

## **CHARITY COMMISSION**

### **APPLICATIONS FOR THE REGISTRATION OF THE ETHNIC-ENGLISH TRUST AND THE IRONSIDE COMMUNITY TRUST**

#### **DECISION OF THE CHARITY COMMISSION MADE ON 28 JUNE 2007**

##### **1. Background**

- 1.1 The Ethnic-English Trust (“EET”, formerly known as the Malfosse Society) and the Ironside Community Trust (“ICT”) are companies limited by guarantee with objects for the benefit of “ethnic English” people (as variously defined).
- 1.2 Both companies applied for registration as charities pursuant to section 3(2) of the Charities Act 1993 (“the 1993 Act”) in August 2005. Their applications were rejected in October 2005. In December 2005, both companies applied for a review of the decisions to refuse registration.
- 1.3 Given the similarities between the objects of both companies, the scope of their beneficial classes, their proposed activities and the overlap in the identity of their directors, the Members of the Commission decided to review the status of both companies at the same time.
- 1.4 In March 2006, both companies amended their objects and submitted new applications for registration. The Members of the Commission agreed to consider the March 2006 versions of each company’s objects as part of their review and held their first meeting to consider the review in June 2006.
- 1.5 In November 2006, both companies ostensibly withdrew from the decision review process and EET resubmitted its application for registration with a newly amended objects clause.
- 1.6 The Members of the Commission decided to conclude their consideration of the March 2006 versions of each company’s objects, together with the November 2006 version of the EET objects.
- 1.7 In August and October 2006, the Commission received further applications for registration in respect of the Wycliffe Trust, the Shieldwall Trust and the English Community Advisory Trust. These three trusts have similar beneficial classes to EET and ICT and, in view of the common issues raised, the Members of the Commission decided that these applications should be put on hold pending the outcome of the EET and ICT cases.

## **2. The objects of EET and ICT subject to the decision**

### **EET March 2006**

2.1 EET adopted the following objects by a special resolution dated 8 March 2006:

*The Charity's objects (the Objects) are:-*

- (1) The promotion and undertaking of research into issues such as education, crime, health and social welfare affecting persons of White English descent or origin in England and the dissemination of any useful results.*
- (2) The development of the capacity and skills of persons of White English descent or origin in England and who are socially and/or economically disadvantaged in such a way that they are better able to identify and help meet their needs and to participate more fully in society*
- (3) To advance the education of the boys and girls, teenagers and young people of England who are White English in descent or origin in such subjects and studies etc in supplementation of the education provided by the non independent section of English schools, as such persons have need of by way of additional education in order that they may achieve their full potential in society*
- (4) To carry out such other objects for the benefit of persons who are White English in descent or origin in England as shall be exclusively charitable within the meaning of English Law;*

*AND for the purposes of the Objects the phrase "of White English in descent or origin " shall be taken to mean:- of those people who are members of the "ethnic group" (as that phrase was used in the England Household HI form and the England Individual II form of the 2001 UK Census) known as the White British and (a) who are also members of the racial group "English" by virtue of national origin"; and (b) who are not members of another racial group by virtue of being of another national origin or who are not members of any group of persons whom together have been prior to date of the adoption of this clause 3 been declared or treated by any judgment of any competent court or tribunal of England to be of another "racial group" (as the phrases "racial group" and "national origin" are defined pursuant to the Race Relations Act 1976). For the avoidance of doubt "White British" (and thus also for "White English") in this memorandum of association does not refer to the skin colour of a potential beneficiary but to a potential beneficiary being British-European by descent or origin*

### **EET November 2006**

2.2 By a special resolution dated 11 November 2006, EET replaced its objects with the following:

*The Charity's objects (the Objects) are:-*

- (1) The promotion and undertaking research into issues such as education, crime, health and social welfare affecting the Ethnic English of England ("the beneficiary class") and the dissemination of any useful results.*
- (2) The development of the capacity and skills of the beneficiary class who are socially and/or economically disadvantaged in such a way that they are better able to identify and help meet their needs and to participate fully in society generally,*
- (3) To advance the education of boys and girls, teenagers and young adults of the beneficiary class in such subjects and studies etc in supplementation of the education provided by the state schools in England as such persons have need of by way of additional education in order that they may achieve their full potential and in society generally,*
- (4) To carry out such other objects for the benefit of the beneficiary class as shall be exclusively charitable within the meaning of English Law,*

*AND for the purposes of the Objects the phrase "Ethnic English" is a reference to the ethnic group referred to as English in question 13 of the "2007 Test Census Household Questionnaire – England" issued by the Office of National Statistics and to the racial group in law known as the English.*

### **ICT March 2006**

2.3 By a special resolution dated 17 March 2006, ICT replaced clause 3 of its memorandum of association with the following:

- 3(1) The Charity's objects ("the Objects") are to further such exclusively charitable purposes for the benefit of the inhabitants of England but primarily for the benefit of those people who are members of the White English-English Community of England in descent or origin ("the primary beneficiary class") as the Directors shall determine from time to time in particular but not exclusively by*
  - (a) the promotion and undertaking of research into issues such as education, crime, health and social welfare affecting the primary beneficiary class and the dissemination of any useful results,*

(b) *the advancement of education in the histories, cultures, arts, language, literature, politics and similar of the primary beneficiary class; and*

(c) *the promotion of good race relations between the primary beneficiary class and persons of different racial groups*

3(2) *For the purposes of the Objects the phrase “of the White English-English Community of England in descent or origin” (“WE-EC”) shall be deemed to mean to be of those people:-*

(a) *who are resident in England and who are by virtue of descent or origin members of the “ethnic group” (as that phrase was used in the England Household HI form and the England Individual II form of the 2001 UK Census) known as the White British (“EWBO”); and*

*who are also*

(b) *members by descent or origin of the racial group “English” by virtue of national origin (“ENO”); and*

*who are not also*

(c) *members by descent or origin of another racial group by virtue of a national origin other than or in addition to English (“NENO”); and*

*who are not also*

(d) *members by descent or origin of any group of persons whom together have been prior to date of the adoption of this clause 3 been declared or treated by any judgment of any competent court or tribunal of England to be a “racial group” by virtue of ethnic origin (“EGO”); and*

*who are not also*

(d)<sup>1</sup> *by reason of descent or origin members of the regional group known as “the Cornish”; or as the same are referred to in the Cornish language:- “the Kernows” (“KO”)*

*Such that for the purposes of the Objects the primary beneficiaries class can be determined and distinguished by the application of the following formula:-*

$$WE-EC = EWBO - NENO - EGO - KO$$

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<sup>1</sup> There are two clauses 3(2)(d)

- 3(3) *For the avoidance of doubt for all purposes of the Charity the phrases “White British” and the phrase “White English” in this clause 3 do not refer to the skin colour of a potential beneficiary but to a potential beneficiary being a British-European by descent or origin and being a British-European by descent and origin resident in England respectively.*
- 3(4) *For the avoidance of doubt for all purpose of the Charity the word “community” in this clause 3 shall be deemed to have the meaning ascribed to the word “group” by s10(2) and s10(3) of the Equality Act 2006.*
- 3(5) *For the purpose of the advancement of the Objects but without prejudice in anyway to the provisions of clauses 3(1), 3(2), 3(3), and 3(4) IT IS HEREBY DECLARED that for all purposes of the Charity the primary beneficiary class may be, with equal validity, alternatively categorised, and without altering the composition of the primary beneficiary class in anyway, as being: - All those peoples resident in England who are actually or by belief the descendants of the first English, that is of the pre 1066 population of the geographical area know as England but excluding Cornwall and known today as the Anglo-Saxons after the groups whom together formed the dominant majority of the first English, that is of the said pre 1066 population, together with all other peoples who have over the centuries since 1066 whether by integration or by merger or by amalgamation or by adoption or similar become part of the said descendants such that they are not recognised by themselves or by the said descendants or by English Law or by any part or emanation of the UK State as being a group distinct or distinguishable or discernable in any manner whatsoever from the said descendants.*
- 3(6) *For the purpose of the advancement of the Objects but without prejudice in anyway to the provisions of clauses 3(1), 3(2), 3(3), and 3(4) IT IS HEREBY FURTHER DECLARED that for all purposes of the Charity a member of the primary beneficiary class of the Charity may be described as being “Anglo-Saxon or Anglo-Saxon in descent or origin”*
- 3(7) *For the purpose of the advancement of the Objects but without prejudice in anyway to the provisions of clauses 3(1), 3(2), 3(3) and 3(4) IT IS HEREBY FURTHER DECLARED that for all purposes of the Charity members of the primary beneficiary class may be referred to as members of “the Ethnic-English Community”.*

3. **Dual requirement of exclusively charitable purposes and public benefit**

3.1 The Members of the Commission noted that, to be a charity, an organisation must be established:

- for exclusively charitable purposes;<sup>2</sup> and
- for the public benefit.<sup>3</sup>

3.2 The law currently presumes<sup>4</sup> that the public will benefit from purposes that are for the relief of poverty, the advancement of education or the advancement of religion. This presumption can be rebutted in individual cases. Organisations claiming to be charitable under the “fourth head” of Lord Macnaghten’s classification of charitable purposes<sup>5</sup> (“other purposes beneficial to the community”) must positively demonstrate public benefit.

3.3 The Members of the Commission noted that the applicants had stated that parts of the objects clauses of EET and ICT were copied directly from the governing documents of charities already registered by the Commission.<sup>6</sup> The Members of the Commission also noted that it was possible that other parts had also been copied, although it had not been possible to confirm this.<sup>7</sup>

3.4 The Members of the Commission noted, however, that objects expressed in charitable language were not necessarily conclusive of

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<sup>2</sup> s.96(1) of the 1993 Act defines “charity” as “any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in its exercise of the court’s jurisdiction with respect to charities”; s.97(1) goes on to define “charitable purposes” as “purposes which are exclusively charitable according to the law of England and Wales”

<sup>3</sup> In the House of Lords case of *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31, Lord Simonds said: *“I will readily concede that, if the purpose is within one of the heads of charity forming the first three classes ... the court will easily conclude that it is a charitable purpose. But even here to give the purpose the name of “religious” or “education” is not to conclude the matter. It may yet not be charitable, if the religious purpose is illegal or the educational purpose is contrary to public policy. Still there remains the overriding question: Is it pro bono publico? ... I would rather say that, when a purpose appears broadly to fall within one of the familiar categories of charity, the court will assume it to be for the benefit of the community and, therefore, charitable, unless the contrary is shown.”* [1948] AC 31, at p.65

<sup>4</sup> The Charities Act 2006 will remove the presumption of public benefit that applies, at the date of this decision, in relation to purposes for the relief of poverty, the advancement of education and the advancement of religion

<sup>5</sup> *Commissioners for Special Purposes of the Income Tax v Pemsel* [1891] AC 531 (House of Lords), Lord Macnaghten at p.583

<sup>6</sup> Letter dated 30/03/2006, at p.5

<sup>7</sup> In the context of correspondence prior to the registration of the Steadfast Trust (see below), the solicitor-director of ICT wrote to the Commission: *“Every single objects clause set out in the memorandum of The Steadfast Trust is directly copied from a charity previously registered by the Commission. All the charities concerned were ethnic specific charities.”* (Letter dated 19 August 2004)

charitable status<sup>8</sup> and that Chadwick LJ had said in his Court of Appeal judgment in the case of *Southwood v Attorney-General*:<sup>9</sup>

*“The question, which the court must address in each case, is whether the objects to be pursued, although expressed to be of a charitable nature within the spirit and intendment of the preamble to the Statute of Elizabeth (43 Eliz. 1 cp 4), should be recognised as being for the public benefit in the sense in which that concept has come to be understood in the light of the many decisions in this area of the law. It is not enough that the objects should be expressed to be the advancement of education; it is necessary that the advancement of education in the manner intended should promote public benefit.”*

3.5 The Members of the Commission considered therefore whether the objects of EET and ICT met the dual requirements of being:

- exclusively charitable in form; and
- for the public benefit.

4. **Legal basis for considering “factual matrix” (background information)**

4.1 The Members of the Commission noted that, as a general rule of construction, when deciding the status of organisations applying for registration as charities, the courts did not normally look beyond the plain language used in the organisation’s governing document. The Members of the Commission noted, however, that, on occasions, the courts had considered it necessary and appropriate to take background information into account in order to come to a view about the purpose for which an organisation was established.<sup>10</sup>

4.2 The Members of the Commission also noted that, in order to decide whether an organisation’s purposes were charitable and for the public benefit, the courts had held themselves to be entitled to look at the circumstances in which the organisation came into existence and the sphere in which it operated,<sup>11</sup> whether the wording of the governing document was ambiguous<sup>12</sup> or not.<sup>13</sup> The Members of the Commission noted that the courts had held that whether an organisation will operate

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<sup>8</sup> Attorney-General v Ross [1986] 1 WLR 252 (Chancery Division), Scott J at p.263  
<sup>9</sup> [2000] WL 877698 (Court of Appeal (Civil Division))

<sup>10</sup> For example, Smith v Kerr [1902] 1 Ch. 774 (Court of Appeal), Incorporated Council of Law Reporting v Attorney-General [1972] Ch. 73 (Court of Appeal), McGovern v Attorney-General [1982] Ch. 321 (Chancery Division) and Southwood v Attorney-General [2000] WL 877698 (Court of Appeal (Civil Division)), (see below)

<sup>11</sup> Incorporated Council of Law Reporting v Attorney-General [1972] Ch. 73 (Court of Appeal), Sachs J at p.91

<sup>12</sup> McGovern v Attorney-General [1982] Ch. 321 (Chancery Division), Slade J at p.348

<sup>13</sup> Southwood v Attorney-General [2000] WL 877698 (Court of Appeal (Civil Division)), Chadwick LJ

for the public benefit is a question of fact to be decided on the evidence.<sup>14</sup>

### **Extent of relevant background material**

- 4.3 The Members of the Commission noted that, in *McGovern v Attorney-General*<sup>15</sup>, when considering the status of Amnesty International Trust, the High Court had taken into account the statute of a related unincorporated association. In *Southwood v Attorney-General*<sup>16</sup>, the Court of Appeal had considered a range of material emanating from the trustees before they executed the trust deed, including a number of background and briefing papers which described their proposed activities and their purposes. In the present case, the Members of the Commission considered that it might be necessary to take account of background material not submitted by the applicants, including information available on the internet.
- 4.4 The Members of the Commission noted that the EET and ICT applications formed part of a series of applications submitted by the same solicitor, sharing similar beneficial classes and a number of common directors and trustees, which began with the Steadfast Trust (see below). They considered, therefore, that they could not be viewed in isolation. The Members of the Commission noted that the solicitor (who is a director of ICT and a trustee of the Wycliffe Trust, the Shieldwall Trust and the English Community Advisory Trust, and a former director of the Steadfast Trust) made several cross-references to EET, ICT and the Steadfast Trust in the course of correspondence in relation to the more recent applications.
- 4.5 The Members of the Commission considered therefore that, in order to form a view on the charitable status of EET and ICT, they should consider that background material relating to these other applications (and to the common directors and trustees) formed part of the factual matrix accompanying the EET and ICT applications.

## **5. The background evidence**

### **The definitions of the beneficial classes**

- 5.1 The Members of the Commission considered that it was not clear:
- what the definitions of the beneficial class in the EET and ICT applications meant; nor
  - whether the pursuit of the objects for the beneficial classes specified were for the public benefit.

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<sup>14</sup> In *Re Hummeltenberg* [1923] 1 Ch. 237 (Chancery Division), Russell J at p.242 (approved by the House of Lords in *National Anti-Vivisection Society v IRC* [1948] AC 31); see also *McGovern v Attorney-General* [1982] Ch. 321, Slade J at p.333

<sup>15</sup> as above

<sup>16</sup> as above



5.2 The Members of the Commission considered, therefore, that it was necessary to view the definitions in the context of the other definitions of beneficial class that appeared in the series of applications submitted by the solicitor-director of ICT<sup>17</sup>, which included:

- members of the Anglo-Saxon community living in England<sup>18</sup>;
- the Anglo-Saxon community of England (defined as people who are Ethnic English by descent or origin)<sup>19</sup>;
- those of ethnic Anglo-Saxon descent or origin within the Norfolk area<sup>20</sup>;
- the boys youths and young men of England<sup>21</sup>;
- the boys and girls, teenagers and young people of England who are of Ethnic English descent or origin<sup>22</sup>;
- the Ethnic English Communities of England (“Ethnic English” being defined as “of Anglo-Saxon common descent or origin”)<sup>23</sup>;
- persons of White English descent or origin in England<sup>24</sup>;
- the inhabitants of England, but primarily the members of the White English-English Community of England in descent or origin<sup>25</sup>;
- the inhabitants of England, but primarily the members of the English Community of England<sup>26</sup>;
- all the inhabitants, but primarily the English inhabitants, of the traditional 40 counties of England (“English inhabitants” meaning members of the English racial group defined by reference to their national origins, within the meaning of the Race Relations Act 1976)<sup>27</sup>;
- all the inhabitants, but primarily the English inhabitants, of the counties of Nottinghamshire and Oxfordshire and such other counties of England as the Trustees shall determine (“English” meaning members of the English racial group defined by reference

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<sup>17</sup> The Steadfast Trust, EET, ICT, the Wycliffe Trust, the Shieldwall Trust and the English Community Advisory Trust

<sup>18</sup> Objects of the Steadfast Trust (see below)

<sup>19</sup> Objects of EET at date of incorporation (26 April 2004)

<sup>20</sup> Objects of ICT at date of incorporation (26 April 2004)

<sup>21</sup> Objects of EET at 15 December 2004

<sup>22</sup> Objects of EET at date of first application for registration (August 2005)

<sup>23</sup> Objects of ICT at date of first application for registration (August 2005)

<sup>24</sup> Objects of EET at date of second application for registration (March 2006)

<sup>25</sup> Objects of ICT at date of second application for registration (March 2006)

<sup>26</sup> Objects of the Wycliffe Trust at date of application for registration (August 2006)

<sup>27</sup> Objects of the English Community Advisory Trust (October 2006)

to their ethnic or national origins, within the meaning of the RRA 1976, who are not members of any other racial group)<sup>28</sup>; and

- the Ethnic English of England<sup>29</sup>.

5.3 The Members of the Commission considered that the scope of terms such as “Anglo-Saxon community” and “Ethnic English” was uncertain, but formed the view that there appeared to be a common theme in the applicants’ definitions, namely that the applicants’ intended beneficial class was people who:

- defined themselves as ethnically English; and
- believed that they were of Anglo-Saxon descent (i.e. that their English ancestry pre-dated the Norman conquest in 1066),

but that people who:

- identified themselves as being members of any other ethnic or racial group; or
- would be considered to be members of any other ethnic or racial group by the court or by a government institution

would be excluded.<sup>30</sup>

5.4 The Members of the Commission considered that the complexity of some of the formulations of the beneficial class was such that it would be very difficult for the directors to determine who would qualify as beneficiaries, or for members of the public to know whether they would qualify.

5.5 The Members of the Commission noted that the courts have stated that, where possible, ambiguous trust provisions should be construed in favour of charity.<sup>31</sup> The Members of the Commission noted, however, that the courts had held that this principle of benignant construction did not apply in relation to companies.<sup>32</sup>

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<sup>28</sup> Objects of the Shieldwall Trust (October 2006)

<sup>29</sup> Objects of EET at date of third application for registration (November 2006)

<sup>30</sup> See March 2006 version of ICT objects (paragraph 2.3 above), the most detailed and comprehensive definition supplied by the applicants, which states that the terms “Anglo-Saxon in descent or origin” and “the Ethnic-English community” (terms used by applicants to describe their intended beneficial class, both in the governing documents and in correspondence) are intended to be synonymous with the two, alternative definitions of the intended beneficial class that appear in that version of the objects

<sup>31</sup> *Hadaway v Hadaway* [1955] 1 WLR 16 (Privy Council), Viscount Simonds at p.19, and *In Re the Estate of Winsome Joy Harding (aka Joseph Harding) deceased, sub nom Gibbs v Harding and others* [2007] EWHC 3 (Chancery Division)

<sup>32</sup> *Commissioners of the Inland Revenue v Oldham Training and Enterprise Council* [1996] STC 1218 (Chancery Division)

## **Race Relations Act 1976 (“RRA 1976”)**

### **Restricting beneficial class by reference to colour: s.34(1)**

- 5.6 The Members of the Commission noted that s.34(1) RRA 1976 provides that, where a charitable instrument defines its beneficial class by reference to colour, the restriction by reference to colour must be disregarded.
- 5.7 The Members of the Commission noted that some of the applicants’ definitions of their intended beneficial class included the word “white”, but that, in each such case, the objects stated that the word “white” did not refer to skin colour, but had another meaning. For example, the March 2006 version of the ICT objects stated that “White English” did not refer to skin colour, but meant “British-European by descent or origin and resident in England”.<sup>33</sup>

### **Registration of “ethnic” charities**

- 5.8 The Members of the Commission considered that an apparent aim of the series of applications submitted by the applicants was that their organisations should be able to limit their benefits to (or, at least, to target benefits at) the “ethnic English”. As stated above, the Members of the Commission understood the applicants’ use of the phrase “ethnic English” to mean all those descended from the (white) Anglo-Saxon, pre-Norman population of England.
- 5.9 The Members of the Commission also noted that, in correspondence, the applicants had stated a belief that the “ethnic English” were entitled to establish charities for their own benefit.<sup>34</sup>
- 5.10 Following the rejection of EET and ICT’s applications for registration as charities, the applicants made it clear that they intended to challenge the Commission’s practice in relation to the registration of “ethnic” charities on grounds of perceived racial discrimination against the “ethnic English”<sup>35</sup> and that they intended to use the courts to achieve this.<sup>36</sup>

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<sup>33</sup> See analysis of the impact of s.34(1) RRA 1976 below

<sup>34</sup> “*What our clients want is to be treated correctly in accordance with the law.*” (p.2 of letter from Iverson-Homes dated 04/10/2005)

<sup>35</sup> “*...you cannot lawfully devise higher obstacles for members of one of the oldest indigenous populations of England to jump in order that they might enjoy those rights in relation to charities than you create for other ethnic populations.*” (p.1 of letter from Iverson-Holmes dated 11/11/2005)

<sup>36</sup> “*...we have been preparing for not less than 20 years just for the litigation you have so kindly supplied us. We, with others, have spent the last 5 years collecting the necessary evidence.*” (p.4 of letter from Iverson-Holmes dated 11/11/2005); “*So as to be clear as to our intent, it is not lost on the self-aware sections of the Ethnic English communities that we are talking of litigation of historic and legal immortality.*” (p.6 of same letter); “*We have made clear the lengths to which we will go to ensure equal treatment for our client’s beneficial class.*” (p.1 of letter from Iverson-Homes dated 30/03/2006)

5.11 The Members of the Commission noted that, in their letter requesting a review of the decision to refuse registration, the applicants had stated:

*“...the recent changes in the Race Relations Act have made it very easy to pursue a claim and a heavy burden falls on those allegedly doing the discrimination. Consequently ... some discriminatory British State institution is going to play “the fall guy”. Our backers would have preferred it to be some part of the British State infrastructure with an already loathsome reputation. Thus it is of great regret that at this stage it is likely to be you.”<sup>37</sup>*

The “ethnic English” as a “racial group”: s.3(1) RRA 1976

5.12 The Members of the Commission noted that several of the definitions of the beneficial class submitted by the applicants<sup>38</sup> made reference to terms such as “racial group”, “ethnic origin” and “national origin”, which are used in the RRA 1976, and that some of the objects clauses stated that these terms were to have the meanings intended by the RRA 1976.<sup>39</sup>

5.13 The Members of the Commission noted that the applicants had expressed an intention to seek legal recognition for the “ethnic English” as an “ethnic group”:

*“If you have formulated any thoughts on what would be acceptable to you so that the Ethnic English can specifically enjoy the benefits granted to an ethnic group in law even if not actually being one for your purposes we suggest you start a process of co-operation and being proactive with us now as part of the settlement arrangements.”<sup>40</sup>*

5.14 The Members of the Commission noted that s.3(1) RRA 1976 provides that “racial group” means “a group of persons defined by reference to colour, race, nationality or ethnic or national origins” and it is the Members of the Commission’ understanding that the English racial group can be defined by reference to “national origins”, but that:

- it is not possible to be part of the English racial group by virtue of “nationality” because it is possible to have British, but not English, nationality; and
- the English are not currently recognised as a racial group by virtue of their “ethnic origins” under the RRA 1976.<sup>41</sup>

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<sup>37</sup> Letter from Iverson-Holmes dated 11/11/2005

<sup>38</sup> e.g. ICT March 2006 and EET November 2006

<sup>39</sup> e.g. EET March 2006 and English Community Advisory Trust October 2006

<sup>40</sup> p.6 of letter from Iverson-Holmes dated 11/11/2005

<sup>41</sup> BBC Scotland v Souster [2001] SC 458 (Court of Session, Inner House, Extra Division), Lord Cameron of Lochbroom at p.470, following Boyce v British Airways plc, 31 July 1997, EAT 385/97 (Employment Appeal Tribunal) and Northern Joint Police Board v Power [1997] IRLR 610 (Employment Appeal Tribunal)

- 5.15 The Members of the Commission noted that, in the Scottish decision of the Inner House, Extra Division of the Court of Session in *BBC Scotland v Souster*<sup>42</sup>, Lord Cameron of Lochbroom had concluded that the English as a racial group lacked the “necessary distinctiveness or community by virtue of certain characteristics derived from their origins alone” to constitute an ethnic group under the RRA 1976. The applicants have argued that this case was wrongly decided and that it would not be followed by an English court.<sup>43</sup> The Members of the Commission rejected this argument. They noted that Lord Cameron was applying the criteria identified by the House of Lords in *Mandla v Lee*<sup>44</sup> (an English and Welsh case) and was following the earlier decisions of the Employment Appeal Tribunal in *Boyce v British Airways plc*<sup>45</sup> and *Northern Joint Police Board v Power*<sup>46</sup> (which concluded that the English were not an ethnic group).
- 5.16 The Members of the Commission noted that in the case of *Ealing London Borough Council v Race Relations Board*,<sup>47</sup> the House of Lords held that the phrase “national origin” does not mean the same as “nationality”.<sup>48</sup> In that case, Lord Cross defined “national origins” as “a connection subsisting at the time of birth between an individual and one or more groups of people who can be described as a “nation” – whether or not they also constitute a sovereign state.”<sup>49</sup> It is the Members of the Commission’ understanding that England constitutes a “nation” for these purposes and it is therefore possible to be of English “national origin” within the meaning of the RRA 1976.
- 5.17 The Members of the Commission noted that, in the *Ealing* case, Lord Cross went on to say that a child of foreign parents might have a national origin “connection” with the English nation simply by virtue of the fact that his or her parents had made their home in England. The Members of the Commission noted that the English-born children of immigrants who have settled in England were therefore part of the English racial group defined by reference to national origins, whether or not their parents have naturalised.

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<sup>42</sup> as above

<sup>43</sup> Letter dated 11/11/2005: “We are aware and have been for a long time of the Scottish case you point out to us that says the English are not an ethnic group [BBC Scotland v Souster]. We are more than a little confident that no English higher court will be able to see through that case’s simple analysis and as the case is Scottish in origin it is not in any event binding on the English courts ... It was extremely disingenuous of the Scottish legal system to purport to take unto itself the determination of this question without seeking to refer the matter to England. A parallel of what actually took place in that case is that the case was conducted as if all the Jewish organisations and peoples of the UK were excluded from a discussion as to their legal status save for a single humble illiterate and non-practising Jewish shoemaker who was then the only person permitted to explain why his community constituted an ethnic group.”

<sup>44</sup> [1983] 2 AC 548 (House of Lords), Lord Fraser of Tullybelton at p.562

<sup>45</sup> 31 July 1997, EAT 385/97

<sup>46</sup> [1997] IRLR 610

<sup>47</sup> [1972] AC 342 (House of Lords), Lord Cross at p.365

<sup>48</sup> “nationality” includes citizenship: s.78 RRA 1976

<sup>49</sup> *Ealing London Borough Council v Race Relations Board* [1972] AC 342, at 365

- 5.18 The Members of the Commission considered therefore that the concept of English “national origins” appeared to embrace all those who have a connection with the English “nation” at the time of their birth, regardless of their race or skin colour, and appeared to be broader than the applicants’ intended beneficial class.
- 5.19 The Members of the Commission noted that the applicants’ approach to defining their intended beneficial class had changed over time. The Members of the Commission considered that there might be an explanation for some of the changes in the following statements made by the applicants in the course of correspondence:

*“At the time of the applications for registration these two charities it was not appreciated that national origin was not the same as national identity and that national origin was the legal equivalent to ethnic origin. Accordingly the only issues are whether Anglo-Saxon is an alternative term for a member of the English racial group and whether the term Ethnic English can be used in the constitution of a charity to describe a beneficiary class so as to distinguish the racial English from the national identity English. All other issues relating to ethnic group etc have fallen away.”<sup>50</sup>*

*“Neither the Malfosse Society nor the Ironside Community Trust was submitted with the understanding and clarity that now exists as to the intended beneficiary class. Their beneficiary class definitions have been superseded by one provided pursuant to the Race Relations Act by the judiciary.”<sup>51</sup>*

- 5.20 The Members of the Commission asked the applicants to supply details of the legal authority to which they appeared to refer in the above statements. The authorities cited by the applicants<sup>52</sup> did not, however, appear to support the assertion that the courts’ interpretation of the term “ethnic or national origins” had changed.
- 5.21 The Members of the Commission noted that the applicants had also given the following explanation for changes made to the description of the EET beneficial class:

*“By now the Commission will know that we have, by resubmitting both our client and the Ironside Community Trust for registration, undertaken the process of making a very large proportion of the Ethnic-English Community distinct and sufficient. We have done so by translating our client’s description into the language employed by the UK 2001 census and the CRE sponsored ethnic monitoring forms. The knock on effect is that we have been left with no choice but to limit both our clients’ beneficiary classes to those*

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<sup>50</sup> Email of 16/11/2006

<sup>51</sup> Letter of 27/11/2006

<sup>52</sup> BBC Scotland v Souster (as above), Ealing LBC v Race Relations Board (as above) and R (on the application of Elias) v Secretary of State for Defence, Commission for Racial Equality 2005 WL 1534626 (Queen’s Bench Division)

*sections of the Ethnic English Community that are a subsection of the ethnic group "White British". It was the Anglophobia racism and the prejudice of the Commission that has forced our clients in this direction. Our client is far from happy that it has been forced to do so.<sup>53</sup>*

### **Links with the Steadfast Trust and Steadfast magazine**

- 5.22 The Members of the Commission noted that the applicants made several references in their correspondence about the EET and ICT applications to a company called the Steadfast Trust.<sup>54</sup>
- 5.23 The Members of the Commission noted that the Steadfast Trust was entered into the Central Register of Charities in September 2004 with registered charity number 1105806, following an application submitted by the solicitor-director of ICT, who was also one of the first directors of the Steadfast Trust. The Steadfast Trust's objects are focused on the "Anglo-Saxon community living in England."
- 5.24 The Members of the Commission also noted that the Central Register of Charities records that the two directors of EET are now also the sole directors of the Steadfast Trust, following the retirement of the previous directors (who included all three directors of ICT).
- 5.25 The Members of the Commission considered whether understanding the nature of the Steadfast Trust would assist them in determining the status of EET and ICT. They concluded that it would, and hence that background information about the Steadfast Trust formed part of the factual matrix accompanying the establishment of EET and ICT.
- 5.26 The Members of the Commission noted that, in September 2004, a message posted on the Stormfront "White Pride" internet forum, and headed "New Charity For Ethnic English!", announced the registration of the Steadfast Trust, stating that the Charity Commission had accepted for registration a charity specifically for the benefit of persons of Anglo-Saxon descent or origin.<sup>55</sup> The message solicited funds for the Steadfast Trust and also sought, on behalf of ICT (under its then name, the Ethnic English Housing Trust), landlords who would be interested in letting property to ICT. The message also invited people wishing to form charities or associations for the benefit of "Anglo-Saxons/Ethnic English" to contact the writer (one of the first trustees of the Steadfast Trust, who is also a trustee of the Wycliffe Trust, the Shieldwall Trust and the English Community Advisory Trust), who offered to arrange an

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<sup>53</sup> Letter of 30/03/2006, at p.12

<sup>54</sup> Letters of 03/10/2005 ("*the Charity Commission had already accepted the existence of the class of beneficiaries in question for another charity*") and 04/10/2005 ("*Finally we point out to you that the Charities Commission has already accepted persons of Anglo-Saxon descent or origin is an acceptable class of beneficiaries.*"); letter of 30/03/2006 referred explicitly to the Steadfast Trust

<sup>55</sup> <http://www.stormfront.org/forum/showthread.php/new-charity-ethnic-english-155392.html>

introduction to “solicitors willing to supply this type of advice” for “modest” fees.

- 5.27 The Members of the Commission noted that, whilst the message on the Stormfront web site is credited to one of the first trustees of the Steadfast Trust, it was posted on the site by someone using the name “English Martyr”. The Members of the Commission noted that it appeared that the message had been copied from a magazine called Steadfast.<sup>56</sup> Whilst the message states that the Steadfast Trust is “completely separate” from the Steadfast magazine, the trustee who wrote the message is a regular contributor to the magazine<sup>57</sup> and the Members of the Commission considered that this implied a degree of connection.
- 5.28 The Members of the Commission also noted that the Steadfast web site<sup>58</sup> states that Steadfast magazine is not affiliated with any political group or party. The Members of the Commission noted that the Spring 2004 issue of Steadfast magazine included articles from representatives of the “main nationalist parties” contesting the June 2004 European Elections, including the UK Independence Party, the British National Party and the English Independence Party.
- 5.29 The Members of the Commission noted that the Steadfast web site also states that:

*“Steadfast was launched on 1st January 2001. Its strategy is to pursue an ‘ethnic politics’ approach, demanding that the English be recognised as an ethnic group and be given the same rights and privileges as other ethnic groups.”<sup>59</sup>*

- 5.30 The Members of the Commission noted that the solicitor-director of ICT, who was also a founding trustee of the Steadfast Trust, appeared on a television programme shown on Channel 4 on 13 November 2006, entitled “100% English”. In the programme, and in subsequent press coverage, the solicitor-trustee was described as “a lawyer campaigning to have the English accepted as an ethnic group.”<sup>60</sup>
- 5.31 The Members of the Commission noted that several of the definitions of beneficial class in the applications submitted by the solicitor-director referred to the “ethnic English” and, in the course of the correspondence

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<sup>56</sup> After the heading “Charity News” and the information about the Steadfast Trust and ICT, there is another heading, “Mr Nasty”, under which the writer states: “I have been told that my contribution to this edition of Steadfast (Issue 12) is harsh on the English Democrats Party.”

<sup>57</sup> <http://www.steadfastonline.org.uk>

<sup>58</sup> as above

<sup>59</sup> <http://www.hsite.co.uk/steadf/pages/intro.html>

<sup>60</sup> [http://www.mirror.co.uk/news/tm\\_headline=your-life--we-love-telly---documentary-100--english-c4--8pm-&method=full&objectid=18085894-name\\_page.html](http://www.mirror.co.uk/news/tm_headline=your-life--we-love-telly---documentary-100--english-c4--8pm-&method=full&objectid=18085894-name_page.html) ,  
[http://entertainment.timesonline.co.uk/tol/arts\\_and\\_entertainment/film/article635789.ec](http://entertainment.timesonline.co.uk/tol/arts_and_entertainment/film/article635789.ec)  
e,  
<http://www.telegraph.co.uk/global/main.jhtml?xml=/global/2006/11/05/svgenetic05.xml>



in relation to the applications of EET and ICT, the solicitor-director argued that the English should be recognised as an ethnic group within the meaning of the RRA 1976 (see above).

- 5.32 The Members of the Commission noted that, in November 2006, meetings were held in the name of “Steadfast” in Newcastle, London and Nottingham on the subject of “English Racial Identity, English Only Organisations and the Race Relations Act 1976.” At the meetings the solicitor-director was due to speak about “charities, not for profit clubs and other organisations for the English” and “the enforcement of the RRA 1976 for the benefit of the English Community”.<sup>61</sup>

### **Conclusions on background material**

- 5.33 The Members of the Commission noted that EET and ICT had come into existence in a political context, which raised a concern that any research or educational activities that they undertook might be for propagandist purposes.
- 5.34 The Members of the Commission noted that the apparent intention of the applicants was to limit the benefits to be provided by EET and ICT to the “ethnic English”, by which they intended all those descended from the (white) Anglo-Saxon, pre-Norman population of England. In order to achieve this, it would appear that the applicants had attempted to avoid the restrictions of s.34(1) RRA 1976<sup>62</sup> by stating that all occurrences of the word “white” in the objects clauses of EET and ICT did not refer to skin colour, but had some other meaning. The Members of the Commission noted that it would be necessary to examine carefully whether the applicants had been successful in avoiding the impact of the RRA 1976, or whether there might be some disparity between the intended scope of the beneficial classes of EET and ICT and their actual scope.
- 5.35 The Members of the Commission considered that, in view of EET and ICT’s links with the Steadfast magazine, and even the Stormfront web site, they might need to consider whether there might be any collateral, non-charitable purpose behind the applications for registration.

## **6. The objects clauses**

- 6.1 The Members of the Commission went on to consider whether, viewed in isolation, the objects clauses submitted by the applicants were charitable in form, or for the public benefit.

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<sup>61</sup> <http://www.wearetheenglish.com/steadfast%20meeting.htm>

<sup>62</sup> s.34(1) RRA provides that, where a charitable instrument defines its beneficial class by reference to colour, the restriction by reference to colour must be disregarded

## **EET March 2006**

### **Beneficial class**

- 6.2 The March 2006 EET beneficial class, “persons of White English descent or origin in England,” is defined as members of the White British “ethnic group” (as that phrase was used in the 2001 UK census) in England who are:
- members of the “English” racial group by virtue of national origin (within the meaning of the RRA 1976); but
  - not members of any other racial group by virtue of national origin, or by virtue of any judgment by an English court or tribunal.
- 6.3 The objects clause states that the terms “White British” and “White English” do not refer to skin colour, but mean “British-European by descent or origin.” The Members of the Commission noted that this statement was an attempt to avoid the scope of s.34(1) RRA 1976 (which provides that a restriction of the beneficial class made by reference to colour in a charitable instrument shall be disregarded).
- 6.4 The 2001 census England Household form included the question: “What is your ethnic group?” This question was followed by the direction: “Choose ONE section from A to E; then [tick] the appropriate box to indicate your cultural background.” Under section A (“White”), the first box was labelled “British”.
- 6.5 The Members of the Commission considered that if one considered oneself as a member of the White British “ethnic group”, within the meaning of the 2001 census, one would need to tick the “White – British” box. This would require self-identification as “White”, which would mean that the definition of the March 2006 EET beneficial class included a reference to colour within the meaning of s.34(1) RRA 1976.
- 6.6 The Members of the Commission concluded therefore that the term “White British” must therefore be read simply as “British”, as a result of the operation of s.34 RRA 1976.
- 6.7 In view of the fact that the wording of the 2001 Census implied that the term “ethnic group” was synonymous with “cultural background”, the Members of the Commission concluded that the March 2006 EET beneficial class should be read as including all those who regard their cultural background as British, regardless of race or colour and who are also English by virtue of national origin and would not be judged to be members of any other racial group. The Members of the Commission noted that this was not the applicants’ intended beneficial class.
- 6.8 The Members of the Commission’ noted that, in the March 2006 application form, the applicants’ description of their proposed activities in furtherance of their objects made several references to conducting

activities for people “of white English descent or origin”, without any qualification that this was not a reference to the intended beneficiaries’ skin colour.

6.9 The Members of the Commission noted that the provisions of the RRA 1976 did not require them to disregard the references to the colour “white” in the EET application form and the Members of the Commission considered therefore that the apparent intention of the applicants was to restrict benefits to the white English.

6.10 The Members of the Commission noted that charity trustees owed a duty of impartiality towards all potential beneficiaries of their charity. The Members of the Commission were concerned that, if the objects were registered in this form, there was a risk that the directors of EET might exercise their discretion improperly by restricting the benefits of EET’s activities to people with white skin, thereby circumventing the policy underlying s.34(1) RRA 1976.

### Objects

6.11 In March 2006, the EET objects were:

- promoting and undertaking research into issues affecting its beneficial class;
- developing the capacity and skills of members of its beneficial class (“community capacity building”);
- providing supplementary education to children and young people within the beneficial class; and
- such other objects (for the benefit of the beneficial class) “as shall be exclusively charitable within the meaning of English law” (“general charitable purposes”).<sup>63</sup>

6.12 The Members of the Commission considered each object in turn.

#### (1) Research into issues affecting the beneficial class

6.13 In its March 2006 application for registration, EET stated that it would further its research object by:

- (in the long term) setting up a research project to look into issues affecting the “White English”; and
- (in the shorter term) promoting and undertaking research to understand more fully the needs of the beneficial class and the problems they face so that these needs and problems may be addressed more effectively.

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<sup>63</sup> The complete wording is set out at paragraph 2.1 above

6.14 The Members of the Commission noted that the promotion of research is charitable if the subject matter is a useful subject of study, the results will be disseminated to others and there is sufficient public benefit.<sup>64</sup>

6.15 The Members of the Commission noted that, at the date of this decision, there remained a legal presumption that educational purposes, such as research, were for the public benefit. The Members of the Commission noted, however, that this presumption would be rebutted by evidence suggesting that the research would not be conducted in a balanced manner, but would be designed to promote a propagandist or particular point of view.<sup>65</sup>

6.16 The Members of the Commission noted that the factual matrix raised considerable doubts about whether EET would conduct or fund research in a balanced, non-propagandist manner, in view of the known political links of the applicants. The Members of the Commission concluded therefore that, without sight of any research funded by EET, they could not be satisfied that its research object was for the public benefit.

(2) Community capacity building (for members of the beneficial class who are socially and/or economically disadvantaged)

6.17 In the March 2006 application form, EET stated that it would further its community capacity building object by making available literature, work groups, seminars and other educational programmes and practical advice to people within the beneficial class to allow them to participate more fully and to make a positive contribution to society.

6.18 The Members of the Commission noted that the scope of the community capacity building object was limited to members of the beneficial class who are socially and/or economically disadvantaged. However, as explained at paragraph 17 of the publication RR5 – The Promotion of Community Capacity Building), an organisation applying for registration as a charity for the promotion of community capacity building will need to show that:

- the purpose of the activities it carries out amongst members of a socially and/or economically disadvantaged community is the improvement of the capacity and skills of those who take part in them;
- those activities are capable of improving the capacity and skills of those who take part in them;
- any personal benefit derived by individuals or groups from the organisation's activities is incidental to the wider benefit to the public; and

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<sup>64</sup> Re Besterman's Will Trusts (Chancery Division 1979, B No. 632, reported in The Times, 22 January 1980)

<sup>65</sup> In re Shaw, decd [1957] 1 WLR 729 (Chancery Division), Harman J at p.738

- it has objects in a form which describe the purpose and the benefits flowing from it with sufficient clarity.

6.19 As explained in paragraph A7 of RR5 – The Promotion of Community Capacity Building, the promoters of an organisation applying for registration as a charity for the promotion of community capacity building will need to demonstrate the status of their target community as economically and socially disadvantaged, or merely socially disadvantaged, by reference to appropriate indicators, which might include:

- economic indicators, such as levels of unemployment, benefit receipt and poor housing; and
- social indicators, such as the extent to which people from different sections of a community are represented in decision making within the community, the extent and take-up of the facilities available in an area and levels of reported crime, young people excluded from school or registered drug users.

6.20 The Members of the Commission noted that it was not clear from the information supplied whether the activities proposed by EET were capable of improving participants' capacity and skills. The Members of the Commission concluded, however, that the community capacity building object was capable of being charitable, provided that the social and/or economic disadvantage of the target community, and the efficacy of the proposed activities, could be established. If this was possible, the applicants would need to demonstrate that they had objective criteria for selecting beneficiaries.

(3) Supplementary education (for children and young people who are members of the beneficial class)

6.21 In the March 2006 application form, EET stated that it would further its supplementary education object by:

- providing education and training in “hands on” and practical skills through work placements provided by contacts and supporters of EET;
- providing education on the cultural, historical, moral, economic, social and other needs of the beneficial class; and
- conducting the community capacity building activities described above.

6.22 The Members of the Commission noted that this object contained elements of the charitable purpose of advancement in life and of broader educational purposes.

- 6.23 The Members of the Commission noted that, at the date of this decision, there remained a legal presumption that educational purposes, as contained in object (3), were for the public benefit. As in the case of the research object above, however, the Members of the Commission noted that this presumption would be rebutted by evidence suggesting that the educational activities would not be conducted in a balanced manner, but would promote a propagandist or particular point of view.
- 6.24 As in the case of the research object above, the Members of the Commission noted that the factual matrix raised considerable doubts about whether EET would provide education and training in a balanced, non-propagandist manner, in view of the known political links of the applicants. The Members of the Commission concluded therefore that the applicants would need to demonstrate that the educational activities envisaged were for the public benefit before EET could be registered as a charity.
- (4) Such other objects for the benefit of the beneficial class “as shall be exclusively charitable within the meaning of English law”
- 6.25 Having concluded that the applicants had not demonstrated that the research or educational objects were for the public benefit, the Members of the Commission concluded that EET’s objects were not exclusively charitable within the meaning of the law of England and Wales.

#### Conclusions

- 6.26 The Members of the Commission concluded that, for the reasons set out above:
- the applicants had not demonstrated that the research object was for the public benefit;
  - the community capacity building object was potentially charitable; and
  - the applicants had not demonstrated that the supplementary education object was for the public benefit.
- 6.27 The Members of the Commission concluded that it had not been demonstrated that the March 2006 EET objects were for the public benefit.
- 6.28 The Members of the Commission also concluded that, despite the applicants’ attempts to avoid the impact of s.34(1) RRA 1976, the March 2006 EET application form made it clear that their intended beneficial class was *“people of white English descent or origin”*.

## **EET November 2006**

### **Beneficial class**

- 6.29 The November 2006 EET beneficial class, the Ethnic English of England, was defined as:
- the ethnic group referred to as English in the 2007 Test Census; and
  - the racial group in law known as the English.
- 6.30 As in the case of the March 2006 EET beneficial class, ticking the “English” box on the 2007 Test Census form would require self-identification as white, which is a reference to skin colour.
- 6.31 The Members of the Commission concluded, therefore, that the first limb of the November 2006 definition was rendered meaningless by s.34(1) RRA 1976.
- 6.32 For the reasons stated above, it is the Members of the Commission’ understanding that the meaning of “the racial group in law known as the English” is people of English national origin, which includes the English-born children of settled immigrants, regardless of their race or ethnicity.
- 6.33 As in the case of the March 2006 EET beneficial class, the Members of the Commission recognised that this was not the applicants’ intended beneficial class. The Members of the Commission noted that charity trustees owed a duty of impartiality towards all potential beneficiaries of their charity and were concerned that, if the objects were registered in this form, the directors of EET might exercise their discretion improperly by restricting the benefits of EET’s activities to people with white skin, thereby circumventing the policy underlying s.34(1) RRA 1976.

### **Objects**

- 6.34 The November 2006 EET objects are identical to the March 2006 EET objects, with the exception of a new description of the beneficial class.<sup>66</sup>
- 6.35 The applicants did not submit a new application form, nor any other description of the activities proposed in furtherance of the EET objects, and so the Members of the Commission’ comments and conclusions in relation to the March 2006 EET objects apply equally to the November 2006 EET version.

### **Conclusions**

- 6.36 The Members of the Commission concluded that, for the same reasons set out above in their analysis of the March 2006 EET objects:

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<sup>66</sup> The complete wording is set out at paragraph 2.2 above

- the applicants had not demonstrated that the research object was for the public benefit;
- the community capacity building object was potentially charitable; and
- the applicants had not demonstrated that the supplementary education object was for the public benefit.

6.37 The Members of the Commission concluded that it had not been demonstrated that the November 2006 EET objects were for the public benefit.

6.38 The Members of the Commission also concluded that, despite the applicants' attempts to avoid the impact of s.34(1) RRA 1976, the March 2006 EET application form (which the applicants had left to stand in respect of their November 2006 application) made it clear that their intended beneficial class was "people of white English descent or origin".

### **ICT March 2006**

#### **Beneficial class**

6.39 The March 2006 ICT beneficial class was defined as the inhabitants of England, but primarily members of the "White English-English community of England" in descent or origin ("the primary beneficiary class").

6.40 The "primary beneficial class" was defined as people who are:

- resident in England; and
- members by descent or origin of the White British ethnic group (within the meaning of the 2001 census); and
- members by descent or origin of the "English" racial group by virtue of national origin; and
- not members by descent or origin of any other racial group by virtue of national origin; and
- not members by descent or origin of any other racial group by virtue of ethnic origin following any judgment by an English court or tribunal; and
- not Cornish by descent or origin

6.41 The objects clause stated that:

- "White English" means British-European by descent or origin and resident in England and does not refer to skin colour; and



- “White British” means British-European by descent or origin and does not refer to skin colour.
- 6.42 The objects clause contained the following “alternative categorisation” of the primary beneficial class, which appears to be intended to identify exactly the same group of beneficiaries:
- residents of England who are (actually or by belief) the descendants of the pre-1066 population of England (excluding Cornwall) and now known as the Anglo-Saxons; plus
  - all those who have subsequently become part of this group (by integration, merger, amalgamation, adoption or similar) and who are not recognised by themselves, by the descendants of the pre-1066 population, by the law or by any state institution as being distinct from this group “in any manner”.
- 6.43 The objects clause also contained the following alternative descriptions of primary beneficial class, which appears to be intended to describe the same beneficiaries “for all purposes”:
- Anglo-Saxon or Anglo-Saxon in descent or origin; and
  - the Ethnic-English community
- 6.44 As in the case of the March 2006 EET objects, the Members of the Commission considered that the effect of s.34(1) RRA 1976 was that the 2001 census White British ethnic group should be read as all those who regard their cultural background as British, regardless of race or ethnicity.
- 6.45 The Members of the Commission considered that the alternative definitions, categorisations and descriptions were so contradictory and convoluted that it would be impossible or impractical to determine who were beneficiaries and who were not. For example, the alternative descriptions of the primary beneficial class (“Anglo-Saxon in descent or origin” and “the Ethnic-English community”) were intended to describe the same group of beneficiaries as alternative definitions in clauses 3(2) and 3(5) respectively. The Members of the Commission considered, however, that the applicants had not achieved their desired result because the meaning of the alternative descriptions was unclear and the primary definition and alternative categorisation were contradictory. For example, someone who could trace his ancestry back to mediaeval Cornwall, but no further, would have no way of knowing whether he was in fact Anglo-Saxon or Cornish within the applicants’ definitions.
- 6.46 In addition, the Members of the Commission considered that there was an inherent contradiction between the self-identification required to be a member of the beneficial class and the circumstances in which a potential member might be excluded e.g. by being recognised by a state

institution – such as the Charity Commission – as being distinct from the intended beneficial class.

6.47 As in the case of EET, the Members of the Commission noted that charity trustees owed a duty of impartiality towards all potential beneficiaries of their charity. The Members of the Commission were concerned that, if the objects were registered in this form, the directors of ICT might exercise their discretion improperly by restricting the benefits of ICT's activities to people with white skin, thereby circumventing the policy underlying s.34(1) RRA 1976.

### Objects

6.48 In March 2006, the ICT objects were:

- general charitable purposes;
- promoting and undertaking research into issues affecting the “White English-English community of England”;
- advancing education in the histories, cultures, arts, language, literature and politics of the “White English-English community of England”; and
- promoting good race relations between the “White English-English community of England” and persons of different racial groups.<sup>67</sup>

6.49 The Members of the Commission considered each object in turn.

### General charitable purposes

6.50 The Members of the Commission noted that ICT's objects at the time of its March 2006 application were expressed to encompass such charitable purposes for the benefit of the inhabitants of England (primarily for the benefit of the “primary beneficial class”, as defined), “as the Directors shall determine from time to time” and that a number of purportedly charitable objects were then recited by way of example.

6.51 The form submitted in support of the March 2006 application stated that, if there was any doubt whether particular activities were charitable when directed at the “primary beneficial class”, legal advice and, if appropriate, the Commission's advice would be sought.

6.52 The Members of the Commission noted that where an organisation is established for general, charitable purposes and specific, illustrative purposes are listed, the objects will fail as charitable if any one of the specific purposes is not charitable.<sup>68</sup>

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<sup>67</sup> The complete wording is set out at paragraph 2.3 above

<sup>68</sup> *George Drexler Ofrex Foundation Trustees v Inland Revenue Commissioners* [1966] Ch. 675 (Chancery Division), Cross J at p.697

6.53 The Members of the Commission went on to consider whether the specific purposes set out in the objects clause were charitable.

(a) Research into issues affecting beneficial class

6.54 In the March 2006 application form, ICT stated that it would further its object (a) by promoting research on whether binge drinking, anti-social behaviour and teenage pregnancy disproportionately affected the beneficial class in order to provide an appropriate environment for imaginative and supportive solutions.

6.55 As in the case of EET, the Members of the Commission noted that the promotion of research is charitable if the subject matter is a useful subject of study, the results will be disseminated to others and there is sufficient public benefit.<sup>69</sup>

6.56 The Members of the Commission acknowledged the occurrence of binge drinking, anti-social behaviour and teenage pregnancy in particular disadvantaged social groups might well be a proper and useful subject of study. The Members of the Commission were not, however, satisfied that there was a link between social problems and the “White English-English community of England”, as distinct, for example, from white Irish or Scottish people, or from white-skinned people with mixed ethnic backgrounds.

6.57 As above, the Members of the Commission noted, however, that, at the date of this decision, there remained a legal presumption that educational purposes, such as research, were for the public benefit. As in the case of EET, the Members of the Commission noted, however, that this presumption would be rebutted by evidence suggesting that the research would not be conducted in a balanced manner, but would be designed to promote a propagandist or particular point of view.<sup>70</sup>

6.58 The Members of the Commission noted that the factual matrix raised considerable doubts about whether ICT would conduct or fund research in a balanced, non-propagandist manner, in view of the known political links of the applicants. The Members of the Commission concluded therefore that, without sight of any research funded by ICT, they could not be satisfied that its research object was for the public benefit.

(b) Education in history and culture etc. of primary beneficial class

6.59 In its application, ICT stated that it would further its object (b) by:

- (initially) distributing educational materials, holding workshops and seminars; and

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<sup>69</sup> Re Besterman's Will Trusts (Chancery Division 1979, B No. 632, reported in The Times, 22 January 1980)

<sup>70</sup> In re Shaw, decd [1957] 1 WLR 729 (Chancery Division), Harman J at p.738

- (once the organisation has grown) providing supplemental community-based education concentrating on the most vulnerable of the primary beneficial class.

6.60 As in the case of EET, the Members of the Commission noted that, at the date of this decision, there remained a legal presumption that educational purposes, such as this, were for the public benefit. As in the case of ICT's research object above, however, the Members of the Commission noted that this presumption would be rebutted by evidence suggesting that the educational activities would not be conducted in a balanced manner, but would promote a propagandist or particular point of view.

6.61 As in the case of the research object above, the Members of the Commission noted that the factual matrix raised considerable doubts about whether ICT would further its educational purpose in a balanced, non-propagandist manner, in view of the known political links of the applicants. The Members of the Commission concluded therefore that the applicants would need to demonstrate that the educational activities envisaged were for the public benefit before ICT could be registered as a charity.

(c) Promotion of good race relations

6.62 In its March 2006 application, ICT stated that it would further its object (c) by:

- (initially) working with police forces, schools, judicial inquiries and the Commission for Racial Equality to raise awareness of the problems faced by the primary beneficial class in modern Britain and of the rights of the primary beneficial class under the Race Relations Act; and
- (in the long run) encouraging the independent representation of the primary beneficial class in multi-ethnic Britain to enable the primary beneficial class to interact positively with other communities to improve race relations.

6.63 The Members of the Commission noted that the promotion of good race relations fell under the fourth head of Lord Macnaghten's classification of charitable purposes ("other purposes beneficial to the community") and that the applicants needed, therefore, to demonstrate public benefit.

6.64 The Members of the Commission questioned whether the activities proposed in the ICT application would, in fact, promote good race relations for the public benefit. The Members of the Commission concluded that the applicants would need to demonstrate that the activities envisaged would tend to promote good race relations for the public benefit before ICT could be registered as a charity

### Conclusions

- 6.65 The Members of the Commission concluded that it had not been demonstrated that the research, education and race relations objects were for the public benefit.
- 6.66 The Members of the Commission also concluded that the applicants' definition of their intended beneficial class was unworkable and that the March 2006 ICT objects were not therefore valid charitable objects.

### **7. Conclusion**

- 7.1 The Members of the Commission concluded that, for the reasons set out above, it had not been demonstrated that the EET or ICT objects were for the public benefit and that neither EET nor ICT could therefore be registered as charities.
- 7.2 The Members of the Commission had serious reservations as to the applicants' intention to operate, or whether there was a non-charitable, collateral purpose behind the ICT and EET applications.
- 7.3 The Members of the Commission were concerned that the applications were being used as tools to make a political point, or to seek recognition of the "ethnic English" as racial group within the meaning of s.3(1) RRA 1976, but did not feel it necessary to decide on this point, in view of the other grounds for rejecting the applications for registration.