



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

Case No. CA/2010/0009

Appellants: THE REVEREND SOPHY WAHAB

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

Determined on the Papers

By

**Alison McKenna
Principal Judge**

**Subject matter: Watford Apostolic Pentecostal Church;
Tribunal Procedure;
Jurisdiction of the Tribunal.**

DECISION OF THE FIRST-TIER TRIBUNAL

This appeal is struck out pursuant to Rule 8(2) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

REASONS FOR DECISION

1. Background

- 1.1 This matter concerns the Watford Apostolic Pentecostal Church ("the charity") which is registered charity number 269440. The Appellant states that she is either a charity trustee of the charity or a person who is or may be affected by the Respondent's decisions in respect of it.
- 1.2 The Appellant has been in correspondence with the Respondent about the charity since June 2009, raising concerns about the adoption of a new constitution and the removal of previous trustees, and also making allegations about conflicts of interest in the charity, bullying and intimidation and financial irregularities in the charity's activities in Nigeria.
- 1.3 The Respondent carried out an assessment of the Appellant's concerns and wrote to her with the outcome of its assessment on 5 August 2010. The Respondent took the view that the charity was no longer in existence (following the sale of its building some years previously) and that it would shortly be removed from the register of charities. It informed the Appellant that the constitution under which she had been appointed as a charity trustee was not the governing document that the Respondent held for that charity. The Respondent took the view that the Appellant's concerns related to the International Ministerial Council of Great Britain, an unincorporated association, which had not sought charity registration. This organisation was also to be dissolved in view of the fact that a company with the name International Ministerial Council of Great Britain had been incorporated and had recently sought charity registration. The Respondent had concluded that it would not be pursuing any historic issues concerning the

defunct charity or the unincorporated association, but would be considering the governance arrangements of the newly incorporated charity in the context of the registration process. It informed the Appellant that it would accordingly be closing its assessment case.

1.4 The Appellant asked for the 5 August decision to be reviewed. On 6 September 2010, the Respondent's Head of Compliance Monitoring, Assessment and Intelligence wrote to the Appellant. He informed her that he had undertaken a review of the case. He provided answers to some specific questions she had raised in asking for the review. He confirmed that the allegations made had been considered in the assessment case but had been found to be unsubstantiated and that he had decided to uphold the decision that the Respondent should not become involved with the historical dispute.

1.5 The Appellant has now applied to the Tribunal in respect of the Respondent's decision dated 6 September 2010. The grounds of her application are set out at paragraph 2.3 below.

2. The Jurisdiction of the Tribunal

2.1 The Tribunal's jurisdiction is established as follows. Section 2A of the Charities Act 1993 ("the Act") provides that

"(4) The Tribunal shall have jurisdiction to hear and determine—

(a) such appeals and applications as may be made to the Tribunal in accordance with Schedule 1C to this Act, or any other enactment, in respect of decisions, orders or directions of the Commission....."

2.2 Schedule 1C to the Act contains a table which lists, in column one, the decisions orders or directions of the Respondent in respect of which an application may be made to the Tribunal. Column two of the table sets out who can make an application to the Tribunal in respect of the specific decision order or direction and column three sets out the powers of the Tribunal in respect of such an application¹.

2.3 In this case, the Appellants' Grounds of Appeal state that she wishes to appeal against the following decisions by the Respondent (references are to sections of the Charities Act 1993 as amended by the Charities Act 2006):

- Decision not to give a direction under s.96(5) or (6);
- Order under s.73(4)

¹ The table is available on the Tribunal's website www.charity.tribunals.gov.uk under Rules and Legislation.

- Decision under section 69E
- Decisions under sections 64(2), 65(4) or 66(1);
- Order under s.44(2);
- Decision not to make an Order under section 26;
- Order under section 19A(2)
- Order under section 18A(2).

2.4 In view of the fact that the decision letter of 6 September does not specifically mention these provisions, I sought the Appellant's further submissions and asked her to clarify why she believes that these sections of the Act were engaged in her dealings with the Respondent.

2.5 By e mail dated 9 November 2010, the Appellant responded that the Respondent was in breach of its duty to investigate irregularities at the charity; that it had not conducted a thorough assessment of her allegations; that it has acted inconsistently (by continuing to accept annual returns from a charity it had told her no longer existed); that the Respondent had received other complaints about the charity but had not pieced all the information together; that the Respondent's delay in completing its assessment had lead to a situation where the Appellant and other former trustees had effectively been excluded from the charity by the incorporation.

2.6 I would not expect an unrepresented Appellant necessarily to be able correctly to identify the legal provenance of the actions she had asked the Respondent to take. I have therefore considered whether, in the context of the Appellant's requests to the Respondent, its decision of 6 September might properly be understood as an implied refusal to take certain legal actions in response to the Appellant's concerns.

2.7 The legal provisions cited by the Appellant are:

- *Decision not to give a direction under s.96(5) or (6):* these provisions allow the Respondent to direct that certain charities can be treated as one entity for accounting purposes;
- *Order under s.73(4):* this section relates to the reimbursement to a charity of benefits obtained by a disqualified charity trustee;

- *Decision under section 69E*: this section relates to the registration of a Charitable Incorporated Organisation (“CIO”)²;
- *Decisions under sections 64(2), 65(4) or 66(1)*: these sections refer to the alteration of the governing document of a charitable company; the ratification of transactions by a charitable company; and the approval or affirmation of certain transactions by the members of a charitable company, respectively, and the requirement for the Respondent’s consent.
- *Order under s.44(2)*: this section refers to the Respondent’s power to make orders permitting auditors and independent examiners access to certain charity information.
- *Decision not to make an Order under section 26*: this refers to the Respondent’s power to authorise certain actions proposed or contemplated in the administration of a charity;
- *Order under section 19A(2)*: this refers to the Respondent’s power, after the opening of an inquiry under s.8 of the Act, to direct certain persons to take specified actions;
- *Order under section 18A(2)*: this refers to the Respondent’s power, when suspending a person from employment or trusteeship of a charity, also to suspend their membership of the charity.

2.8 As stated above, I make no criticism of the Appellant, who is unrepresented, for not having an in-depth knowledge of the powers the Respondent might have exercised in her particular situation. I accept that she is a person affected by the Respondent’s decision, although it appears she may no longer be a charity trustee. In an effort to assist the Appellant, I have considered the substance of the engagement between the Appellant and the Respondent, rather than their own descriptions of their legal positions and powers. Taking everything into account, however, I have concluded that none of the sections identified above were sought (expressly or impliedly) by the Appellant and neither were decisions made by the Respondent (expressly or impliedly) so that they engaged the Appellant’s appeal or review rights in respect of those sections. This means that the Tribunal has no jurisdiction to determine this matter.

2.9 I sympathise with the Appellant’s frustration. She considered herself to be a charity trustee of a charity that the Respondent considers does not exist; she has no constitutional role in relation to the successor body to that charity; her allegations have been found to be unsubstantiated by the Respondent. Nevertheless, it does not seem to me that the Respondent has

² The CIO provisions in the 2006 Act have not yet been brought into force.

taken any decision in this matter which engages her right of appeal to the Tribunal. Her alternative remedies are considered below.

3. Procedure – The Rules

3.1 I now turn to consider the relevant procedure to be adopted in these circumstances. I have specifically considered rule 5 (3)(k)(i) and rule 8(2) and 8(3)(c) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“the Rules”)³, which provide as follows:

“Case management powers

5.—(1) Subject to the provisions of the 2007 Act⁴ and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

....

(k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—

(i) because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or

(ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;

Striking out a party’s case

8

...

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or that part of them; and

³ The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 are available on www.charity-tribunals.gov.uk under Rules and Legislation.

⁴ This is a reference to the Tribunals Courts and Enforcement Act 2007.

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

- 3.2 An Appellant has the right to make representations prior to a Tribunal taking the decision to strike out an appeal, under rule 8(4) of the Rules. Accordingly, I informed the Appellant of my provisional view that the Tribunal had no jurisdiction in relation to his application and also that I did not consider that the Tribunal could transfer her application to another court or tribunal which did have jurisdiction.
- 3.3 I sought the Appellant's comments on this ruling in draft and asked her to provide her comments within 7 days. I have finalised this ruling having taken those comments into account. I have informed the Appellant about the Respondent's Independent Complaints Reviewer and also where she might obtain free legal advice.

4. The Tribunal's Ruling

- 4.1 In a statement submitted to the Tribunal by e mail and dated 17 November 2010, the Appellant wrote that she *"asserts that the Tribunal has power to hear and determine appeals in relation to any misconduct or mismanagement in the administration of a charity and asks the Tribunal to set aside the Respondent's decision of August 2010 and September 6 2010 that indicates the assessment is closed and to hold a hearing into the question of whether the various complaints received should be acted upon by the Respondent. The tribunal could make recommendation for the administration court or Upper tribunal to approve that the investigations should not be stopped at assessment stage but should continue to full investigation of the issues complained by various people"*. She asked me to use my case management powers to transfer her case to the Administrative Court or the Upper Tribunal so that it might proceed as an application for judicial review.
- 4.2 I cannot accept that the Tribunal has the power to hear appeals into any misconduct or mismanagement in the administration of a charity. The Tribunal's jurisdictional boundaries are set out at paragraphs 2.1 and 2.2 above.
- 4.3 I am unwilling to exercise the power to transfer this case to the Administrative Court or the Upper Tribunal. This is because (a) the application is not framed as a judicial review application; (b) there is no evidence that the Appellant has complied with the pre-action protocol for issuing judicial review proceedings; (c) I am concerned not to put the Appellant in a position where there are Court fees for her to pay and a risk of costs being awarded against her in the absence of (a) and (b) above. I note that she

has three months to issue judicial review proceedings herself if she wishes to do so and as her complaint relates to a decision dated 6 September, she is still within time to do so. I have already drawn her attention to the availability of free legal advice schemes, the details of which appear on the Tribunal's website.

- 4.4 The process required by the Rules does not include a right for the Respondent to make representations on a proposed strike out. I recognise, however, that the receipt of an application by the Tribunal Administration generates notification of the appeal to the Respondent, with the result that the "clock starts ticking" under rule 27 of the Rules for the filing of the response. It would be unfortunate if this were to put the Respondent to unnecessary work in relation to an application which must be struck out. Accordingly, the case management power in rule 5(3)(a) of the Rules, which allows the Tribunal to extend the time for complying with any rule, has been invoked in this case, suspending the requirement for the Respondent to file a response pending determination of the jurisdiction issue. In the circumstances it will not be necessary for the Respondent to file a response in relation to this application, which is hereby struck out on the grounds of lack of jurisdiction.

Signed:

Alison McKenna

Principal Judge

First-tier Tribunal (Charity)

Dated: 22 November 2010

Alison McKenna

Principal Judge