



Supreme Court Judgment in *Lehtimaki v Childrens Investment Fund Foundation*

Today's Supreme Court judgment in CIFF (*Lehtimaki v Childrens Investment Fund Foundation*) will take some time to digest. It is important to note at the outset that the Court expressly refrained from deciding the implications of the case for mass-membership charities. Subject to that, the key points are:

1. Members of charitable companies owe fiduciary duties to the charitable purposes of those companies. Those duties can be limited by the company's articles, and may not apply for all purposes. However, there is an irreducible duty to exercise their powers honestly and in good faith in the best interests of the charity. Membership charities will clearly need to review their governing documents in light of this decision.

2. The court's jurisdiction with respect to charities is wider than its jurisdiction with respect to trusts, and this greater width is not just because of the jurisdiction to make schemes. It is also wider than the Charity Commission's. In exceptional cases such as



those in CIFF, in accordance with an exception to the principle of "non-intervention", the court could direct a charity fiduciary how to vote. The precise scope of the court's jurisdiction, however, has not been resolved.

3. However, a majority of the Supreme Court preferred to hold that Dr Lehtimaki would be in breach of fiduciary duty by voting otherwise than as the Chancellor had decided. This involved the application of an objective rather than subjective test for breach of fiduciary duty - the ordinary subjective test did not apply where the court's decision left no doubt what the best interests of the charity required.



4. The provisions of the Companies Act 2006 (in particular s.217, requiring payment for loss of office to be approved by members' resolution) did not exclude the court's jurisdiction to decide how Dr Lehtimaki should vote.

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Year of Call: 2004