



Appeal number: CA.2021.0008

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

**Jacob Boruch Wolff, Ruth Wolff and Yehudoh Aryeh Lobenstein
(Trustees of the Charity Teshuvoh Tefilloh Tzedokoh, registered number 1099567)
Appellants**

-and-

**The Charity Commission for England and Wales
Respondent**

BEFORE

DDJ Rebecca Worth (authorized to sit as a Tribunal Judge in the GRC),

DECISION and REASONS

1. The Tribunal considered:
 - 1.1. The Charity Commission's Order and accompanying letter, each dated 30 March 2021;
 - 1.2. Case Management Directions dated 22 April 2021, 10 May 2021 and 02 June 2021;
 - 1.3. Strike out Application by the Charity Commission dated 19 August 2021;
 - 1.4. Appellants' Representations against strike out sent by email on 27 August 2021.

Background

2. Teshuvoh Tefilloh Tzedokoh ("the Charity") is a registered charity (number 1099567).
 - 2.1. On 14 January 2019 a case was opened by the Charity Commission into the Charity due to regulatory concerns and, on 18 June 2019 a report was prepared by the Charity Commission's accountancy team identifying,

according to paragraph 9.2 of the Charity Commission's strike out application, "several serious regulatory concerns".

- 2.2. On 30 March 2021 the Charity Commission made an Order under sections 52(1)(A) and 52(1)(b) of the Charities Act 2011 which required the Trustees to provide documents and information to the Charity Commission, the information was divided into 20 categories with numerous sub-sections. The Trustees were required to provide all the information by 27 April 2021.
- 2.3. The Charity Commission, also on 30 March 2021, wrote to the Trustees asking that:
 - 2.3.1. If any of the meeting minutes and documentation requested at point 1 of the Order are not available an explanation why this is the case.
 - 2.3.2. If no documentation is available to evidence who makes decisions about expenditure from charity bank accounts provide details of who makes decisions on this expenditure.
3. By Notice of Appeal dated 15 April 2021, proceedings were lodged at this Tribunal to appeal against the 30 March 2021 Order and named the Charity as the appellant; following directions it was clear that the Trustees of the Charity were, in law, the persons who had the right to appeal against the Order. On 10 May 2021, Case Management Directions were issued substituting the above-named Trustees as Appellants and requiring the Charity Commission to respond to the appeal by 10 June 2021.
4. On 26 May 2021 the Charity Commission wrote to the Trustees to extend the date for compliance so that compliance was to take place by 25 June 2021. That offer was accepted on behalf of the Appellants although they stated that they considered the new timescale was "unreasonable".
5. Parties agreed for the proceedings to be stayed until 25 June 2021, but the Tribunal refused to stay the proceedings and, on 02 June 2021 required the Trustees to confirm whether they are continuing the proceedings or withdrawing them and, if the proceedings were not withdrawn, then the date for the Charity Commission's response was 15 July 2021.
6. The Charity Commission agreed to a further extension of time to comply with the 30 March 2021 Order, extending the time to 02 July 2021. Parties again asked for a stay of the proceedings, and, on 15 July 2021, the Tribunal made Case Management Directions requiring the Appellants to inform the Charity Commission and the Tribunal by 01 September 2021 whether they were continuing the proceedings or withdrawing them – effectively giving the additional time requested by the Appellants.
7. On 02 July 2021 the Charity Commission received a USB stick which the Appellants stated contained the "majority" of the information (the rest was to follow).

8. On 19 August 2021 the Charity Commission. applied for strike out of the appeal.
9. The Appellants made representations about the strike out application by email sent on 27 August 2021 at 12:39:30 p.m.

The Law

10. Section 52 of the Charities Act 2011 provides (where relevant) as follows:

52 Power to call for documents

- (1) The Commission may by order—
 - (a) require any person to provide the Commission with any information which is in that person's possession and which—
 - (i) relates to any charity, and
 - (ii) is relevant to the discharge of the functions of the Commission or of the official custodian;
 - (b) require any person who has custody or control of any document which relates to any charity and is relevant to the discharge of the functions of the Commission or of the official custodian—
 - (i) to provide the Commission with a copy of or extract from the document, or
 - (ii) to transmit the document itself to the Commission for its inspection (unless the document forms part of the records or other documents of a court or of a public or local authority).
- (2) The Commission is entitled without payment to keep any copy or extract provided to it under subsection (1).

....

Grounds of appeal

11. The Grounds of Appeal centre on the length of time the Trustees were given to comply, arguing that giving 4 weeks to comply during which the Trustees was insufficient time for various reasons, including:

11.1. Due to the Trustees celebrating the Jewish Festival of Passover, they did not see the Order until 05 April 2021.

11.2. The amount of information required was extensive.

11.3. The information went back some years and, therefore, more time was needed to find it.

12. The outcomes sought were:

12.1. A reasonable extension to be able to provide the information.

12.2. A possible reduction in the volume of queries.

Strike out application

13. The strike out application by the Charity Commission argues:

13.1. The Charity Commission have already amended the original Order by agreeing a compliance date of 25 June 2021 and then 02 July 2021. The appeal is either academic or has no reasonable prospect of succeeding because, due to the proceedings being on-going from April to now, the Trustees have been given the additional time they sought.

13.2. The Trustees have not detailed their position as to the “possible reduction” in any submissions or documents lodged with the Tribunal or in correspondence with the Charity Commission and in any event it was reasonable to ask for a 6-years’ worth of documents.

14. The Appellants’ representations about the strike out are, in summary:

14.1. The Charity Commission’s actions were heavy handed and threatened court action for non-compliance.

14.2. The Trust is manned by volunteers and has “no accounting function”.

14.3. The deadline in the Order of 30 March 2021 was short and over a Jewish Festival.

14.4. The majority of the evidence has now been sent, with no feedback being received about what was provided, further information was to be provided in early September 2021.

14.5. The Appellants was the Tribunal to grant a further extension for their final submission as Jewish Festivals take up most of September.

14.6. The Appellants “used the Tribunal as a defence against the Respondent to ensure the trustees are not bullied by the Respondent once again”.

Consideration

15. I will consider the application by dealing with the Appellants’ representations as summarised at paragraph 14.

15.1. The Charity Commission’s action: The Tribunal does not supervise the Charity Commission’s conduct. The Tribunal is, therefore, unable to enter

into consideration of whether the Charity Commission was, or was not, heavy handed in respect of the documents required for production. It was entirely appropriate for the Charity Commission to set out the potential consequences of non-compliance, after all the Charity Commission could not assume that the Trustees had read the Charities Act 2011 and therefore knew what may happen if they failed to comply with the Order.

- 15.2. The Trustees are volunteers and there is “no accounting function”: most persons who act as Trustees are volunteers. When such persons agree to being Trustees, they then have to take on the responsibilities expected by Parliament, which includes being accountable to the relevant regulatory body, namely the Charity Commission and being accountable to those who donate funds to the Trust by properly managing the funds gifted and being able to explain where that money has been spent and why. The statement that there is “no accounting function” seems to overlook the need for the Trustees to properly account to those who donate to the Charity for the donations received.
- 15.3. The deadline was, in fact, extended by the Charity Commission on two occasions – firstly to 25 June 2021 (just shy of 3 months’ additional to the original 4 weeks), then to 02 July 2021 which gave just under 3 months from the date the Trustees say they first became aware of the Order.
- 15.4. Information has now (at least in majority) been provided: it is questionable why the Appellants continue to pursue these proceedings when they have now complied with the Order, at least in the majority. These proceedings cannot consider whether there has been compliance (that is a matter for the courts), all these proceedings could do (see Schedule 6 of the Charities Act 2011) is quash the Order of 30 March 2021 (which would be opposed by the Charity Commission and not even sought by the Appellants) or substitute for all or part of the Order any other Order which could have been made by the Charity Commission.
- 15.5. Extension to be until after September: this decision a out strike out is being made in November 2021; therefore the Appellants have had the whole of October to provide the final information or an explanation for why they have been unable to provide it.
- 15.6. The use of the Tribunal as a defence mechanism: the Tribunal’s decisions are only binding on the parties to an appeal and only for the purposes of that appeal. It is not understood how the Appellants could, within the law, believe that these proceedings could influence the future relationship between them (or any other trustees of the Trust) and the Charity Commission.

Conclusion

16. I summarise the information required under the 30 March 2021 Order as: the minutes of meetings, accounting documents about income and expenditure (including reasons for specific items of significant amounts of expenditure), the

charity's financial control policies, information about involvement in property syndicates and the charity's investments.

17. Much of the information should have been immediately accessible by the Trustees, particularly the minutes of all Trustee meetings. Also, accounting documents should have been immediately available and the financial control policies. If those items were not immediately available, the Appellants could have immediately provided a reason why (as per the Charity Commission's letter). Whilst I accept that perhaps some of the detail information would have taken more time to find, it is my view that even that should have been able to be provided by 02 July 2021.
18. Overall, the appeal has, in fact, achieved the main wish of the Appellants: to get more time to provide the information. They have, through these proceedings, obtained an agreed extension of 12 weeks and 5 days (to 02 July 2021) and, in practical terms, obtained an additional 6 months to provide all the information the Charity Commission required them to provide by 27 April 2021. If by now, they have not managed to either provide all the information or an explanation of why they are unable to provide it, I am doubtful that they will ever provide the information required or an explanation.
19. The second part of the appeal – the “possible reduction” in the amount of information to provide – is not set out sufficiently for the Tribunal to understand what part(s) they believed, on lodging the appeal, should be excluded from the Order and even now the Appellants have not set out what they believe the Order should (and should not) have required of them. It is for the Appellants, as the persons who seek to overturn the relevant Order, to clearly set out what they believe it wrong with the original Order and what Order should be made in its place (it seems that the Appellants do not seek quashing of the Order).

Decision

20. For all the reasons set out above, and pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, I strike out the appeal as having no reasonable prospect of succeeding.

DDJ Worth

Deputy District Judge Worth, authorised to sit as a Tribunal Judge in the GRC

Dated: 15 November 2021