



TC03302

Appeal number: TC/2010/7066

VAT – Freemasonry – the Grand Lodge - Art 132(1)(1) VAT Directive: aims of a philosophical, philanthropic, religious or civic nature.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

UNITED GRAND LODGE OF ENGLAND

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE CHARLES HELLIER
MR JULIAN STAFFORD**

Sitting in public at 45 Bedford Square WC1B on 23 to 26 September 2013

Nicola Shaw QC instructed by KPMG LLP for Appellant

**Brendan McGurk instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

Introduction

- 5 1. This appeal concerns whether the United Grand Lodge of England ("UGLE" or the "Grand Lodge") has aims of a philosophical, philanthropic or civic nature. If it does then the supplies it makes to its members in return for their subscriptions are exempt from VAT. We have also considered whether it has aims of a religious nature.
- 10 2. UGLE appeals against the decision of HMRC of 6 April 2010 which decided that these supplies were not exempt. That letter was in response to a voluntary disclosure reclaiming VAT for the period 1973 to 1996.
- 15 3. UGLE is an unincorporated association which draws together those practising Freemasonry in a manner recognised by its rules. We understand that there are other forms of Freemasonry whose practitioners do not belong to UGLE. In this decision we use "Freemason" to mean someone who is a member of a Freemason's Lodge which is recognised by UGLE and associated expressions similarly.

The relevant law

- 20 4. Article 132(1) of the Principal VAT Directive 2006/112 is entitled "Exemptions for Certain Supplies in the Public Interest", and requires member states to exempt:
- 25 *"(l) the supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit making organisations with aims of a political, trade union, religious, patriotic, philosophical, philanthropic or civic nature provided such exemption is not likely to cause distortion of competition."*
5. Article 132 replaces Article 13A(1) of the Sixth Directive which was in force from May 1977. There was no equivalent provision before that time.
- 30 6. It was common ground that UGLE was a non-profit making institution whose supplies were in its members' common interest in return for subscriptions fixed in accordance with its rules, and no argument was advanced that the exemption of its membership services would distort competition.
- 35 7. It was UGLE's case that its aims were of a philosophical, philanthropic or civic nature. At the end of the hearing we asked both parties to address also whether its aims were of a religious nature and we were grateful for their written submissions on that question.

8. There was no need to address the domestic legislation. UGLE relies, as it is entitled to do, on the Directives; it was not suggested that the domestic legislation added any dimension to the exemption afforded by the Directives.

Strict interpretation

5 9. Whilst exemptions are to be strictly interpreted the "task of the Court is to give the exempting words a meaning which they can fairly and properly bear in the context in which they were used" (Chadwick LJ in *Expert Witness Institute v Customs and Excise Commissioners* [2002] S TC 42 at [19]).

10 10. The interpretative aim is to give the provision a meaning consistent with the objects pursued. It seems to us that in its decisions on Article 132, the CJEU takes the aim or object of a particular subparagraph of Art 132 from the words of that subparagraph.(see eg: *d'Ambrumenil* [2005] STC 650 at [59]; *Kingcrest* [2005] STC 1547 [30]; *EC v Germany* [2002] STC 982 at [47]; *Mesto Zamberk v Financni reditelstvi v Hradci Kralove* [2013]EUECJ C-18/12. at [23]). In each of
15 these cases the CJEU has not looked further than the words of the provision.

The public interest

11. Article 132 indicates that it provides exemption for certain activities in the public interest. The use of "certain" makes it clear that it is not any supply which is in the public interest which is exempted, but only those within the lettered
20 paragraphs. But that heading may, in our view, colour the fair meaning which may be given to an exemption: if a particular meaning which is otherwise open is plainly not in the public interest the exemption should not extend to it. So for example competitive drugtaking might not fall within "sport" in Art 132(1)(m) even if it otherwise exhibited all the characteristics of a sport.

12. That conclusion is supported by Lewison J's approval at [46] in *British Association for Shooting and Conservation Ltd v Revenue & Customs Commissioners* [2009] STC 41 ("BASC") of the tribunal's statement that the objects of BASC had to be of the requisite nature and "in the public interest". (See also for example the advocate general's opinion at [40] in *TNT Post UK v HMRC Case 357/07*, mentioned to us by Miss Shaw.)
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Main or principal aim

13. In *BASC* Lewison J reviewed the decision of the Court of Appeal in *Expert Witness Institute v CCE* [2001] STC 42, which concerned whether or not that Institute had aims of a civic nature. He said he drew the following principles from
35 that case:

"i) The aims of an organisation are (at least prima facie) to be found in its constitutional documents, tested against the reality of what it does;

"ii) It is permissible to approach the activities of an organisation on the basis that it has a main or primary aim which characterises its fiscal treatment;

“iii) An organisation will not have aims of a civic nature if its objects are solely (or perhaps mainly) for the purpose of the benefit of its members.”;

and at [45] that identifying an organisation's main object is one element in deciding whether it falls within the exemption.

5 14. In neither *BASC* nor *Expert Witness* did the possibility of aims qualifying under more than one heading of para(l) arise. It seems to us that the Directive does not make it a condition for exemption that the aims of the body must fall exclusively into one of the listed categories. Thus a body whose aims were partly religious and partly patriotic could qualify. That follows from the use of the plural "aims".

15 15. But it is not enough that some of its aims, or some part of its aims fall within one or more of the listed categories because the requirement is that the nature of the aims falls within those categories. Unless the principal part of those aims falls within one or more listed categories, its aims would not have the requisite nature. That requires in our view that the remainder of those aims are minor, insignificant or incidental, or ancillary to aims of the requisite character.

20 16. In this context, we note that Article 132(1)(l) relates to services supplied to members “in their common interest” by a body with the requisite aims. It seems to us that these words suggest that the activities of the organisation – including the supplies it makes – need not be limited to those in direct pursuit of its aims. Thus a body brought together to campaign for a political party is not disqualified from being treated as having political aims because it supplies to its members a newsletter, or certificates of membership or even cups of tea during its meetings. On the other hand, if the supplies made for the benefit of the members constitute the majority of its activity and are not directly related to a requisite aim, it may, in our view, be permissible to conclude that the aim of providing them has overtaken any external aim of the body.

30 17. We do not think that we should strive to find a single phrase describing UGLE’s aims and then ask whether that phrase appears in the qualifying words. Instead we should attempt to describe the aims and then ask to what extent the nature of those aims taken together falls within the qualifying concepts.

Determining a body’s aims

18. Lewison J said that the aims of an organisation are at least prima facie to be found in its constitutional documents "tested against the reality of what it does".

35 19. In *Expert Witness* Chadwick LJ took the objects of the appellant from its memorandum of association. But he said ([10]) that it had not been suggested that the activities of that appellant had involved any departure from the primary object for which it had been incorporated.

40 20. In *The Worshipful Company of Painter-Stainers v HMRC* VAT Decision 20668 the tribunal said that in determining a taxpayer's objects it was not enough

simply to refer to the stated objects but necessary to look at the way the organisation operated in practice.

5 21. In *The Game Conservancy Trust v CCE* VAT Decision 17394, the tribunal started with the objects set out in the Trust Deed, but in deciding on the appellants' aims took into account the whole range of the trust's activities.

22. Mr McGurk says that in determining UGLE's aims we should start with the documents: that had been the approach shown in the cases.

10 23. It seems to us that the importance of the written rules of a body in determining its aims may depend upon the nature of the body: Trustees are required to act in accordance with the trust deed: that deed must therefore be highly significant; companies may be bound by transactions they enter which are not authorised by their constitutions, but they are bound to their members by their constitutions: there is more scope than there is with a trust governed by a trust deed for finding their aims in what is actually done; and unincorporated associations are generally bound together by agreement between their members: 15 such agreements may more readily change over time, and the nature of the agreement which holds members together may not be reflected, or not wholly reflected, in any written set of rules: in their case what is actually done may be of greater significance in determining what the aims are.

20 24. Thus a tennis club or a choir may have a written set of rules providing for the election of a president or a committee, and membership subscriptions and finance; all of which speak to the regulation of the club but none of which may speak to its aims which are to play tennis or to sing, and which may be gleaned from what the members actually do.

25 25. Thus in the case of an unincorporated association it is particularly the case that testing any written constitution against what is actually done may, depending on the nature of the organisation, permit a conclusion that its aims are more restricted, or greater, than those provided for in the written document.

30 26. It is also in our view important to distinguish administrative rules and practice from aims. In *Rotary International v Commissioners of Customs and Excise* [1991] VATTR 177 ("RIBI") the tribunal sounded a warning in relation to the investigation of what an organisation does:

"however in our opinion what matters is not so much what RIBI does but why it does it".

35 **The Evidence and Our findings of fact**

40 27. We heard oral evidence from Quentin Humberstone, UGLE's treasurer and a member of its Board of General Purposes; and from Raymond Reed, also a member of the Board of General Purposes. Both had held other masonic offices in the past. Mr Reed had been a Freemason since 1965, and Mr Humberstone since 1978. The bundles of documents before us included publications by UGLE

and the provincial Masonic organisations, and letters from charities supported by Masonic endeavour. We also had two small books setting out the content of certain lectures and ceremonies.

Freemasonry

5 28. In a dialogue which forms part of a traditional freemasonry lecture the question is asked: What is Freemasonry? The answer is given:

“A peculiar system of morality veiled in allegory and illustrated by symbols”.

10 29. In a more recent brochure printed by UGLE and entitled "Are you thinking of becoming a Freemason?" The following appears under the heading "What is Freemasonry?":

“Masonry consists of a body of men brought together for the sake of mutual intellectual social and moral improvement.

15 "Masonry recognises no distinction of religion and emphasises the duties of citizenship. Religious or political discussions are not permitted in Lodge meetings.

“Masonry offers no monetary advantages.

“Masonry supports a wide range of charities both Masonic and non-masonic.”

20 30. In answer to the question: “Why become a Freemason?” the same booklet gives an alphabetical list of reasons:

achievement - passing through the various offices of the Lodge;

brotherhood - making new friends;

charity - being able to contribute to deserving causes;

education - learning from peers and mentors;

knowledge - finding out about the history and mysteries of freemasonry;

25 self-improvement - making a contribution to family and society.

31. In 2006, in a speech quoted at greater length below, the Grand Master of UGLE described Freemasonry as

“a system of belief and principle that offers us a framework for the better regulation of our lives.”

30 32. The evidence of Mr Humberstone confirmed these statements. Mr Humberstone told us that whilst he may have had a predilection towards behaviour consonant with Masonic principles before he became a Freemason, becoming a mason and participating in its practice had deepened and embedded his pursuit of those principles.

35 33. Mr Reed told us that what mainly attracts and retains masons is the fellowship Masonry offers. In a recent survey he said that 70% of Freemasons said they had

joined for fellowship. He said they stay because they like what they find: part of what they find is training and responsibilities which are not available elsewhere - training in public speaking and in the duties and responsibilities of the offices held as a Freemason.

5 *The Lodges, the Provinces and UGLE*

34. There are some 250,000 Freemasons in England and Wales, belonging to about 8,000 Lodges.

10 35. A person may be invited to become a Freemason by a friend or acquaintance who is himself a Mason. A new Mason would join a local Lodge and be initiated by degrees into its fraternity. The Lodges have ceremonies by which a new Mason will be first initiated as an apprentice, then as a Fellow Craft and then a Master Mason. These degrees were thought likely to be reflected in the historical origins of Masonry.

15 36. The Lodges meet formally several (between about four and seven) times a year. At a meeting the members take part in the Masonic rituals. There are then reports from the Lodge Almoner and Charity Steward. Some meetings may also have an outside speaker either on some aspect of freemasonry or from a charity. There is a collection for charity. After the formal meetings there may often be food and drink.

20 37. Each Lodge has a number of officers. The new member might be expected to progress through the ranks of those offices until he becomes Master of the Lodge, and then, after his period as Master, take a post such as Lodge Almoner or Charity Steward. Some would go on, like Mr Humberstone and Mr Reed, to become officers of provinces and of UGLE.

25 38. The local Lodges are grouped into 48 geographical provinces (which name we also apply to metropolitan districts and certain overseas districts). Each province has its own officers in order of precedence headed by a Provincial Grand Master. The Province is responsible for promoting behaviour in the local Lodges which conforms with the requirements and initiatives of UGLE and for
30 ensuring that standards of ritual and conduct are maintained. Many of the provincial posts require substantial commitment of time and energy. Mr Reed told us that as Provincial Almoner for Buckinghamshire he spent an average of 20 hours per week in the duties of the office.

35 39. UGLE was founded in 1717 by the agreement of four London Masonic lodges. It has its own administration housed at Freemasons' Hall, 60 Great Queen Street WC2, and its own complement of senior Masonic officers, headed by the Grand Master.

40 40. UGLE as a body of people meets five times a year at Freemasons' Hall. The hall has seating for 1300 only, so not all members can attend. Invitations are sent to all those holding an active rank and if their acceptances fall short to other members. The formal parts of the meetings are, Mr Humberstone told us, very

dry: dealing with changes to ritual, the opening and closing of lodges and formal expulsions. These were generally resolutions proposed by the executive and the committees of UGLE. The formal meeting would be followed by a speaker from one of the charities supported by masons. There would be food afterwards. It
5 seemed that the last real debates at such a meeting had taken place in the late 20th century in relation to the Board's proposal for the removal from the Regulations of rather mediaeval penalties for certain breaches of the rules.

The Book of Constitutions

10 41. UGLE publishes a Book of Constitutions. This contains short chapters on: the charges to be read to a local Lodge Master on his installation, the Aims and Relationships of the Craft, and the basic principles of the Grand Lodge's recognition of other national Lodges. It also contains an extensive chapter of Regulations for the government of Freemasonry and the trust deed for the Masons' Grand Charity.

15 42. Mr Humberstone noted that although some of the language in the book is rather arcane it reflected "the aims of the UGLE as being to establish, practice, regulate and determine any matters relevant to [Freemasonry] and to manage the interests of the fraternity".

20 43. The Regulations provide: for the organisation and governance of the Grand Lodge; for the appointment of officers of the Grand Lodge, Provincial Lodges and of local Lodges; for the Constitution of committees of the Grand Lodge; for precedence in rank among officers; for the payment of subscriptions to UGLE and contributions to the Grand Charity by each Lodge in respect of its members; for detailed rules on the design of Masonic regalia and for appeals from certain
25 decisions.

44. Regulation 2 provides that the interests of the fraternity be managed by the general representation of all Lodges together with the officers of the Grand Lodge, and that this collective body be referred to as "The Grand Lodge" .

30 45. Regulation 5 provides for an order of precedence among 'members' of the Grand Lodge. It is a long list, and at its end come Masters and past Masters of local Lodges. We concluded that not all masons were members of the Grand Lodge. Those who had joined a local Lodge but had not yet held the position of Master were members of that local Lodge, but not members of The Grand Lodge, although their interests might be represented by those who were or had been
35 Masters of the local Lodge.

46. The Regulations say very little about Masonic custom or ritual. The preamble records a declaration in 1813 that Masonry was restricted to three degrees: Apprentice, Fellow Craft and Master Mason, and rule 172 restricts the minimum interval between being invested in one degree and the next to four weeks, but
40 otherwise there is little, save the rules on regalia (and perhaps the rules on precedence), in relation to ceremonial or ritual.

47. The short chapter on the Aims and Relationships of the craft contains a statement agreed in 1938 between the three Grand Lodges England and Ireland and Scotland. It appears to us to be a document of its time with what seems almost paranoid emphasis on the apolitical nature of each Grand Lodge rather than a comprehensive statement the objects of Freemasonry: it says more about what Freemasonry is not. Paragraph 2 records that "recent" statements made it desirable to "emphasise certain principles of the order". It continues:

"3. The first condition of admission into, and membership of the Order, is belief in the Supreme Being. This is essential and admits of no compromise.

"4. The Bible, referred to by Freemasons as the Volume of the Sacred Law, is always open in the Lodges. Every Candidate is required to take his Obligation on that book or on the Volume which is held by his particular creed to impart sanctity to an oath or promise taken upon it.

"5. Everyone who enters Freemasonry is, at the outset, strictly forbidden to countenance any act which may have a tendency to subvert the peace and good order of society; he must pay due obedience to the law of any state in which he resides or which may afford him protection, and he must never be remiss in the allegiance due to the Sovereign of his native land.

"6. While English Freemasonry inculcates in each of its members the duties of loyalty and citizenship, it reserves to the individual the right to hold his own opinion with regard to public affairs. But neither in any Lodge, nor at any time in his capacity as a Freemason, is he permitted to discuss or to advance his views on theological or political questions.

"7. The Grand Lodge has always consistently refused to express any opinion on questions of foreign or domestic state policy either at home or abroad, and it will not allow its name to be associated with any action, however humanitarian it may appear to be, which infringes its unalterable policy of standing aloof from every question affecting the relations between one government and another, or between political parties, or questions as to rival theories of government.

[Paragraphs 8, 9, and 10 concern the refusal to recognise other forms of Masonry (such as those operating more - or less - than the three degrees) or bodies which do not adhere to the principles.]

"11. There is no secret with regards to any of the basic principles of freemasonry, *some of which* [our emphasis] have been stated above. The Grand Lodge will always consider the recognition of those Grand Lodges which profess and practice ... those ... principles ..."

48. The chapter starts with a rubric indicating that it was accepted by the Grand Lodge on 7 September 1949 and finishes with three paragraphs which confirm that the Grand Lodge (presumably in 1949) stands by the 1938 statement, warning of the discord and disintegration which would follow if Freemasonry espoused political or theological opinions.

49. The opening chapter of the Book of Constitutions contains the charges to be read to a master of a Lodge when assuming office. These enjoin: caution; courteous, moral and peaceful conduct under the law; submission to superior officers; the avoidance of quarrels; preservation of the general good; the discountenance of changes in Masonry without Grand Lodge consent and general obedience to regulations.

50. From this written material, whose force was not dispelled by any of the evidence of what UGLE actually did, we conclude that a condition of Freemasonry is belief in a Supreme Being, and that it encourages the due obedience of Freemasons to the law.

Recent history

51. Mr Reed told us that Freemasonry had become inward looking around the time of World War II: there had been concern about persecution. That was consistent with the tone of the Aims and Relationships statement. He said that before the war newspapers would publish the dates of local Lodge meeting; that ceased. Freemasonry became more secretive. Then in the 1960s masonry came under attack as a secret society. The response was to become more open and to be involved more in the community. From the millennium (“over the last 15 or 20 years”) he said there had been a greater emphasis on getting out into, and giving time to, the community. There was a move to bring Freemasonry into the 21st century: to review process, to cut out administration and to make time for masons to be involved with their local communities.

52. These comments were echoed in the 2002 speech of the Grand Master given at the annual investiture of officers of UGLE and published in its quarterly communication:

"This has been an exciting year for the Craft [that is to say Freemasonry], which will culminate in our Freemasonry in the Community initiative.

"I have been delighted... by the enthusiastic way in which the Provinces, Districts and London have taken up the challenge of communicating to the general public ... what a substantial contribution the Craft has made to society for well over 300 years. Not that we are concerned simply about the past, we must continue to get the message across that Masons play an important role in their communities and Masonry encourages its members to live by their high principles in their everyday lives.

"Paramount among these are our charities ...

“Following the substantive changes made three years ago in the administration of the craft...”.

53. And also in his 2006 address on the same occasion:

"The Craft has embraced the policy of openness with increasing optimism and the benefits are becoming ever more visible. Nowhere has openness been more apparent than in our charitable activities. The amount of money raised on the

donations made to both Masonic and non-masonic charities has been remarkable, and has contributed significantly to the raising of our profile and our increasing acceptance in the wider community.

5 "Nevertheless, charity is not just about raising money and making donations to good causes, valuable though these are. It has a broader and deeper purpose. Apart from giving alms and providing help by liberality to those in need or distress, charity is also defined as love of one's fellow man, as kindness, and as leniency and judging others.

10 "... we should also spend more time in our assembly in considering the excellences of charity and the lessons it has to teach us as Freemasons, remembering that no less an authority than St Paul placed charity in front of both faith and hope as the greatest qualities.

"We are also conscious that Freemasonry rests on the basic tenets of friendship, charity and integrity which we know as Brotherly Love, Relief and Truth.

15 "Friendship is the cement which binds us together, integrity is a characteristic which should be inherent in all Freemasons, but charity in all its aspects is the practical application of Freemasonry to the rest of the world. Through our charitable work and our openness about it the world may know the happy and beneficial effects of freemasonry."

20 "Brethren, in speaking at some length today about charity I want to stress that we must not fall into the trap of becoming dominated by financial charity, nor even its extension into the aspect and doing good by some practical means, if that leads us to forget that Freemasonry is a system of belief and principle that offers us a framework for the better regulation of our lives."

25 54. Mr Humberstone explained that as the Welfare State grew (with a consequent reduction of the demands on the Masonic purse) and the needs of the populace changed, a review of the masonic charities was conducted in 1971, as a result of which there had been a streamlining of the structure of masonic charities and the introduction of greater focus on charitable activity in the community.

30 55. Mr Reed said that Freemasonry redefined itself over time, but Mr Humberstone added the cautionary note that it moved slowly.

35 56. Miss Shaw argued that the changes referred to in the Grand Master's 2002 address were mainly administrative. We did not take the same view of the evidence: the repetition in 2006 of the a similar welcome of new openness, and Mr Reed's evidence confirmed the 2002 message as indicating a change in outlook, not simply administration, which started at about the time of the millennium.

40 57. We conclude that the practice of Freemasonry has changed in particular since 2000, and since then has become more involved in charitable work among those, and for the benefit of those, who are not Freemasons or their dependents.

Ritual

58. Tradition, ceremony or ritual clearly played an important part in the local practice of Freemasonry. It was part of the formal Lodge meetings; in a wider sense than simply enacting a ceremony it was part of the hierarchy of offices within a Lodge, within a province and within the membership of UGLE; it was displayed in the detailed description of the badges of office worn by masons at formal events, and its mastery was part of the process of learning Freemasonry.

59. Keeping certain information secret was part of this tradition ritual or ceremony.

60. Mr Reed said that from the first day a person becomes a Freemason he was encouraged to participate in charitable events and to develop his ability to learn ritual and take part in Masonic ceremonies.

61. We accept that ceremony or ritual, whether at a football match, in court, at school or in a public ceremony can have a significant effect on participants' behaviour, and may bind them together or to a common cause. It is also possible that people indulge in, and become attached to, ritual or ceremonial practice for its own sake.

62. The ritual ceremonies undertaken at Lodge meetings are to a modern ear archaic. We were told that for many years they had belonged to an oral tradition but in more recent years had been written down (like Homer's Iliad and Odyssey). Those shown to us included the forms used for the first ceremony of initiation and the second and third ceremonies of promotion of initiates to Master Mason after becoming Freemasons. They contain precise stage directions, catechisms and invocations of the Supreme Being. The language is reminiscent of the 1662 Church of England prayerbook and shares many of its phrases. There could be hymn at the start and end of the ceremony.

63. Between initiation and entering into the second and third degrees of masonry, Freemasons may attend lectures. These include allegorical stories involving the old Testament characters and stonemasons. The stories have a mystical flavour.

64. Mr Humberstone was emphatic that ceremonies were not religious worship. There was no requirement to believe in a particular God so long as one believed in a Supreme Being. Masons included Christians, Muslims and Jews. The ritual included prayers addressed to a supreme being but this was not worship. Sacred texts were laid open during ceremonies but their presence and invocation of the Supreme Being were ways of making obligations more serious and of reinforcing the conduct of masons in accordance with the three Grand Principles (see below).

65. Mr Reed did not regard the ritual as particularly important. He suggested that its forms made more sense 100 years ago when more people were religious. What kept people together in a Lodge he said was fellowship, not ritual.

66. Our impression from the evidence we heard and saw was that a serious interest in ritual was these days generally something for the few, and the practice

of Freemasonry as promoted by UGLE was more than just the participation in ritual.

5 67. Our impression of the rituals we were shown did not indicate that they were a form of worship; whilst there were prayers for the confirmation of undertakings and for blessing, there was no form of adulation or veneration.

The Three Grand Principles

10 68. The ceremonies and the lectures advocate virtuous behaviour: loyalty, the keeping of confidence, truthfulness, wisdom, strength in adversity, beauty, perseverance and more. All of these Mr Humberstone said were encapsulated in the three Grand Principles of Freemasonry: Brotherly love, Relief and Truth. Each was specifically taught in the formal lectures. The allegorical stories were better ways of ensuring the absorption of the principles than simply stating them. He said that after some time one began to understand the rather tortuous language of the lectures and rituals, and the allegory and symbolism affected the way
15 people behaved more deeply: the principles became embedded and core to a mason's approach to life. Masonry was not the only way to achieve this, but it worked.

69. He described the three Grand Principles thus:

20 (1) Brotherly Love – Every Freemason should show tolerance and respect for the opinions of others and behave with kindness and understanding towards his fellow creatures.

(2) Relief – Freemasons are taught to practice charity and care, not only for their own, but also for the community as a whole, both by charitable giving, and by voluntary efforts and words as individuals.

25 (3) Truth – Freemasons should strive for truth, requiring high moral standards and aiming to achieve them in their own lives.

30 70. He described the practice of these principles as a way of life. He said that the purpose of the principles was to encourage good deeds and that the principles were manifested in the actions of Freemasons. He regarded Relief as the defining principle - taken as synonymous with charity in the widest sense. He said it would be quite wrong to assume that masonic charities were directed only towards Masonic brethren and their dependents. Huge amounts of the charitable activities were communitywide. These comments were reflected in a booklet:

35 "Freemasonry offers its members an approach to life which seeks to reinforce thoughtfulness to others, kindness in the community, honesty in business, courtesy in society and fairness in all things. Members are urged to regard the interests of the family as paramount but importantly Freemasonry also teaches and practises concern for people, care for the less fortunate and help for those in need."

40 71. We accept that these three principles encapsulate the principle teachings of Freemasonry which relate to the conduct of Freemasons' lives .

Charitable Activities

72. There was no doubt at all that Freemasons make very substantial contributions to charitable causes, both in money and of their own time.

5 73. Numerous letters from beneficiaries attested to the generosity on the scale of masonic giving: the Royal College of Surgeons had received £4 million since 1967, Help the Hospices £9 million since 1984, the Red Cross £1.7 million since 1998, and Air Ambulance £250,000 since 2008.

10 74. The combined charitable spending of the masonic charities in 2010 was £82 million, which we were told was second only to the national lottery in the amount of charitable contributions.

75. Of this £82m, £20 million was paid for the benefit of masons, £46 million for the benefit of their dependents, and £17 million for the benefit of others with no Masonic connection.

15 76. The history of charitable contributions was described in the province of Derbyshire's website:

"From its earliest days Freemasonry has been involved in charitable activities, and since its inception it has provided support for many widows and dependents of Freemasons as well as members of the Craft who need either short or long-term financial assistance.

20 "Funds have always been made available for other charitable purposes, especially when assistance is urgently required for events such as national disasters ..."

25 77. UGLE is intimately involved with the running of four large charities: the Grand Charity (whose trust deed is, as we have said, included in the book of Constitutions), the Royal Masonic Trust for Girls and Boys, the Royal Masonic Benevolent Institution, and the Masonic Samaritan fund. It is also involved in a number of smaller charities.

30 78. In each case the charity's officers and members are officers and members of UGLE, and its administration is conducted in Freemasons' Hall. The charities are directed by masons appointed by UGLE's officers.

35 79. The Grand Charity was created in 1980 after the 1971 review and replaced the former Board of Benevolence. The Grand Charity makes grants to charitable causes: in 2010 30% of its grants were for causes benefiting people who were not masons or dependents of masons. It also operates a "relief chest" scheme, which acts as a sort of mutual bank account for funds raised by Lodges pending their payment to the cause for which they were raised.

80. The Royal Masonic Trust for Girls and Boys provides funds for young people with priority for children with Masonic connections. Associated trusts have

provided choral bursaries for children (whatsoever their connections) at choir schools.

81. The Royal Masonic Benevolent Institution runs 19 residential care homes. In 2010 about 10% of its spending was on people without Masonic connections.

5 82. The Masonic Samaritan Fund provides funds for urgent medical care and medical research. In 2010 about 10% of its expenditure was on care for masons and about 8% spent on non-masons, and so about 80% on non-masons with Masonic connections.

10 83. All these charities are, in Mr Humberstone's words, "one legged". They dispense funds but do not raise them. The raising of their funds is by and from masons.

84. The Regulations require the Lodges to make annual contributions, which UGLE currently sets at £14 per annum, in respect of each mason to be made to the Grand Charity.

15 85. In addition to contributions directly to these charities Freemasons around the country raise funds and contribute funds and time to many other non-masonic charities. The fundraising is conducted both at Lodge and Provincial level, with national, provincial and local campaigns for selected causes.

20 86. There was absolutely no doubt in our minds that a great deal of time, effort and money is contributed to charitable and benevolent causes by Freemasons around the country, and that that activity is encouraged by UGLE.

25 87. To an extent some of the charitable contributions resembled the activities of mutual insurance society whose members' contributions were made to be used to protect members and their dependents against the uncertainties and misfortunes of life. That was illustrated by the split of total masonic charitable spending roughly in the ratio: one quarter to masons, one half to dependents of masons, and one quarter to those with no Masonic connections. It was echoed by the comments cited above - just before the heading of this section - that members were "urged to regard the interests of the family as paramount" whilst
30 recognising the importance of care for others.

88. Mr Humberstone told us that the pursuit of the principle of Relief was not simply giving money to charitable causes, but also giving time and effort in the service of the community. It would be quite wrong he said to assume that Masonic charity was directed only towards masons and their dependents.

35 89. Mr Reed said that under the direction of UGLE Freemasonry had striven to dispel the false perception of a secret society concerned only with the promotion and benefit of its members.

90. We concluded that a significant part of the outward and visible manifestation of the practice of Freemasonry was the donation of significant time and effort to

charitable causes benefitting the wider community, and that a material part of the work of UGLE was concerned with the promotion of these activities. We find that work in the community – the donation of effort and time – was not principally linked to the benefit of those who were masons or who had Masonic connections, but that monetary giving was mainly for the benefit of those who were masons or had Masonic connections.

91. We conclude that the aims of Freemasonry include the practice of such charity.

What does UGLE do?

92. UGLE employs about 100 people managed by an executive team supervised by the Board of General Purposes. Its activities include:

- (1) Providing rooms in Freemasons' Hall for use by Lodges for meetings;
- (2) Providing accommodation for the four main charities and other charities at Freemason's Hall (at cost);
- (3) Providing information and advice on the enforcement of Masonic rules, whether related to the Constitution or to the bye laws of individual Lodges and on matters of practice and procedure in general;
- (4) The provision of a dispute resolution service;
- (5) Providing publications: information booklets; a quarterly magazine, *Freemasonry Today*; charity mail shots; the *Masonic year Book*; and maintaining a website;
- (6) Communicating with lodges and Provinces, and assigning and deploying visiting officers;
- (7) Appointing the senior Provincial Officers;
- (8) Developing and implementing policy initiatives, for example the introduction of the post of Lodge Mentor, the development of a university scheme¹ for university graduates to join at university and to become itinerant members of lodges thereafter;
- (9) Dealing with Lodges in decline and the opening of new lodges;
- (10) Preparing for, and holding, the general meetings of UGLE;
- (11) Deploying of its officers on the panels of its charities;
- (12) Coordinating contributions to national and international causes and events (such as the tsunami);
- (13) Launching charitable initiatives;
- (14) Monitoring individual Lodges and providing a supportive or listening ear for advice and counsel (as Mr Reed attested)

¹ Mentioned in the Grand Master's 2010 address

93. In the Grand Master's 2010 Investiture speech he stressed the importance of Freemasons recognising "the vital role that the Centre, here at Grand Lodge, plays in running the English Constitution on your behalf and making sure that Freemasonry survives".

5 94. In that same paragraph he speaks of an improvement in the relationship between the Grand Lodge and the Provinces. It seems clear that the relationship was not always without friction.

10 95. We accept Mr Humberstone's evidence of UGLE leading and advising on all Masonic activity and of its launching of initiatives, and Mr Reed's evidence of the help afforded by its visiting officers. We therefore accept that UGLE aimed to inspire and motivate its members in the practice of Freemasonry.

15 96. Mr Reed viewed UGLE as operating a similar strategy to that of those businesses that have a bottom upward management style, setting a clear strategy and encouraging creativity in their employees, communicating its message via its publications to subscribing Freemasons. Without UGLE's direction and inspiration he thought that Freemasonry and its charitable activities would not succeed as they did.

20 97. We thought that the description of UGLE as the "Centre" described well what UGLE did. It held together, or attempted to hold together, the 250,000 Freemasons in the UK so that Freemasonry could "survive", be practised and flourish; and its guidance resulted in greater charitable activity that would otherwise have been the case.

The parties' arguments

98. Mr McGurk says:

25 (1) The decision in dispute relates to output tax accounted for since 1977 – when the Sixth Directive came into force. The Appellant needs therefore to show that for the whole of this period it had the requisite aims. Among other things the 2002 investiture speech of the Grand Master and Mr Reed's
30 acknowledgement that Freemasonry was inward looking until about 15 years ago may suggest that the position was not the same over the period of the claim. There was little evidence for the period before 2000.

(2) UGLE was not the same as its charities: it was UGLE's objects, not those of the charities, which were to be determined.

(3) Nor was UGLE the same as the provincial Lodges or the local Lodges.

35 (4) The aims of UGLE could not simply be identified with the aims of Freemasons or Freemasonry:

(a) even the quarterly meetings of UGLE were not, and could not, be attended by all masons. There was no real right for those of lowly rank to attend;

(b) in any event the meetings were dry affairs ratifying decisions taken by the Board and the Executive committee;

5 (c) thus the decision-making power of the body formed by the agreement of its members was expressed in the actions and decisions of a few, and the aims of the body could be discerned through their powers and actions;

(d) those few were the Board, the senior officers and the executive committee and perhaps some others, but were not every Freemason.

10 It was thus the aims and activities of those core decision makers that were relevant to determining the aims of UGLE;

(5) The investigation of those aims must start with the constitutional documents. That was the book of Constitutions. There was a statement of aims: made in 1939 and confirmed in 1949. Since then there had been no amendments to the Aims despite 13 reprints of the book since 1949. This was not a dusty document. Those aims were:

(a) coherence: of fellowship and between Lodges

(b) the preservation of Freemasonry (e.g against the World War II threat) by the barring of political and religious discussion and the requirement of obedience to the state;

20 (c) the recognition of other conforming bodies;

(d) the regulation by UGLE, as the supreme authority for the practice of Freemasonry - that was to say the ritual of the three degrees - for it was by its adherence to the limitation to those three degrees that the Grand Lodge defined itself in the recitation of the 1813 union in the preamble to its regulations.

(6) These were the aims of administration, regulation and preservation of the society and its ritual, not of a philosophy or of a philanthropic or civic nature. Whatever else, it was not aimed at the three Grand Principles.

30 (7) If it was necessary to go beyond the constitutional documents and to look at what UGLE actually did, and how that illuminated its aims, you reached the same conclusion. UGLE was a big administrative organisation. Mr Reed had described the charitable activities as arising bottom up; he had said that the object of his work was to streamline administration and to free up volunteer time. That showed UGLE as an administrative regulator. UGLE, as Mr Humberstone said: makes laws, makes policy, deals with finance, set fees, disciplines, presides on appeals, and regulates membership and ritual.

(8) The Lodges and the members raised charitable donations, not UGLE. The Lodges had three dimensions – ritual, social and charitable; UGLE regulated the ritual and might provide administrative assistance with the charitable activity: its activity was administration and regulation.

(9) UGLE did not raise funds or act philanthropically. Nor could it be said that it acted philanthropically on the grounds that it inspired or encouraged

charity. There was little evidence of such encouragement other than perhaps the occasional publication detailing the activities of the Lodges.

(10) If what drove the way of life of a Mason was the lessons learned from the practice of ritual, it was the ritual and not UGLE which did the inspiring.

5 (11) To the extent that the aims of Freemasonry could be said to be self improvement by achieving a better way of life, such aims were inward looking and did not have the public benefit needed for exemption even if they could be attributed to UGLE.

10 99. Miss Shaw relies on a parallel with RIBI whose aims were held by the tribunal to be philanthropic. Rotary clubs in the UK were members of RIBI. The objects of Rotary were formally expressed as being to encourage and foster an ideal of service and to foster the development of acquaintance as an opportunity for service. The purposes of RIBI were to promote the objects of Rotary, to coordinate the activities of the Rotary Clubs, to process information, to advance
15 Rotary and to promote fraternity among Rotary Clubs. The tribunal said that, in every day terms, RIBI's object was to aid the Clubs in what they did and to inspire them to greater heights of service.

20 100. RIBI arranged conferences and assemblies, produced literature and organised. It did not itself do philanthropic works but supported and inspired the Clubs. HMRC had urged on the tribunal that these aims were organisational and administrative. But the tribunal said that it mattered not so much what RIBI did but why it did it. It must have had a purpose for its administrative work. Its Constitution provided the answer -- to promote Rotary. That object was philanthropic.

25 101. Miss Shaw says that the parallels with UGLE are clear. The evidence of Mr Humberstone and Mr Reed, and the documentary evidence showed that UGLE's object was to inspire and motivate its members. The purpose of its regulation was to encourage good and charitable deeds of Freemasons. UGLE's aim was the outward looking good charitable deeds of its members.

30 102. Miss Shaw says that in UGLE's case philosophy and philanthropy are intertwined. UGLE's philosophical aim is the creation of a better society, its philanthropic aim is the service of that society through charity. One breeds the other.

Discussion

35 103. Every large body of people needs an organisation. If people are doing things together there will be a need for an administration, whether it is a church, a choir, or a rugby club. It does not seem to us that the activities of administration and organisation define the aims or objects of the body; as the tribunal said in *RIBI* what matters is why such activities are conducted.

40 104. We accept that the purposes of the Charities associated with UGLE cannot automatically be taken to be the purposes of UGLE. However, if (as we accept)

the reason for the activities which UGLE carries on in relation to its charities is to promote the raising of funds for them or to reduce their costs (so as to increase their charitable spend), then that will be an aim of UGLE. But UGLE's aims must also be assessed by reference to the manner in which control and discretion is exercised by officers of UGLE in their capacity as trustees over the disposition of the charities' funds.

105. UGLE is in our view properly regarded as comprising all its members; after all it is they who fund the subscriptions. But we accept that, save in exceptional circumstances, its activity is directed by its committees and senior officers, and that the purpose of their activity will affect the determination of its aims.

106. We therefore accept that the activities of individual Freemasons or Lodges or even Provinces are not the activities which must be examined. When a Lodge runs a charity event it does not do it as part of UGLE, but as a group of people who are members of UGLE but separate from the entirety of its membership: they do not do it as representatives of UGLE.

107. As Chadwick LJ pointed out at [23] and [31] in *Expert Witness*, the question is whether the aims of the body rather than those of any individual member or members are of the requisite nature. But, in our view, if the aims of a body can fairly be described as promoting particular activities of its members, then that body shares the aim of those activities.

108. From the book of Constitutions we drew little help in finding the aims of UGLE:

(1) Belief in a Supreme Being is a condition of membership, not an object, nor is the veneration of that Being an object.

(2) The inculcation of good citizenship is plainly stated in the Aims as a practice. It is reflected in the charges to be read to a new Master. We accept that it is one of the concerns of Freemasonry. The evidence of UGLE's activities and the description of its Grand Principles did not indicate to the contrary;

(3) But the Aims confess to describing only some of the principles, and appear to us written, not for the purpose of describing the objects but limiting attack and distancing UGLE's form of Freemasonry from that of others.

109. Aside from the prescription of regalia and hierarchy, the remainder of the Regulations in the book of Constitutions related to organisation and administration, and raised the question asked by the tribunal in *RIBI*: why organise and administrate?

110. The evidence of what UGLE did indicated to us that the reason it did what it did was to promote Freemasonry. The evidence showed that it appointed officers, and provided help, assistance, ideas and direction, and the communication and administrative glue to hold all the Lodges together, and that its purpose was to promote and preserve the practice of Freemasonry.

111. Thus taking what we can find in the constitutional documents and testing it against, and supplementing it by, the evidence of what UGLE actually did, we conclude that the aims of UGLE were the following:

(1) promoting a particular system of morality which:

5

(a) required belief in a supreme being,

(b) required commitment to the Grand Principles of integrity, brotherly love and charity; and

(c) was taught in allegory as well as directly;

10 (2) promoting behaviour consistent with that system and which inculcated due obedience to the law;

(3) bringing men together to practice that system:

(4) aiding the cohesion in mutual fellowship and acquaintance of its members through common ceremony and social intercourse; and

15 (5) administering charitable funds (and their distribution) consistently with these aims.

112. We think it possible that a body could, in theory, exist simply to perform and regulate the performance of ritual. However the evidence of Messrs Reed and Humberstone convinced us that regulation for regulation's sake was not a
20 significant object of UGLE. Both men were part of the governing body of UGLE, and both saw the object of their and UGLE's activities as extending well beyond regulation for regulation's sake. Their evidence on the value of ritual differed - Mr Reed seeing more purpose in the charitable activity and fellowship of masonry, and Mr Humberstone acknowledging the subtle effects of ritual on habit
25 of mind. We concluded that only a small part of Freemasonry, and so of the Grand Lodge's promotion of it, was ritual (including therein ceremony, tradition and hierarchy) for its own sake.

113. There were indications that the relative importance of these aims may have changed over the period from 1977 to the present day. The promotion of
30 charity towards all (rather than mainly those with Masonic connections) may have become more pronounced after 2000 (at least in the sense of greater public "outreach", and the preservation of cohesion and mutual fellowship through ceremony and secrecy less so.

114. We now turn to ask whether and to what extent these aims are aims of the
35 requisite nature.

Aims of a Religious nature

115. The question of whether or not UGLE's aims were to any extent of a religious nature was not raised by either party. Indeed both parties argued that its

aims were not religious. But we asked the parties for their written submission on the issue, and were grateful for them.

116. To some extent it may be better to consider “religious” alongside “philosophical” for, as we explain below, it seems to us that in the context of para (l) they are together concerned with aims which permit or promote the giving voice to the freedoms of Article 9 of the European Convention. In *R v Secretary of State for Employment ex parte Williamson* [2005] UKHL 15 Lord Bingham describes the place of religious belief in those freedoms:

“23. Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of 'manifestation' arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in article 9 of the European Convention and comparable guarantees in other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. *The language used is often the language of allegory, symbol and metaphor.* [Our emphasis] Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention: see Arden LJ [\[2003\] QB 1300](#), 1371, para 258.

“24. This leaves on one side the difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious. This question will seldom, if ever, arise under the European Convention. It does not arise in the present case. In the present case it does not matter whether the claimants' beliefs regarding the corporal punishment of children are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. Article 9 is apt, therefore, to include a belief such as pacifism: *Arrowsmith v United Kingdom* [\(1978\) 3 EHRR 218](#).

The position is much the same with regard to the respect guaranteed to a parent's 'religious and philosophical convictions' under article 2 of the First Protocol: see *Campbell and Cosans v United Kingdom* [4 EHRR 293](#).

117. The meaning of religion in Article 132 is of course an autonomous EU meaning. We were not shown any case from the CJEU on its meaning but noted the expansive definition in Article 10(1)(b) of the Directive 2004/83/EC (enacted in 2004):

“ (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief; “

118. That formulation seems to us to differ little from that suggested by Lord Bingham in construing the Convention, that typically (but not always) religion involved belief in the supernatural, that it was not always subject to lucid explanation or rational justification, and that it used the language of “allegory symbol and metaphor”.

119. In *R ex parte Hodkin and the Church of Scientology v Registrar General of Births and Deaths* [2012] EWHC 3635 Ouseley J considered whether a scientology chapel was a “place of religious worship”. Ouseley J did not find himself able to depart from a previous finding of the Court of Appeal that the chapel was not a place of “worship” but he said that he would accept scientology as a religion - accepting the persuasive judgements of the High Court of Australia in *Church of the New Faith v Commissioner of Pay-Roll tax (Victoria)* [1983] 154 CLR 120, a case which concerned whether scientology was a “religious institution” for the purpose of payroll tax. He said:

“50. The Australian *Payroll Tax* case also contains a full and careful analysis of the nature of religion and Scientology to explain the High Court’s conclusion that, under the relevant legislation in Victoria, the beliefs, practices and observances of the Scientologist Church of the New Faith were a religion. The judgment is a valuable legal exposition of what constitutes a religion and whether it applies to Scientology. It is sufficient for these purposes to set out the headnote:

“*Per* Mason A.C.J. and Brennan J. For the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion.

“*Per* Wilson and Deane JJ. No single characteristic can be laid down as constituting a formularized legal criterion of whether a

particular system of ideas and practices constitutes a religion, but the following criteria are helpful: that the particular collection of ideas and/or practices involves belief in the supernatural, i.e. a belief that reality extends beyond that which is capable of perception by the senses; that the ideas relate to man's nature and place in the universe and his relation to things supernatural; that the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance; that, however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or groups; and that the adherents themselves see the collection of ideas and/or practices as constituting a religion.

“Per Murphy J. The categories of religion are not closed, but the following bodies are religious: any body which claims to be religious and whose beliefs or practices are a revival of, or resemble, earlier cults; any body which claims to be religious and to believe in a supernatural Being or Beings, whether physical and visible, a physical invisible God or spirit, or an abstract God or entity; any body which claims to be religious and offers a way to find meaning and purpose in life.

“Per curiam. The test of religion should not be confined to theistic religions.”

120. The parties' submissions on this issue were made before the Supreme Court gave its judgment on the appeal from Ouseley J (see [2013]UKSC] 17). That Court held that Ouseley J had been right to conclude that scientology was a religion. Lord Toulson quoted the judgements in the *Payroll Tax Case*. He said, at [57]:

“Of the various attempts made to describe the characteristics of religion, I find most helpful that of Wilson and Deane JJ. For the purposes of PWRA, I would describe religion in summary as a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system. By spiritual or non-secular I mean a belief system which goes beyond that which can be perceived by the senses or ascertained by the application of science. I prefer not to use the word “supernatural” to express this element, because it is a loaded word which can carry a variety of connotations. Such a belief system may or may not involve belief in a supreme being, but it does involve a belief that there is more to be understood about mankind's nature and relationship to the universe than can be gained from the senses or from science. I emphasise that this is intended to be a description and not a definitive formula.”

The parties provided their submissions on the High Court judgment. We did not seek further submissions from the parties in the light of the Supreme Court's judgment given the acceptance in that judgment of the guidance afforded by the *Payroll Tax Case* which had commended itself to Ouseley J.

121. None of these judgments require worship to be a necessary part of the practice of religion or treat it as an indicium of religion.

122. It seems to us that these judgments, read as a guide to the meaning of "religious" in an English statute, and when taken with the views expressed by Lord Bingham in the context of the Convention, are the best available guide to the meaning of "religious" in Article 132.

123. Miss Shaw says that in order for a body to have aims of a religious nature it must aim to practise or promote religion. She says that in contrast, Freemasonry does not exist to advance, teach or preach a religion. However, it seems to us that UGLE's aims do include the promotion of Freemasonry and the teaching of its concepts: it would not "survive" if it were not promoted and its concepts not taught in the lectures and ceremonies. Thus if Freemasonry were properly classified as a religion for the purposes of Art 132, then UGLE would have some aims which were of a religious nature.

124. Mr McGurk says that the practice of ritual cannot be described as canons of conduct. We agree that the mere conduct of ritual does not constitute a religion, but ritual of some form is an activity which suggests religion, and if it inspires or is aimed at the acceptance of serious canons of conduct, that weighs in favour of its being a religion.

125. The Grand Principles of Freemasonry are intelligible and concern important matters. They are taught in the language of allegory and metaphor. There is belief in the supernatural. Many of the descriptors used by Lord Bingham are present.

126. But if one tests Freemasonry against Mason ACJ's and Brennan J's criteria: belief in a supernatural being and the acceptance of conduct to give effect to that belief, it seems that Freemasonry –just- falls short. That is because (i) as we understand those criteria the supernatural being is the same for all adherents, whereas the nature of the supernatural being accepted by Freemasons may differ according to their particular faith; and (ii) the canons of conduct promoted by Freemasonry are freestanding and not adopted to give effect to the belief.

127. We say "just" because if religion does not demand a belief in a superior being the lack of belief in a single being, and the lack of purpose for the canons of behaviour cannot disqualify a system of belief from being a religion.

128. Of the indicia adopted by Wilson, Murphy and Deane JJ, Freemasonry possesses many, but notably does not possess the quality of proclaiming itself a religion, indeed the opposite.

5 129. Freemasonry also seems to us to fall just short of Lord Toulson's description of a religion. Whilst Freemasonry requires belief in a supreme being and teaches its adherents how to live their lives, that rule of life did not, on the evidence before us, arise in conformity with a spiritual understanding, but by reason, in part through ritual, of a code of behaviour. Its moral system did not
10 arise from and was not adequately connected with a non secular or spiritual understanding of man's relationship with the universe.

130. We conclude, with some hesitation and on balance (and subject to the last sentence of the penultimate paragraph of the next section), but no doubt to the relief of both parties, that the aims of UGLE do not include any significant aims of a religious nature.

15 *Aims of a Philosophical Nature*

131. The Concise Oxford English Dictionary defines "philosophical" as

(1) "1. of or according to philosophy, 2. skilled in or devoted to philosophy or learning; learned. 3 wise serene or temperate. 4 calm in adverse circumstances; and "philosophy" as:

20 (2) 1. the use of reason and argument in seeking truth and knowledge of reality...2a.a particular system of beliefs or set of beliefs reached by this. b a personal rule of life. 3 advanced learning in general. 4 serenity, calmness."

25 132. Miss Shaw says that the Three Grand Principles are a personal rule of life, a philosophy of life; and that following those principles is the aim of Freemasonry as shown by the activities and aspirations of Freemasons as such.

30 133. Mr McGurk suggests that by an organisation with "philosophical" aims is meant a body whose object is to discuss and investigate philosophy. Put another way he says that philosophy is thinking about thinking, or is rationally critical thinking about the nature of the world or the justification of belief, not a rule of conduct.

35 134. He says that even if "philosophical" is intended to permit the inclusion of bodies whose objects pertain to a particular system of philosophy, the Three Grand Principles cannot be said to be components of a system of philosophy because they are common to almost all civilised normative systems – there is nothing about them which is unique to Freemasonry. Had he put it another way in another country he might have said that motherhood and apple pie is not a philosophy.

135. Lord Denning in *R v Registrar General ex parte Segerdal* [1970] 2QB 697 considered that scientology was "more of a philosophy...rather than a religion".

Its services were instructions on philosophy. Although Lord Denning was not construing an EU Directive, this gives us some comfort that the meaning of philosophy as a rule of life is not rare or arcane and is a potentially fair meaning of the word.

5 136. In the context of para (l) it seems to us that “philosophical” can fairly bear the meaning of appertaining to a rule of life. “Philosophical” lies alongside “religious” and “political”, each of which is concerned with the holding of beliefs and conforming conduct.

10 137. Further, if “religion” has a meaning which requires some belief in one or more deities or that its practitioners must accept it as a religion or a code of conduct which flows from the numinous, the right to freedom of thought, conscience or religion would suggest that the Directive would not discriminate against cogent and serious belief systems which lacked deities or self-referential description by excluding them from exemption (see Lord Bingham cited above).

15 138. We also note the formulation adopted by the ECHR in *Campbell and Cosans v UK* 7511/76; 7743/76, that in the context of the human rights Convention “philosophical convictions” denoted such convictions as were worthy of respect in a democratic society and were not incompatible with human dignity.

20 139. We conclude that a body whose aims are to promote or practice a rule of life is capable of having philosophical aims for the purpose of Art 132(1)(l).

25 140. But in order for a rule of life to qualify it must be possible to say that there is some public interest in the exemption. In the case of a belief system it seems to us that the public interest lies generally in enabling freedom of belief and the public interest requirement would act only to disqualify a plainly obnoxious system (see Lord Bingham’s examples) rather than to require a measurable public benefit.

30 141. Mr Humberstone’s evidence and much of the documentary evidence was that Freemasonry encouraged not only belief in the three Grand Principles but putting them into practice: “a system of belief...which offers a framework for the better regulation of our lives”. We accept that the Grand Principles are generally accepted norms of good behaviour, but that does not in our view prevent them from being a philosophy: the means of their expression, and the emphasis on putting them into practice was enough in our view to make them a philosophy. Poverty, Chastity and Obedience may be more exacting, but love, charity and integrity do not come easily to most of us. Nor was there in the evidence before us anything which suggested that this was in any way an obnoxious system which was against the public interest.

40 142. The absorption into a Mason's conduct of the Grand Principles may be called self-improvement. Those two words give the impression of something inward looking and without public benefit. But the internalisation of any moral principles may be so regarded, and we do not consider “philosophical” as

requiring proof of the benefits of the acceptance of a particular rule of life. Further the clearly expressed desire to promote Freemasonry and to permit it to survive seen in the speeches of the Grand Master indicates to us a proselytising of the code to others - something which was not wholly inward-looking.

5 143. We concluded that the aims of UGLE included aims of a philosophical nature. If we have misinterpreted the meaning of “philosophical” we would have found that “religious” was wide enough to encompass the tenets of Freemasonry.

10 144. Whilst greater emphasis may have been placed on the charitable aspect of its philosophy in recent years we detected no change in the relative importance of UGLE’s aim of promoting the teachings of Freemasonry over the period since 1977. If anything it had been displaced somewhat by the aim of promoting charitable actions.

Aims of a Philanthropic Nature

15 145. In *RIBI* the tribunal said this of the meanings of “philanthropic” and “philanthropy”

“Philanthropy is given this meaning in the Shorter Oxford Dictionary:

“Love towards mankind; practical benevolence towards men in general; the disposition to promote the well-being of one’s fellow men.”

20 “Philanthropic means “Characterised by philanthropy; benevolent, humane”, The Oxford dictionary gives the same meaning and additionally “actuated by love of one’s fellow men”. In *Re McDuff* [1986] 2 CH 451 ...Stirling J said that

“an act cannot be philanthropic unless it indicates goodwill towards mankind at large.”

At page 464 Lindley LJ could not put any definite meaning on the word:

25 “All I can say is that a philanthropic purpose must be a purpose which indicates goodwill towards mankind in general” ”.

30 146. Neither party dissented from these interpretations. It seems to us that, particularly in view of the requirement that the exemption have a public interest, that acts which are intended to benefit only a defined class rather than mankind in general may not be, or be wholly, philanthropic, particularly if that class is small.

147. But we accept that one of the fundamental responsibilities of Freemasonry is the provision of time and money for relief. The practice of Relief is in our view an aim of Freemasonry. We accept that UGLE's aims therefore included the promotion of this practice.

35 148. We also accept that in practice Freemasons devoted substantial amounts of time and money to charitable works and that UGLE assisted, directed and promoted such activity.

149. Thus we find that Relief was an aim of UGLE. The question is whether or to what extent that aim was philanthropic.

150. The provision of time to good causes (unrelated to Freemasonry in any way) was in our view a philanthropic activity: it was benevolence towards mankind in general. Its encouragement by UGLE proclaimed a philanthropic aim.

151. Whilst it has been accepted that the objects of UGLE's charities were such as to make them charitable at law, we had some concern that, because of the actual distribution of funds by the charities, the objects of Masonic contribution to the charities, and UGLE's administration of them, might display – at least to some extent – a principal purpose of benefitting fellow masons or the dependents of fellow masons and thus not to that extent indicate goodwill towards mankind in general, but to a particular subset of mankind. The intimate involvement of UGLE's officers in the direction of the charities indicated that UGLE's aim was to encourage charitable donation for the purposes in which the charities' funds were expended. And if the object of the contributions was not wholly for the general benefit, the object of UGLE in promoting those contributions might not be wholly philanthropic.

152. Some 25 or 30% of charitable monies was expended on persons without any Masonic connection. If, as seems to us to be the case, that division of distributions was the expectation of UGLE, then at least to that extent there was a philanthropic purpose.

153. Some 50% of charitable monies were expended on the dependents of masons, although there was some indication that it may have dropped to this level when the welfare state assumed greater responsibility for ill fortune. There are some 1 million dependents of masons. It seems to us that such a number of potential beneficiaries permits one to say that there was benefit to mankind. But if the gift was encouraged with some measure of expectation that the charities would provide for the donor's own dependents² should the need arise at some time in the future, the object of the gift, and its encouragement, may have a sufficient touch of self interest to prevent it from being philanthropic. If what was promoted was giving which was not philanthropic it seems to us that to that extent UGLE's aims were not philanthropic.

154. The remaining 25% of the charitable spend was on masons. The same reasoning applies but with greater force. It is not that benefitting others who happen to be masons does not display goodwill towards mankind in general, but that if that is coupled with a hope or expectation of personal benefit, some of the aim loses that quality of benevolence. To the extent monies were paid with the hope or expectation of self-insurance their payment does not seem to us to be an act of philanthropy, and the aim of encouraging such giving does not appear to be a philanthropic aim.

² See also "interests of the family are paramount" in the quote from the booklet earlier in the decision

155. But any expectation of future benefit, if there was such, must have been limited. For there could be no certainty of benefit since the availability of funds would depend on the actions of other masons in the future.

5 156. Overall we consider that not all of UGLE's promotion of charitable giving can be treated as having a philanthropic aim.

10 157. It seemed to us that this was an area in which the evidence suggested there had been a change since the turn of the century. There was evidence that the Welfare State had to some extent taken the place of Masonic provision; this and the reorganisation of the charitable and benevolent funds, and the move towards an outward looking body of persons serving their communities suggested to us that the proportion of self interest may have declined since that time.

15 *Aims of a Civic Nature*

20 158. In *Expert Witness*, Chadwick LJ accepted that "civic aims" could mean or include aims "pertaining to citizenship" as well as to municipal affairs. In that case the object for which the Institute was incorporated was for the advancement of justice through fair and unbiased expert evidence. He said that the proper administration of justice was a "central element in the social contract between the state and its citizens" and held that the Institute fell within the exemption. Longmore LJ, responding to the suggestion that this made the definition impossibly wide, said that for a body to have aims of a civic nature:

25 "that body must have objects which promote the relationship of citizens, not among themselves, but with the state of which they are citizens."

159. Miss Shaw says that participation in a local community to build a better society is just as much part of the social contract as the administration of justice. Mr McGurk replies that it is the "relationship of citizens ...with the state" which is crucial to a civic aim.

30 160. We agree with Mr McGurk. By excluding relationships between citizens from the ambit of civic aims, Longmore LJ was not simply excluding social clubs, but bodies whose aims did not relate to the citizen's relationship with the state.

35 161. It seems to us that neither Freemasonry nor UGLE's activities have any substantial aim which relates to the relationship between the citizen and the state. The charitable activities of Freemasons were largely unrelated to any relationship of citizens with the state, the fellowship and ritual enjoyed by Freemasons had nothing to do with the state, and acceptance of, and living by, the three Grand

Principles touched only slightly on a person's relationship with the state. UGLE's coordination, regulation, encouragement and promotion of these activities involved or affected no separate relationship of citizens with the state.

5 162. The closest any of the evidence came to showing a civic aim was the statement in the Aims and Relationships enjoining obedience to the law and loyalty, and the charge read to new Lodge masters. To our minds these injunctions were about the relationship between individual Freemasons and the state rather than the relationship between citizens in general with the state (although they affected a substantial number of citizens) and thus were less
10 clearly of a civic nature. There was however little evidence that this requirement figured prominently in the activities of UGLE.

163. We conclude that at most only a small part of UGLE's aims were civic in nature.

15 164. We detected from the evidence before us no change in relation to the importance of this aim in the period since 1997.

Other Aims?

165. It seemed to us that the practice of Freemasonry also had social aims and aims of self-improvement. It was a "body of men brought together for intellectual social and moral improvement". It provided the benefit of Fellowship, in part
20 through the cohesive effects of shared ritual and some shared secrecy. There was also some evidence of an aim of self improvement in the learning and responsibilities undertaken. The evidence of the way in which Freemasons were prepared for and helped in the roles they performed, and some of the answers to the question Why become a Freemason? – see para 28ff above - supported the
25 impression given that the aims of Freemasonry were not limited to the pursuit of a rule of life, philanthropy and civic duty.

166. We have also noted the role of ceremony and ritual and UGLE's part in its regulation. Mr McGurk argued that "the practice of ritual is performative" while there may be value in doing or partaking in the practice, it is inward looking and
30 not done for the public benefit. We consider that to some extent ceremony and ritual can be an end in itself as well as a way of creating Fellowship or reinforcing the Masonic philosophy. We therefore find that some part of UGLE's aim was the promotion of Masonic ritual and ceremony.

Conclusion

35 167. We accept that included among UGLE's aims are those of a philosophical, philanthropic and, to some smaller extent, civic nature. But it has other aims as well.

40 168. It seemed to us that some of these other aims were aims in themselves and not simply insignificant or ancillary to the qualifying aims. It is true that social intercourse helps people pursue common goals, but common goals also bind

people together. Whether one serves the other is a question of degree. Our impression is that the relationship was not simply one of service to the qualifying aims.

5 169. To some extent also the pattern of the distribution of the charitable spend by the Masonic charities suggested to us at least the vestiges of mutual insurance – the care for masons and their dependents. Thus there was some element reflecting an aim of encouraging mutual benevolence, which we do not regard as wholly philanthropic.

10 170. The distinction between UGLE and *RIBI* is this. *RIBI*'s aim was to promote Rotary, and Rotary's aim was to foster service and acquaintance as an opportunity for service. UGLE's aims by contrast include service to the community but also in our judgment include fostering fellowship for its own sake and care for other masons.

15 171. Whether or not UGLE's aims fell within Art 132 (1)(l) therefore depended on whether these other aims were shown to be minor or ancillary to the qualifying aims..

20 172. It seems to us that in the period before 2000 they were not. In that period it appeared that Freemasonry had been more inward-looking and more concerned therefore with mutual benefit and mutual society. The evidence was not sufficient to conclude that the pursuit of those concerns was not a minor aim.

25 173. In the period after 2000 there was evidence that Freemasonry became more outward looking. We have described the evidence which indicated that Freemasonry was more open and willing to communicate its practices to the world at large and to reach out into the communities in a way it had not done before. But the evidence did not satisfy us that the aims of the encouragement of fraternity, self improvement and mutual care had become merely incidental or ancillary to the philanthropic, philosophical and civic aims of UGLE.

30 174. We therefore conclude that UGLE had a variety of different aims, some of which came within Article 132 and some of which did not. In our opinion, the aims which did not fall within the exemption were not insignificant and were of sufficient magnitude to cause UGLE to fall outside the words of the exemption in Article 132. Accordingly we dismiss the appeal.

Rights of Appeal

35 175. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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**CHARLES HELLIER
TRIBUNAL JUDGE**

RELEASE DATE: 3 February 2014