



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

**Appeal number: CA/2017/0014**

**GRAHAM HIPKISS**

**Appellant**

**- and -**

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**

**Respondent**

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**DIRECTIONS**

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**Before:  
Judge Alison McKenna  
Sitting in Chambers on 21 March 2018**

Upon the parties agreeing directions **IT IS DIRECTED** as follows:

**Preliminary Issues**

1. The Appellant wishes to raise a preliminary issue, for the reasons set out in the Appellant's Reply and copied below for ease of reference (note that the paragraph numbering below differs to that of the Reply).
  - a. In para 13 of the Response, the Commission "*submits there is an additional ground for removal from the Register which was not contained within the Decision Letter – that HOPRT does not operate for the purposes of section 34(1)(b) of the 2011 Act*" and cites s 319(4) of the 2011 Act as justification for including this additional ground after the

appeal has already commenced. The Appellant believes that this is an incorrect application of the law:

- i. The Decision at page 4 states, *“The Commission’s decision was made under section 34(1)(a) of the Charities Act 2011”*. As noted by the Respondent in para 13, no decision was issued under s 34(1)(b), and the Decision letter did not make any claim that HORPT does not operate.
- ii. S 319(4) provides that, *“In determining such an appeal the Tribunal – (b) may take into account evidence which was not available to the Commission”*. This section relates to the Tribunal’s power to consider fresh evidence and says nothing about allowing the Commission to make modifications to the Decision subject to the appeal.
- iii. In the alternative, should the Tribunal decide that s 319(4) also allows for modifications to Decisions, the Commission has not in fact presented any evidence which was not previously available to them at the time the Decision was issued. At para 5 of the Response they state that the documents listed in the Annex are those that *“it relied upon when reaching the Decision”*.
- iv. S 319(1) refers to *“an appeal [brought] against any decision, [...]”* and s 319(4)(a) provides that the Tribunal *“must consider afresh the decision [...] appealed against”*.
- v. Sch 6 of the 2011 Act lists the powers of the Tribunal, per s 319(5)(b). The powers of the Tribunal in this appeal are, *“Power to quash the decision and (if appropriate)— (a) remit the matter to the Commission; (b) direct the Commission to rectify the register.”*
- vi. The position appears therefore to the Appellant to be that the Tribunal may quash the Decision appealed against, but does not have the power to consider what effectively amounts to a brand new Decision (insofar as it pertains to the additional ground) as this would not be the Decision which was *“appealed against”*.
- vii. A similar line of reasoning is used by the Respondent in paras 109 and 110 to justify their position in relation to availability of remedies. They cite the example an appeal of an order under s 69(1) of the 2011 Act and state that the Tribunal *“has, additionally, the power to substitute for the order ‘any other order which could have been made by the Commission, and/or to add to the existing order”* and further that *“Parliament must therefore be taken to have consciously decided not to give these*

*additional remedial powers to the Tribunal in the case of an appeal against a decision under section 34 of the 2011 Act, as here”.*

- viii. This appears to be essentially the same scenario and the same logic must surely apply. The powers of the Tribunal for a s 34 appeal do not contain the additional power relating to a s 69(1) appeal (“*add to the existing order*”) so therefore Parliament must have consciously decided not to provide this additional power for a s 34 appeal.
  - ix. As noted in item 13 of the Annex to the Response, the Commission initiated its investigations on 21 November 2016. The Commission lists 11 items of correspondence between itself and the Appellant during the course of its investigation. The Decision was issued on 10 November 2011, nearly a year later. The Commission had ample opportunity to consider the contents of its Decision prior to issuing it in the first instance, and there does not appear to be any justifiable reason for expanding its scope at this stage.
  - x. Doing so would substantially prejudice the Appellant’s position. HOPRT is a small charity with few resources which relies entirely on volunteers, and cannot afford legal representation. It is not reasonable that the Appellant has been required to mount a defence to this additional ground now rather than at the time the Decision was issued.
- b. For the reasons stated above, the Appellant requests that this be dealt with as a preliminary issue and that the Tribunal strike out the Respondent’s request to introduce an additional ground to the Decision, per ss 8(2)(a), 8(7)(a), and 8(8) of the Tribunal Rules.
  - c. In the event that the Tribunal decides not to deal with this as a preliminary issue, then the Appellant requests it be dealt with in the main hearing.
  - d. In the alternative, should the Tribunal decide that it has the power to consider a modified Decision and that it is reasonable in the circumstances to do so, the Appellant submits that in any case the Respondent’s application of s 34(1)(b) to this case is incorrect. This will be addressed separately in the Appellant’s Reply.
- 2.** The Respondent’s Reply to the Appellant’s preliminary issue is to be sent to the Appellant and the Tribunal by 5pm on Friday, 13 April 2018.

3. The parties agree to this preliminary issue being determined by the Tribunal on the papers without an oral hearing after 13 April 2018.
4. Paragraph 13 onwards of these Directions are stayed pending the Tribunal's determination of the preliminary issue, at which time the Tribunal may make such directions as it considers appropriate.

### **Mode of hearing**

5. This appeal shall be determined by an oral hearing. The Appellant's preferred location is in **either Sheffield (1<sup>st</sup> choice), Nottingham (2<sup>nd</sup> choice), or Leicester (3<sup>rd</sup> choice)**. The Respondent's preferred locations, in order of preference, are: London, Leicester, Nottingham or Sheffield.
6. The hearing shall take place **on the first available date on or after Tuesday 17 July 2018 but excluding the following dates: 26 July, 3 – 28 August 2018 (inclusive)**.
7. It is anticipated that the hearing will last **2** days due to the Appellant's expectation of calling multiple witnesses subject to the approval of the Tribunal.
8. The Tribunal will inform the parties of the hearing date and location as soon as possible.

### **Reply**

9. The Appellant's Reply (if any) is to be sent to the Respondent and to the Tribunal **by 5pm on Friday 30 March 2018**.

### **Secondary disclosure**

10. The Respondent's Secondary Disclosure (if any) is to be sent to the Appellant and to the Tribunal **within 14 days of the Appellant's Reply (if any)**.

### **Agreed bundle of documents**

11. 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.
12. The first draft of the index to the hearing bundle is to be prepared by the Respondent and served on the Appellant **by 5pm on Friday 13 April 2018**.
13. **By 5pm on Friday 11 May 2018**, the Appellant is to notify the Respondent whether there are any additional documents in his possession which he wishes to add to the bundle and provide copies of the documents.
14. A consolidated version of the bundle is to be prepared by the Respondent and a hard copy served on the Appellant **by 5pm on Friday 18 May 2018**.

## **Witness statements**

15. **By 5pm on Friday 25 May 2018**, the parties are to exchange any written witness statements on which they wish to rely at the hearing or confirm that they will not be calling witness evidence. If witness statements refer to any documents in the bundle, the relevant page number is to be used in the final version of the hearing bundle (but this can be done by adding a note to the margin of the witness statement once the page numbers of the bundle are known).
16. **By 5pm on Friday 1 June 2018**, each party is to notify the other if they wish to cross examine any witness in respect of whom a statement has been filed.

## **Bundle of authorities and statutory materials**

17. The parties are to use their best endeavours to agree a bundle of authorities and statutory materials, in accordance with the directions below.
18. The first draft of the index to the authorities bundle is to be prepared by the Respondent and served on the Appellant **by 5pm on Friday 8 June 2018**.
19. The Appellant is to notify the Respondent whether there are additional materials that they wish to be included in the authorities bundle **by 5pm on Friday 15 June 2018** and provide copies by the same time.
20. The Respondent is to serve a hard copy of the consolidated version of the authorities bundle on the Appellant **by 5pm on Friday 22 June 2018**.

## **Lodging of bundles with the Tribunal**

21. A final version of the hearing bundle and a consolidated witness statement bundle including any exhibits, is to be prepared by the Respondent and four hard copies are to be lodged with the Tribunal **by 5pm on Friday 29 June 2018**.
22. A further copy of the hearing bundle and consolidated witness statement bundle including any exhibits, is to be brought by the Respondent to the hearing for use by witnesses (if any).
23. A consolidated version of the authorities bundle is to be prepared by the Respondent and four hard copies of the authorities bundle are to be lodged with the Tribunal **by 5pm on Friday 29 June 2018**.

## **Skeleton arguments**

24. Statements of Case (skeleton arguments) are to be exchanged by the parties and lodged with the Tribunal by email, by **no later than 10 working days before the hearing date**.

- 25.** 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. These are to be sent with the skeleton arguments.

**Other**

- 26.** Each party has permission to apply to vary these directions or to apply for further directions. Any such application is to be in writing, to set out the full reasons for the application and (where applicable) to be filed before the time limit for complying with the direction has been reached.
- 27.** Unless specified under The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended), all written correspondence sent to the Tribunal must be copied to all other parties or sent to the other parties as soon as reasonably practicable.

Signed

Dated 21 March 2018

Alison McKenna

Principal Judge