



Appeal number: CA.2021.0013

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(CHARITY)**

MERMAIDS

Appellant

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

**First
Respondent**

- and -

THE TRUSTEES OF LGB ALLIANCE

**Second
Respondent**

DIRECTIONS

UPON the Tribunal receiving a Notice of Appeal on 1 June 2021;

AND UPON the Trustees of LGB Alliance having made an Application to intervene pursuant to rule 33(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended;

AND UPON the Trustees of LGB Alliance having made representations as to the wider conduct of these proceedings;

IT IS DIRECTED THAT:

Joinder

1. The Trustees of LGB Alliance (“LGB Alliance”) are made a party to this appeal as Second Respondent. This is because LGB Alliance have a clear interest in the outcome of these proceedings, and because it is apparent from correspondence that they wish to make representations beyond those generally expected from an intervener.
2. Pursuant to rule 5(3)(a) and in order to avoid undue delay, the Tribunal has shortened the time allowed for the service of consequential pleadings. Any request for an extension of time, other than a request relating to final skeleton arguments, will be agreed by the Tribunal provided it is a first application, is agreed by all parties, and is for a period of no longer than 14 days.
3. Tribunal staff should, by **5pm on 24 September 2021**, send LGB Alliance a copy of all documents and correspondence submitted by the parties to date.
4. The LGB Alliance must respond to the appeal pursuant to rule 27 by **8 October 2021**.
5. Mermaids may issue a further rule 28 Reply, should it wish to do so. This must be served by **22 October 2021**.
6. The Charity Commission may thereafter respond to any new matters raised. Any further pleadings by the Charity Commission must be served by **5 November 2021**.

Preliminary Issues Hearing

7. LGB Alliance has suggested that the issue of standing should be resolved by way of a Preliminary Issues Hearing for reasons of cost. However, these representations were made without the benefit of LGB Alliance having seen the pleadings of the other parties, who do not support this position.
8. The Parties should set out in writing their final views as to whether a preliminary hearing is required by **19 November 2021**.
9. The Tribunal will determine any application for a Preliminary Issues Hearing on the basis of written representations.

Disclosure

10. LGB Alliance objects to a Direction agreed between Mermaids and the Charity Commission, which allows Mermaids to share documents from these proceedings with the Good Law Project and the LGBT Consortium. LGB Alliance's objection is based on social media posts by the Executive Director of the Good Law Project, and questions why Mermaids require the assistance of these organisations in addition to its existing legal representation.
11. It is not generally appropriate to require a detailed explanation from a party of why they intend to approach a named individual with a request for assistance with the preparation of their case. However, given the concerns raised by LGB Alliance, I am satisfied that it is appropriate to make an Order restricting the disclosure and publication of documents obtained in the course of these proceedings. Such an Order serves to reinforce the implied undertaking at common law that documents disclosed in the course of litigation will only be used for the purposes of the litigation concerned, the application of which to proceedings of this nature was confirmed by the Upper Tribunal in *DVLA v Information Commissioner and Williams (Rule 14 Order) [2020] UKUT 310 (AAC)*¹.
 - i. Pursuant to rule 14(1), all documents provided to the Parties in the course of these proceedings are prohibited from disclosure or publication, other than to named individuals and on receipt of a signed undertaking as to confidentiality.
 - ii. The Parties must provide the Tribunal and other parties with a list of the documents shared with 3rd parties and the names of those from whom undertakings were received in return.
 - iii. This Order will remain in force until the conclusion of proceedings.
 - iv. This Order does not extend to a Party's own documents.

Listing

12. The substantive hearing of this appeal will be listed for a 2-day, face to face hearing in London.
13. The Parties must send the Tribunal a list of any dates during the period 28 February – 27 May 2022 when they, their representative or any witnesses will not be available to attend such a hearing, by **5pm on 1 October 2021**.

¹https://assets.publishing.service.gov.uk/media/5fb4e60a8fa8f54ab280c7dc/GIA_779_2019_rule_14_Order.pdf

14. Should the Tribunal determine in due course that a preliminary hearing is required, this will be the subject of further Directions.

Witness statements

15. By **5pm on 19 November 2021** Mermaids must serve on the Respondents any written witness statements on which it wishes to rely at the hearing, or must confirm that it will not be calling witness evidence.
16. By **5pm on 10 December 2021** the Respondents are to serve on Mermaids any written witness statements on which they wish to rely at the hearing, or must confirm that they will not be calling witness evidence.
17. If witness statements refer to any documents in the bundle, they should give the bundle reference.
18. The witness statements (which must contain a statement of truth) are to stand as evidence in chief at the hearing, although supplementary questions may be asked with the permission of the Tribunal. No Party is to call any witness in respect of whom a written statement has not been exchanged without the Tribunal's permission.
19. Each Party is to notify the other if they wish to cross examine any witness in respect of whom a statement has been filed by **5pm on 29 December 2021**

Agreed bundle of documents

20. The Parties are to use their best endeavours to agree the contents of a bundle of documents for the Tribunal hearing in accordance with the arrangements set out below:
 - i. The first draft of the index to the hearing bundle is to be prepared by Mermaids and served on the Respondents by **5pm on 5 January 2022**;
 - ii. By **5pm on 12 January 2022**, the Respondents are to notify Mermaids whether there are any additional documents in their possession that they wish to add to the bundle.
 - iii. All Parties must supply a copy of any relevant document to the other parties if requested;
 - iv. A consolidated version of the bundle is to be prepared by Mermaids and forwarded to the Respondents by **5pm on 26 January 2022**.

Lodging of bundles with the Tribunal

12. A final version of the hearing bundle, to include any witness statements and any exhibits, is to be prepared by Mermaids. The bundle will be provided by electronic means only and will be with the Tribunal no later than **5pm on 4 February 2022**.

Skeleton arguments

13. Statements of Case (skeleton arguments) are to be dealt with as follows:

- i. Not less than 21 days before the final hearing, Mermaids will send its skeleton argument to the other parties and the Tribunal.
- ii. Not less than 7 days before the final hearing, the Respondents will send their skeleton arguments to the other parties and the Tribunal.

14. The Parties are to use their best endeavours to agree a chronology, a schedule of agreed facts and a list of issues to assist the Tribunal. The Appellant shall serve a first draft of these documents. To the extent that they may be agreed, these documents must be sent to the Tribunal no later than 7 days before the final hearing.

Bundle of authorities and statutory materials

15. The Parties are to use their best endeavours to agree a bundle of authorities and statutory materials. The authorities bundle must contain only those authorities specifically referred to in the skeleton arguments. The Charity Commission is to send a final electronic copy of the authorities bundle to the other parties, and lodge it by electronic means with the Tribunal, by no later than 5pm on the date 3 days before the hearing date.

Tribunal Judge Moira Macmillan

Dated: 23 September 2021