FIRST-TIER TRIBUNAL (CHARITY) **Appeal No: CA/2015/0003**

GENERAL REGULATORY CHAMBER

THE STEADFAST TRUST **Appellant**

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES **Respondent**

RULING ON APPLICATIONS AND DIRECTIONS

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in public at Fox Court on 19 May 2016

Upon hearing from Ben Jaffey of Counsel for the Respondent (in the hearing room) and Jane Philips, trustee (on the telephone) for the Appellant

IT IS DIRECTED AS FOLLOWS:

Issue for the Tribunal

1. The issue for the Tribunal is whether it would, on the basis of the evidence before it, exercise the statutory power under s. 34 (1) (a) of the Charities Act 2011 to remove the Appellant from the Register of Charities.

2. The Tribunal will admit evidence and submissions relevant to the issue above only.

3. The Tribunal will not admit evidence and submissions directed towards proving that the Respondent acted *ultra vires*, in bad faith, with maladministration or motivated by a desire to racially harass the Appellants.

Agreed bundle of documents

4. The parties are to use their best endeavours to agree the contents of a bundle of documents to be used at the hearing of this appeal, in accordance with the arrangements set out below.

5. The first draft of the index to the hearing bundle is to be prepared by the Appellant and served on the Respondent by 5pm on 7 July 2016.

6. By 5pm on 21 July 2016, the Respondent is to notify the Appellant whether there are any additional documents in its possession that it wishes to add to the bundle and to supply a copy of any documents to the Respondent.

7. A consolidated version of the bundle is to be prepared by the Appellant and forwarded to the Respondent by 5pm on 4 August 2016.

Witness statements

8. By 5pm on 25 August 2016 the parties are to exchange with each other any written witness statements on which they wish to rely or to confirm that they will not be calling witness evidence. If the statements refer to any documents in the bundle, the relevant page numbers are to be given.

9. The witness statements are to stand as evidence in chief at the hearing, although supplementary questions in chief 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.

10. 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 15 September 2016. If no live witness evidence is to be called, the parties are by the same date to indicate whether they would consent to a paper determination of the appeal under rule 32 of the Tribunal's Rules. If live witness is to be called, the parties are by the same date to provide the Tribunal with an agreed time estimate for the hearing.

Disclosure of bundles to the Tribunal

11. A final version of the hearing bundle, to include any witness statements and any exhibits, is to be prepared by the Respondent and four copies are to be lodged with the Tribunal at least 7 days before the hearing date. A further copy is also to be brought by the Respondent to the hearing for use by witnesses (if any). A core hearing bundle, to include the pleadings and all witness statements, is also to be provided to the Tribunal by the Respondent in electronic form.

Written submissions

12. Written submissions are to be exchanged by the parties and lodged with the Tribunal, by e mail, in the following order:

13. The Parties are to file their written submissions no later than 14 days before the hearing date.

14. The Parties may reply to the other side's written submissions and make any additional submissions of their own no later than 7 days before the hearing date.

Bundle of authorities and statutory materials

15. The parties are to use their best endeavours to agree a bundle of authorities and statutory materials, in accordance with the arrangements set out below. The authorities bundle should contain only those authorities specifically referred to in the written submissions.

16. The first draft of the index to the authorities bundle is to be prepared by the Respondent and served on the Appellant no later than 14 days before the hearing.

17. The Appellant is to notify the Respondent of any additional authorities to be included in the authorities bundle no later than 7 days before the hearing. The Appellant shall send copies of the additional authorities to the Respondent at the same time.

18. A consolidated version of the authorities bundle is to be prepared by the Respondent and forwarded to the Appellant no later than 5 days before the hearing date.

19. The index (only) to this bundle is to be sent by e mail to the Tribunal by no later than three working days prior to the hearing date and four hard copies are to be lodged with the Tribunal by the Respondent at the hearing.

Final Hearing

20. The Final Hearing will take place in London at the earliest available date after 14 November 2016. It is currently estimated that the hearing will last 1 day.

21. The parties are to provide the Tribunal by 7 July 2016 with their non-available dates to attend a hearing within the period 14 November 2016 to 30 December 2016.

Variation/Further Directions

22. The parties have permission to apply to vary these directions provided that such application is in writing setting out the full reasons for the application and (where applicable) before the time limit for complying with the direction has been reached.

23. The Appellant may make a rule 14 application in relation to these Directions within 14 days of the date appearing below.

24. The parties may apply for further directions only by adopting the following procedure:
    a. An outline of the proposed application (on no more than one side of A4) is to be served on the Tribunal and copied to the other party;
    b. The Tribunal will rule, within 7 days of receiving the outline, whether a full application may be made and, if so, set a timetable for a full application to be made and for the filing of a response to it by the other party. If the Tribunal refuses to accept the application full reasons will be given.

Correspondence with the Tribunal

25. Unless specified under The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, all written correspondence sent to the Tribunal must be copied to the other party or sent to the other party as soon as reasonably practicable.

RULINGS AND REASONS

Background

1. The Appellant's application to the Tribunal was made on 25 March 2015. This followed a decision by the Charity Commission that it no longer considered the Appellant to be a charity so that it must be removed from the Register of Charities.

The Issue for the Tribunal

2. The Charity Commission's decision which engaged the Appellant's right of appeal to the Tribunal was made pursuant to s. 34(1) (a) of the Charities Act 2011.

3. An appeal against the exercise of this power proceeds as a *de novo* appeal, that is to say that the Tribunal must consider the matter afresh (s. 319 (4) (a) Charities Act 2011). In this case it follows that the Tribunal must decide whether it would exercise the same power on the basis of the evidence before it. The Tribunal is not limited to considering the evidence which was before the Respondent when it made its decision (s. 319 (4) (b) Charities Act 2011).

4. The appeal is against the exercise of the statutory power and not against the Respondent's reasons given for having exercised the statutory power, whether in the decision letter or later in its pleadings to the Tribunal. Following a final hearing, the Tribunal could allow the appeal and exercise one of the discretionary powers listed in the relevant part of column 3 of Schedule 6 to the 2011 Act. Alternatively, it could dismiss the appeal on the same grounds as were relied upon by the Respondent in taking its decision, or dismiss the appeal on

different grounds from those relied upon by the Respondent. The burden of proof lies on the Appellant, who must satisfy the Tribunal on the balance of probabilities that it would not, on the evidence before it, exercise the statutory power to remove the Appellant from the Register of Charities in making the decision afresh. This is the sole issue for the Tribunal.

5. I have suggested to the Appellant that it might be helpful for it in preparing its case to address the statutory criteria for registration as a charity (ss. 1 – 4 Charities Act 2011) and thus to place before the Tribunal evidence and submissions to show how and why it says it still is a charity. This would involve advancing a positive case rather than trying to show that the Respondent acted wrongly. It might include filing evidence about how it operated during the time that it was on the Register. Clearly a key issue for the Tribunal (in view of the Respondent's stated grounds for removal) will be how the Appellant has in the past been able to identify its beneficiaries in developing its operational policies and procedures and it could explain to the Tribunal how it furthered it objects in practice. The test to be applied to the question of whether the Appellant is a charity is a mixed question of fact and law. The law is the law applicable as at the date the Respondent made the decision which gave rise to the right of appeal.

6. I have explained to the Appellant that the Tribunal, in making its fresh decision, is not concerned with allegations about whether the Respondent acted *ultra vires*, with bad faith, by maladministration, or whether the Respondent is (as has been alleged) engaged in racial harassment of the Appellant's trustees. Many of the Appellant's submissions to date have been concerned with these (and other such) issues, which seem to arise from a fundamental misconception about the jurisdiction of the Tribunal in this matter. I trust that the issue for the Tribunal to decide is now clear, and the Directions also make clear what evidence and submissions will and will not be admitted.

History of Case Management

7. In the year since the Appellant's initial application to the Tribunal was made, the Tribunal has engaged in substantial case management of the appeal as follows:

(a) I issued Directions on 17 April 2015 and ruled on a preliminary issue as to whether the appeal was made out of time on 26 May 2015 (ruling in the Appellant's favour);

(b) Judge Lane refused the Appellant permission to appeal against the Preliminary Ruling on 2 July 2015;

(c) Judge Lane held a telephone directions hearing on 18 November 2015 and issued Directions on the same date;

(d) He issued further Directions on the application of the Appellant on 2 December 2015;

(e) He issued further Directions on cross applications dated 5 February 2016, including directing an oral Case Management Hearing;

(f) He refused the Appellant permission to appeal against his Directions on 9 March 2016;

(g) The Tribunal has since received a substantial number of further applications from the Appellant, on which I rule below, having heard both parties' submissions at the oral Case Management Hearing on 19 May 2016.

8. Having perused the Tribunal's files carefully prior to the Case Management Hearing, I counted fourteen live interlocutory applications which have been made by the Appellant. Some of them were extremely lengthy. It was by no means clear whether all of these applications were still pursued by the date of the Case Management Hearing because the Appellant had submitted contradictory and confusing "lists of issues" to the Tribunal in advance of the hearing. However, the parties and I agreed that I should rule on all of the extant applications so as to "clear the decks" and move this matter forward to a final hearing as soon as possible. My attempt to draw a line under some of the issues has been made more difficult by the Appellant's representative's repeated e-mails to the Tribunal after the close of the hearing, and her continuation of this course of conduct even after she had been asked to desist. Eventually, I took the unprecedented step of asking the Tribunal staff not to forward to me any more of her e-mails and I confirm for the sake of fairness to the Respondent that I have not taken into account any of the representations made by the Appellant after the hearing had finished and in relation to which it did not have either notice or the opportunity to respond.

9. Some of the applications which the Appellant has made do not seem to me to fall squarely within the Tribunal's case management powers. Nor do they all appear to be aimed at furthering the case management objective of assisting the Tribunal to arrive at a determination of the issues before it in a way which is just and expeditious. I have issued Directions above which are aimed at allowing the Tribunal in the future to establish quickly whether any applications are within jurisdiction of the Tribunal before allowing them to proceed. I am satisfied that it is fair and just to make such a Direction and that it is in accordance with the proportionality requirement of the overriding objective, bearing in mind the time and cost to the parties and to the Tribunal which would be expended in dealing with any future new or repeated applications which are clearly without merit.

10. The Appellant has very recently informed the Tribunal that it does not meet the current

minimum income requirement for registration as a charity. It does not seem to me that this information deprives the Tribunal of jurisdiction in this matter, but I have encouraged the parties to discuss between themselves any implications that this information has for the future of the appeal. I am grateful to the Respondent for its helpful advice to the Appellant in this regard.

Rulings

11. The Appellant's first application was that made on 11 January 2016 in which it sought permission to advertise these proceedings to third parties. These proceedings are a matter of public record on the Tribunal's Register of Cases. There is no need for the Tribunal to give permission for them to be brought to the attention of any person by the Appellant. The application is refused as misconceived.

12. The Appellant's second application, also made on 11 January 2016, was for the Tribunal to invite the Equality and Human Rights Commission to intervene in these proceedings. The issue for the Tribunal, as set out above, is whether the Tribunal would exercise the power under s. 34 (1) (a) of the Charities Act 2011 to remove the Appellant from the Register of Charities if making the decision afresh. With the greatest of respect to the body concerned, I am not persuaded that the Equality and Human Rights Commission's views would be of assistance to the Tribunal in deciding the issue before it and accordingly I refuse the application.

13. The Appellant's third application was made on 21 February 2016 and took the form of an extensive application for disclosure of documents by the Respondent. The reasoned schedule which Judge Lane directed the parties to prepare in his Directions of 5 February 2016 eventually ran to some 45 pages of A4 paper. A supplementary application for disclosure was made by the Appellant on 3 May 2016. I rule on each specified disclosure application below, with the number in brackets relating to the number in the reasoned schedule before me.

14. (1) Respondent's internal guidance relating to the removal of charities from the Register on grounds of mistaken registration. This was said to be relevant to (i) the issue of *vires* and (ii) a prospective costs application. The application is refused as neither of these issues is before the Tribunal.

    (2) Respondent's internal documents relating to the decision to remove the Appellant from the Register. This was said to be relevant to the questions of (i) *vires* (ii) alleged discrimination (iii) cross examination and (iv) costs. The application is refused as none of

these issues is before the Tribunal and no witness evidence has yet been served.

(3) Respondent's file on the Appellant. This was said to be relevant to (i) discrimination (ii) cross examination (iii) costs. The application is refused as none of these issues is before the Tribunal.

(3A) Respondent's files on the Appellant's trustees. This was said to be relevant to (i) the intention of the Appellant's settlors (ii) the Respondent's reasons for taking the decision under appeal and (iii) cross examination. The application is refused as none of these issues is before the Tribunal.

(4) Respondent's documents in relation to the Ethnic English Trust. The application is refused as the documents are not relevant to the issue before the Tribunal.

(5) Respondent's documents in relation to the Ethnic English Trust, the Shieldwall Trust, The Malfosse Society, and The Ironside Trust. The application is refused as the documents are not relevant to the issue before the Tribunal.

(6) Respondent's documents related to the Respondent's involvement with the ITV programme "Charities Behaving Badly". The Respondent confirmed that it would be asking the Tribunal to view the video of this programme at the hearing as it would rely on it as evidence. The Appellant disputes that the programme gave a fair representation of its activities. In the circumstances, the Respondent agreed to address, in its witness evidence, the extent of its involvement with the television programme and the basis on which it considered it relevant to the issue before the Tribunal. The Appellant has not yet approached ITV to request additional footage or any other evidence which may assist its case so its application is rather premature. I make no order on this application at this stage; the Appellant may wish to apply for any further disclosure after it has corresponded with ITV and seen the Respondent's own witness evidence.

(7) The Respondent's correspondence with the Equality and Human Rights Commission, including legal advice as to the meaning of race and ethnicity under equalities legislation. The Respondent asserted legal privilege in relation to all such documents. The Appellant has not yet approached the Equalities and Human Rights Commission to ask it if it is willing to write a letter/make a witness statement/comment on the nature of its dealings (if any) with the Respondent so its application is rather premature. I doubt that such evidence would be relevant to the issue before the Tribunal in any event. However, I make no order on this application at this stage; the Appellant may wish to apply for any further disclosure after it has corresponded with the Equality and Human Rights Commission and seen the

Respondent's own witness evidence.

(8) Respondent's alleged correspondence with the Equality and Human Rights Commission, including legal advice as to the meaning of English nationality or the status of ethnic groups on the UK census form. The application is refused as the documents are not relevant to the issue before the Tribunal.

(9) Respondent's alleged correspondence with the Equality and Human Rights Commission, including legal advice as to how the membership of a racial group is to be determined. The application is refused as, to the extent that this is a relevant issue, it is a matter for legal submissions.

(10) Respondent's correspondence with the Equality and Human Rights Commission, including legal advice as to the rights of racial groups to name themselves and the use of their historical names. The application is refused as the documents are not relevant to the issue before the Tribunal.

(11) Respondent's documents relating to the use of the terms "Anglo-Saxon" and "English". The application is refused as the documents are not relevant to the issue before the Tribunal.

(12) Respondent's internal guidance regarding the handling of applications for the registration of charities for a particular racial group, as applicable at the date of the Appellant's registration as a charity. The Respondent replied that it does not have any unpublished guidance and will direct the Appellant to any published guidance which may be relevant. Accordingly, I make no order on this application.

(13) Respondent's internal guidance regarding the handling of applications for the registration of charities for a particular racial group, as applicable at the date of the Appellant's removal from the Register. The Respondent replied that it does not have any unpublished guidance and will direct the Appellant to any published guidance which may be relevant. Accordingly, I make no order on this application.

(14) and (15) Lists of all charities registered as being for persons of a particular racial group. As the Register of Charities is a public document there is no need for me to make an order in relation to this application.

(16) List of all the racial groups for which charities are registered. The Respondent explained that no such list exists. In any event, as the Register of Charities is a public document there is no need for me to make an order in relation to this application.

(17) List of all the racial groups contained in the list at 16 above. The Respondent explained

that no such list exists. In any event, as the Register of Charities is a public document there is no need for me to make an order in relation to this application.

(18) In relation to the list at 16 above, a list of the racial groups falling under the headings "Black" or "Minority Ethnic". The Respondent explained that no such list exists. In any event, as the Register of Charities is a public document there is no need for me to make an order in relation to this application.

(19) Respondent's ethnic monitoring form used at the date of the Appellant's registration as a charity, including the form used for its own staff. The application is refused as the documents are not relevant to the issue before the Tribunal.

(20) Respondent's ethnic monitoring form currently used, including the form used for its own staff. The application is refused as the documents are not relevant to the issue before the Tribunal.

(21) The "Supplemental Application" was not pursued by the Appellant. This related to a hypothetical historical consultation between the Respondent and Jack Straw MP. If the application had not been withdrawn I would have refused it on the basis that it was irrelevant to the issue before the Tribunal.

15. The Appellant's fourth application was an application to strike out the Respondent's Response in whole or in part. This was the second strike out application made by the Appellant, the first (made on 25 January 2016) having been refused by Judge Lane on 5 February. The application had several constituent parts, which I refuse for the following reasons:

16. (i) The application to strike out under rule 8 (2) for lack of jurisdiction is misconceived. It was made on the basis that the Respondent's reasons for removing the Appellant from the Register as given at the date of removal are the only matter before the Tribunal and that any subsequent argument (including in its pleadings) fall outside the Tribunal's jurisdiction. For the reasons given above, the issue for the Tribunal is the exercise of the statutory power and not the reasons given for it. It is right that the Appellant should have notice of the Respondent's case, and the Respondent has been permitted to amend its Response during the course of these proceedings, but these matters do not rob the Tribunal of jurisdiction to determine the appeal.

(ii) The application to strike out under rule 8 (3) (c) for no reasonable prospect of success is refused. The Appellant may disagree with the Respondent's arguments and they may indeed turn out to be wrong, but they are not so fanciful that they should not be adjudicated upon.

(iii) The strike out application also asserted that, in a case where the Tribunal takes the decision afresh, it is wrong in principle for the Respondent to participate in the appeal as it has no formal role. This argument flies in the face of the scheme established by Parliament, which provides for a *de novo* appeal and for the Charity Commission to be the Respondent to any such appeal (s. 319 (3) Charities Act 2011). The Tribunal Procedure Rules also provide for the decision maker to be the Respondent at rule 1 (3)(a).

17. The Appellant's fifth application dated 9 March 2016 was for permission to rely on expert witness evidence in relation to the issue of "race" under the Race Relations Act 1976, the Equality Act 2010 and international law. Judge Lane's Directions of November 2015 and February 2016 had directed the Appellant to make a more detailed application in relation to expert witnesses but this has not been forthcoming. The Appellant appears to have complied with Judge Lane's Directions by indicating at an earlier stage that it no longer wished to rely on expert witness evidence but it then made a fresh application on 9 March 2016 for permission to do so "if it considers at a later date [that] such an expert is necessary". The Appellant has not satisfied me that expert evidence will assist the Tribunal in the matter it has to decide. The matters the Appellant has referred to in making this application appear to be appropriate for legal submissions rather than expert evidence. In the circumstances, I refuse the application.

18. The Appellant's sixth application was made on 9 May 2016 and was for the Tribunal to "correct information in the public domain". This referred to information mentioned in the Tribunal's Preliminary Ruling, which the Appellant says is incorrect. The information concerned does not represent a formal finding of fact by the Tribunal and I note that the application was made nearly a year after the publication of the Preliminary Ruling. As I indicated to the parties before the hearing on 19 May, I doubt that it is within the power of the Tribunal to make the Direction sought and even if it were, I am not persuaded that making it would assist us in moving this appeal forward to a final hearing. But the Appellant is entitled to test facts which it disputes and, accordingly, I make no Order at this stage but leave it open to the Appellant to ask the Tribunal to make any relevant findings of fact at the final hearing of the appeal. A formal finding of fact at the substantive hearing will of course take precedence over any matters referred to in an interlocutory ruling in relation to which there had been no fact-finding by the Tribunal.

19. The Appellant's seventh application was made over 15 and 16 May 2016 and asked the Tribunal to order the Respondent to disclose the formal legal qualifications of its staff so that the Appellant would know to which regulatory body it should send its complaints. I

refuse this application because it does not relate to a matter before the Tribunal and I have no power to make the Direction sought in any event.

20. The Appellant's eighth application was made on 4 May 2016 and this was for the Tribunal to consider transferring this appeal to the Upper Tribunal (Tax and Chancery Chamber). I refuse this application because, as indicated above, the question for the Tribunal to decide in this appeal is a mixed question of fact and law. It is most appropriate for questions of fact to be decided in the First-tier Tribunal by a panel including lay members with experience and expertise in relation to charities. I am not persuaded that there is a discrete question of law for the Upper Tribunal to decide at first instance.

21. The Appellant's ninth application, dated 4 May 2016, was for the Tribunal formally to rule on the issue(s) to be decided at the final hearing. I have allowed this application and have ruled above (see paragraphs 2 - 6). I have also included in the Directions guidance as to the matters in respect of which the Tribunal will admit evidence and submissions and those in respect of which it will not admit evidence and submissions.

22. The Appellant's tenth application, dated 4 May 2016, was for the Tribunal to rule on whether any issues should be determined by way of a preliminary issue hearing. I am not persuaded that any of the issues suggested for this treatment by the Appellant would further the case management objective or that they would assist in determining the matter before the Tribunal. I refuse the application.

23. The Appellant's eleventh application, dated 4 May 2016, was for the Tribunal to rule on whether it could apply for an order for disclosure against a third party. The twelfth application was for the Tribunal to invite submissions from a third party. These both related to the Equality and Human Rights Commission. I have already ruled on these issue above.

24. The Appellant's thirteenth application was for permission to apply for further orders. My Directions above allow this application in part, subject to the limitations I have explained at paragraph 9 above.

25. The Appellant's fourteenth application, made on 15 May 2016, was for a timetable to be set for the final hearing of this matter. I have allowed this application and directed accordingly. I am grateful to Mr Jaffey for the draft Directions he helpfully appended to his skeleton argument for the Case Management Hearing. I amended these to include some matters raised by the Appellant and some matters which I had suggested, after hearing oral submission from the parties at the hearing.

26. The Appellant informed the Tribunal that it intended to ask the Attorney General to join as a

party in these proceedings. No order was sought in this regard.

27. Finally, I agreed at the end of the hearing not to put these Directions into the public domain until I had considered an application which the Appellant wishes to make under rule 14 of the Tribunal's Rules, namely for me to omit her name from them. I have given her a deadline for making any such application. If it is not made, these Rulings and Directions will be placed onto the Tribunal's website in the usual way. I will of course rule separately on any rule 14 application.

PRINCIPAL JUDGE

25 May 2016

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