

# What is a 'sport'?

## The decision of the Charity Tribunal in the Cambridgeshire Target Shooting Association case

James Maloney | 04 May 2016

The First-tier Tribunal (Charity) (the **Tribunal**) recently decided not to recognise Cambridgeshire Target Shooting Association (**CTSA**) as a charity, agreeing with an earlier decision by the Charity Commission (the **Commission**).

While the case will be of particular interest to those involved in the sport of target shooting, it will also be of wider relevance to sports organisations seeking to understand what is required for registration as a charity under an "advancement of amateur sport" purpose.

### Background

Historically, some gun clubs were registered as charities, on the basis that teaching people to shoot promoted the security of the nation and the defence of the realm.

The Commission's review of the register in 1992-1993 determined that certain gun clubs were not charitable; in particular, those that existed only for civilian competition/recreational shooting, which the Commission believed had no connection with defence of the realm.

The Commission's review of the register *did* recognise as charitable "the promotion of community participation in healthy recreation by providing facilities". In 2003, however, the Commission's guidance RR11 "Charitable status and sport" stated that rifle and pistol shooting – along with angling, ballooning, billiards, pool and snooker, crossbow, flying, gliding, motor sports and parachuting – did not meet the Commission's criteria for "healthy recreation". The Commission did state at the same time that it would be prepared to consider an application from an individual club, if it believed it could demonstrate clear benefits to a participant's physical health.

The Charities Act 2006 introduced "the advancement of amateur sport" as one of the 13 descriptions of charitable purposes. Section 2(3)(d) of the 2006 Act defined sport as "sports or games which promote health by involving physical and mental skill or exertion." This is now section 3(2)(d) of the Charities Act 2011. However no new guidance followed the 2006 Act.

“  
The Charities Act 2006 introduced "the advancement of amateur sport" as one of the 13 descriptions of charitable purposes.  
”

In 2011, the Commission registered Hitchin Bridge Club as a charity, deciding that it promoted health by involving mental skill or exertion. The Commission was persuaded by evidence identifying the health benefits of playing bridge, including a lower risk of Alzheimer's disease and other types of dementia.

As of March 2016, there is still no guidance from the Commission on the advancement of amateur sport. Consultation questions were issued in 2011, but there was no follow-up to the consultation, and no draft guidance emerged. So RR11, which has been out of date for almost a decade, remains the Commission's latest published guidance on charitable status and sport.

### **The application**

CTSA is an unincorporated association that applied to be registered as a charitable incorporated organisation.

CTSA acts as a county association. It administers shooting leagues and organises competitions and events. It manages a shooting facility that is hired out to clubs and their members. It provides free coaching and support to clubs and individuals, with a particular focus on young people and those with disabilities.

### **The Commission's decision**

On the evidence presented, the Commission considered that target shooting *did* involve physical and mental skill or exertion.

However, the Commission was not satisfied (on the basis of the evidence) that shooting could be said to *promote health*. While it was necessary to be physically and mentally fit to progress and achieve success in target shooting, the Commission concluded that there was a distinction between the training undertaken to improve fitness (which could lead to success in shooting) and the benefit from shooting itself.

The Commission therefore refused to register CTSA.

### **Appeal to the Tribunal**

CTSA appealed to the Tribunal and, at the time of the hearing in September 2015, there was a list of agreed issues between the parties:

1. What was the physical or mental skill or exertion involved in target shooting?
2. What was the meaning of "promote health" in section 3(2)(d)?
3. What was the extent to which the physical or mental skill or exertion involved in target shooting promotes health, taking account of the expert evidence available?

Question 3 was particularly important, and CTSA listed a number of physical and mental aspects involved in various kinds of target shooting (in different ways, depending on the type of shooting).

CTSA asked the Tribunal to look at the forms of target shooting "holistically", drawing an analogy between the more sedentary forms of shooting, and a coxswain in the sport of rowing, or someone fielding in the outfield in the sport of cricket.

CTSA also adduced some scientific evidence of benefits to health.

### **The Tribunal's decision**

In December 2015, the Tribunal upheld the Commission's decision.

The Tribunal found that the activities involved in target shooting were varied, and some (namely prone shooting and bench shooting involving rests) did not involve any physical skill or exertion. These formed a material part of CTSA's activities.

The Tribunal rejected the rowing/cricket analogy, concerning more sedentary types of target shooting; unlike rowing or cricket, there was no necessary connection between those who engaged in shooting that involved running and firing, and those who took part in less strenuous kinds of shooting.

Although there was evidence that some health benefits would arise in the case of someone moving to target shooting from no activity at all, the Tribunal determined that "more must be shown than that it is better to get out of one's armchair in order to drive to a bench on the shooting ground, than merely to remain in that chair."

The Tribunal was similarly unpersuaded by the evidence on mental skill or exertion. It compared the relative paucity of evidence with the body of research evidence on mental health adduced by Hitchin Bridge Club.

While there was some evidence to show that elite air pistol shooters had improved "neural efficiency", better concentration and improved reaction times, this could not be said to relate to target shooting as a whole.

While CTSA had adduced evidence of the *social* benefits of target shooting, these did not amount to *health* benefits.

The Tribunal was also not persuaded by comparisons between archery (recognised as a sport that promotes health for the public benefit) and croquet (the Commission has accepted a croquet club as charitable) as no evidence was provided to support these

comparisons.

The Tribunal considered that the promotion of health means "improvement in general health, including physical and mental wellbeing" and "the physical or mental activity under scrutiny must be more than 'effort'; it must amount to 'skill or exertion'".

Public benefit was not expressly considered, as CTSA was not able to show that its purposes fell within the definition of "the advancement of amateur sport".

### Implications

Evidence will be important for any organisation wishing to be recognised as charitable under an "advancement of amateur sport" purpose where the sport in question has previously been determined by the Commission as not meeting its criteria for "healthy recreation".

The judgment held that the Tribunal "should not lightly reach findings... in respect of activities for which the science base is less than robust" and it "needs to be satisfied that the evidence relied upon possesses quality and cogency" – and here a comparison with Hitchin Bridge Club's application is instructive.

The judgment also acknowledged that the requirement can vary from sport to sport, depending on whether there is a connection with other sporting activities that are plainly similar. If there is not, it is reasonable to expect some empirical scientific evidence for making the connection.

In the meantime, some target shooting charities remain on the register with "defence of the realm" objects.

If you require further information on anything covered in this briefing please contact [James Maloney](#) [james.maloney@farrer.co.uk](mailto:james.maloney@farrer.co.uk); 020 3375 7114) or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Charities](#) page on our website.

This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances.  
© **Farrer & Co LLP**,  
**May 2016**