. I also expressed regret that the elders considering Mr Bloggs’s case appeared to have created the impression that attendance was essential. As the Trustees of the Charity had no connection with the events of Mr Bloggs’s investigative hearing, the occurrences at that hearing cannot provide any grounds for an inquiry in respect of the Charity.

The Decision to Open the Inquiry

15. On 30 May 2014, the Respondent’s officer Mr Blue completed a “Decision Log” document, setting out his assessment of whether the information established by the Commission during the course of our engagement so far suggests there are grounds to open a statutory inquiry in accordance with the Commission’s stated policy and general approach to regulation.

16. Mr Blue recorded the “headline facts” of the case at paragraph 15 of the Decision Log as follows:

- a. *An individual by the name of Joseph Bloggs was convicted of child sex offences in October 2013 and was sentenced to nine months imprisonment for those offences;*
- b. *As a member of the Belfast Congregation of The Believers, this criminal offence did not automatically bar him from being a member – either under the charity’s internal procedures or the wider law;*
- c. *On his release from prison, the elders of the charity took steps to determine whether this individual should remain a member of the*

congregation – effectively an internal disciplinary process which can result in expulsion;

- d. This process would appear to have involved the elders of the charity (its trustees) and Mr Bloggs interviewing his victims, in an apparently intrusive way”.*

17. Mr Blue identified “the regulatory issues in this case” at paragraph 9 of the Decision Log as follows:

- a. Whether the charity’s trustees were effectively discharging their duties and responsibilities as trustees – meaning charity trustees – in properly safeguarding the charity’s beneficiaries;*
- b. Whether the charity’s policy and general approach to safeguarding is fit for purpose;*
- c. Whether the charity’s approach to expulsion practices in the safeguarding context can be said to cause such potential harm to beneficiaries as to outweigh any public benefit considerations;*
- d. Whether all of the above can lead the charity into serious disrepute in the eyes of the public that is so great that the Commission is bound to intervene via its formal use of powers of remedy and protection”.*

18. Mr Blue considered at section 4 of the Decision Log certain factors related to human rights, equality and diversity, and the principles of best regulatory practice (which we describe further below). Mr Blue concluded at paragraph 39 of the Decision Log:

Having weighed up the factors in this case I have decided that the criteria set out in the Commission’s policy have been met and there are grounds to open an inquiry into this charity to explore the concerns in more detail and to establish the facts. My view is that it is reasonable to conclude that the regulatory concerns in this charity are “most serious” and that the most suitable regulatory response for the Commission to adopt is to open a formal inquiry.”

19. His decision was reviewed and approved by his senior officer, Mrs Purple, also on 30 May 2014, with the effect that an inquiry pursuant to section 22 of the Act was opened on that date.

20. The Respondent wrote a letter to the Charity dated 5 June 2014, informing it of the decision to open the inquiry. We note that the 5 June letter was written by Miss White, an officer not involved in the decision to open the inquiry. We

note that the concerns expressed in Miss White's letter were not precisely the same as those recorded in the Decision Log. Whilst we note that the statutory right to a Review by the Tribunal arises in relation to the Respondent's decision to open an inquiry rather than the terms in which any subsequent letter about it is expressed, we were concerned that the Decision Log and the letter informing the Charity why it was to be inquired into did not to express the Respondent's concerns in identical terms. We hope that the Respondent will review its practice in this area so that charities are always given full and accurate information about the nature of the regulatory concerns which have led to the opening of an inquiry.

The Issue for the Tribunal

21. The issue for the Tribunal in relation to a Review Application is whether the decision to open the inquiry was one that no reasonable decision maker could have made at the time it did so, and that this will include consideration of a range of fact-sensitive issues and the nature of the challenge made to the Charity Commission's decision.
22. The Applicants' challenge to the Respondent's decision in this case raises a number of facets of the central question of whether it was reasonable for the Respondent to have opened an inquiry into the Charity at the time it did so. The Applicants have also alleged unlawful conduct by the Respondent, due to an alleged breach of s. 6 (1) of the Human Rights Act 1998.

The Legal Framework for Charity Inquiries

23. Section 22 of the Act provides that the Respondent may institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.
24. Section 7 of the Act provides that the Respondent's objectives are (1) the public confidence objective; (2) the public benefit objective; (3) the compliance objective; (4) the charitable resources objective; and (5) the accountability objective.
25. Section 7 goes onto say that (1) the public confidence objective is to increase public trust and confidence in charities; (2) the public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement; (3) the compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities; (4) the charitable resources objective is to promote the effective use of charitable resources; and (5) the accountability

objective is to enhance the accountability of charities to donors, beneficiaries and the general public.

26. The Respondent also has statutory general functions as provided at Section 8 of the Act. One such general function is identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein.
27. Further, the Respondent also has statutory general duties as provided at Section 9 of the Act. One such general duty is so far as is reasonably practicable the Commission must, in performing its functions, act in a way (a) which is compatible with its objectives, and (b) which it considers most appropriate for the purpose of meeting those objectives. Another general duty is so far as relevant, to have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed)
28. Sections 6 (1) of the Human Rights Act 1998 provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right.

The Grounds of Appeal

29. The three grounds relied upon by the Applicants at the Tribunal hearing were as follows:
- a. Ground 1: The decision to initiate the inquiry was disproportionate and/or disproportionately interfered with the Trustees' rights of religion and of association in accordance with Articles 9 and 11 of Schedule 1 to the Human Rights Act;
 - i. The Applicants' case in relation to ground 1 was that the Respondent's decision to open the inquiry was a breach of the Applicants' right to freedom of religion, including the right to manifest their religion in worship, teaching, practice and observance, as guaranteed by Article 9 (1) of the European Convention on Human Rights ("ECHR").
 - ii. It was also their case that the decision to open the inquiry was a breach of their right to freedom of association under Article 11

(1) ECHR and a breach of s. 6 (1) of the Human Rights Act 1998.

b. Ground 2: The Commission erred in law in its approach to the duties of Trustees;

i. The Applicants' case in respect of ground 4 was that the Respondent's decision to open the inquiry was based on a misunderstanding by it of the duties owed by charity trustees in the context of safeguarding.

ii. It was submitted that, as the Applicants had not themselves conducted the disfellowshipping proceedings but had asked third parties to conduct them, no reasonable public authority could have concluded that there was a regulatory concern as to whether "*the charity's trustees were effectively discharging their duties and responsibilities as trustees*".

c. Ground 3: The Commission has breached the Trustees' right not to be discriminated against contrary to Article 14 of the European Convention on Human Rights.

i. The Applicants' case in respect of ground 6 was that there had been a difference in treatment by the Respondent of the Charity and many other charities in which there had been sexual abuse allegations. Mr Clayton submitted that this difference of treatment amounted to discrimination as to the enjoyment of the Applicants' Article 9 and Article 11 rights, so as to engage Article 14 ECHR.

End of Case Study