



## Tribunals Service

Charity Appeals, Reviews and References

Charity Tribunal  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 6000 877  
Fax: 0116 249 4253

Email: CharityTribunal@tribunals.gsi.gov.uk

Date: 7 January 2009

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### DIRECTIONS ORDER

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**Appeal Reference Numbers: CA/2008/0003 & CA/2008/0004**

**Appellants: Father Hudson's Society  
Catholic Care (Diocese of Leeds)      Ref: BDJ/Y054979**

**Respondent: Charity Commission      Ref: LDS/69445**

#### **To: The Appellant and Respondent**

On the application of the Appellants and Respondent the Tribunal has issued the following directions:

1. That the issues to be decided at the Preliminary Hearing fixed for 12 and 13 February 2009 shall be the issues numbered (1) and (2) in the Respondent's skeleton argument dated 12 December 2008;
2. That the following applications:

By the Appellants,

- (a) For permission to amend their notices of appeal
- (b) For remittal of the proposed objects to the Respondent for determination in accordance with a finding and/or direction of the Tribunal;
- (c) For a direction that the Respondent consider the Revised Proposed Objects; and
- (d) For costs;

By the Respondents,

- (a) To strike out those parts of the Notices of Appeal which invite the Tribunal to consider the Respondent's decision-making processes;
- (b) To strike out those parts of the Notices of Appeal which invite the Tribunal to consider the Revised Proposed Objects

shall, if necessary, be considered (together with any other directions then required) at a further Directions Hearing to be held immediately upon the conclusion of the Preliminary Hearing aforesaid, to enable the parties to prepare for a final hearing of the Appeals.

- 3. That the timetable for the Preliminary Hearing, set out in the Directions Order dated 16 December 2008, shall continue to apply to both parties;
- 4. Permission to all parties to apply for further directions.

Signed:

Alison McKenna

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President of the Charity Tribunal

Dated: 7 January 2009

**IN THE MATTER OF AN APPEAL TO THE CHARITY TRIBUNAL**

**BETWEEN**

**FATHER HUDSON'S SOCIETY & CATHOLIC CARE (DIOCESE OF LEEDS)  
Appellants**

**AND**

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

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**RULING**

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1. This ruling addresses the matters that have arisen following the telephone directions hearing on 15 December 2008 and the issuing of the Tribunal's Directions Orders dated 16 and 23 December 2008.
2. Father Hudson's Society and Catholic Care (Diocese of Leeds) ("The Appellants") have appealed against the Respondent's refusal to give them consent, pursuant to s.64 (2) of the Charities Act 1993, to amend their objects by adopting new objects ("the Proposed Objects"). The Appellants had sought the Respondent's permission to adopt the Proposed Objects in order to permit them to limit the beneficiaries of their adoption services (who they say, although this is disputed by the Respondent, are prospective adoptive parents), to heterosexuals only.
3. The Equality Act (Sexual Orientation) Regulations 2007 provided an exemption for voluntary adoption agencies under Regulation 15 which lasted until 31 December 2008. The Appellants wished to make changes to their objects in order to bring them within the general exception provided for certain charities under Regulation 18, without which they say they would not be able lawfully to continue to provide adoption services to heterosexuals only.
4. The Respondent's decision refusing the Appellants permission to adopt the Proposed Objects was dated 18 November 2008. The Appeals were made to the Tribunal on 1 December 2008, with a request that the appeals be heard at the Tribunal's earliest convenience and preferably before 31 December 2008. The Appellants explained the reason for the urgency was that they would

have to suspend their adoption services after 31 December 2008 until this matter was finally resolved.

5. The Tribunal arranged a telephone Directions Hearing for 15 December and the parties agreed to accept short notice of that hearing under Rule 3(7) of the Charity Tribunal Rules 2008 ("The Rules").
6. The Respondent provided the Tribunal with a skeleton argument dated 12 December 2008. It submitted that there were six issues for the Tribunal to determine in these appeals, namely:

*(1) Whether the term "to provide benefits" in regulation 18 (1) of the 2007 Regulations means to provide benefits which it is a purpose of the charity to provide.*

*(2) Whether on the true construction of the Proposed Objects it would be a purpose of the charities to provide benefits to potential adopters.*

*(3) Whether the provision of services to those wishing to adopt children is a purpose within the Charities Act ("CA ") 2006 section 2 (2)*

*(4) Whether the provision of services to those wishing to adopt children is for the public benefit.*

*(5) Whether the provision of services to those wishing to adopt children but with the exclusion of same sex couples is for the public benefit.*

*(6) Whether the discretion conferred on the Commission by CA 1993 s 64 (2) should be exercised to give consent to the Proposed Objects.*

7. The Respondent submitted in its skeleton argument that issues (1) and (2) above should be heard by the Tribunal as Preliminary Questions under Rule 14(1) of the Rules. If the determination of those issues was in favour of the Appellants, arrangements could then be made for a final hearing of the appeals. If the determination of those issues was in favour of the Respondent, then the Respondent argued that would effectively dispose of the appeals.
8. The Appellants had been provided with a copy of the skeleton argument in advance of the telephone Directions Hearing, but their solicitor was unable to agree or disagree with the Respondent's proposal as he needed more time to consider his position. He also wished to consider applying to amend the Notices of Appeal, having heard the Tribunal's observations on the nature of its jurisdiction and its powers and, in particular, its inability to consider the Revised Proposed Objects which had been included in the Notices of Appeal. The Tribunal explained that it could not as a matter of law make any ruling about the Revised Proposed Objects, as they had not yet been

the subject of a decision by the Respondent and so could not form the basis of an appeal to the Tribunal.

9. In view of these difficulties, the Tribunal gave the Appellants an opportunity to indicate, by 22 December 2008, whether they agreed that issues (1) and (2) were the issues to be heard at the Preliminary Hearing and, if not, to suggest any additional or alternative issues which the Tribunal should hear at the proposed Preliminary Hearing. The Tribunal also gave the Appellants leave to apply to amend their Notices of Appeal provided they made such applications by 22 December 2008.
10. In view of the stated urgency of this matter and the request to arrange a hearing as soon as possible, the Tribunal proceeded to issue directions aimed at preparing for a two-day preliminary hearing as soon as possible after 1 February 2009. (It has since been fixed for hearing on 12 and 13 February 2009). This was the earliest date by which it was agreed to be possible for both sides to file with the Tribunal and serve on the other parties any witness statements, formulate and exchange their respective skeleton arguments and for them to agree a bundle for the hearing in accordance with directions given by the Tribunal for this purpose.
11. The Appellants filed a document with the Tribunal on 22 December 2008, submitting that the Tribunal should in fact hear issues (1), (2), (3) and (4) at the Preliminary Hearing and also seeking to amend their Notices of Appeal. The Tribunal notes that the Appellants have not objected to the formulation of the issues as suggested by the Respondent, but only the number of issues to be heard at the Preliminary Hearing.
12. In view of the need to keep to the strict timetable it had set if the hearing on 12 and 13 February were to go ahead at all, the Tribunal of its own motion directed on 23 December 2008 that the Respondent should reply to this document at the same time as filing its Response document which, under the provisions of the 16 December Directions Order, was due by 2 January 2009.
13. The Respondent submitted in its Response document (and also in a letter from Mr Dibble, Executive Director Legal Services and Compliance dated 23 December 2008), that it opposed the Appellant's proposal for the enlargement of issues for the Preliminary Hearing (and, indeed, in respect of the application to amend the Notices of Appeal). The Respondent seeks a further oral Directions Hearing to deal with these issues. The Tribunal has had the benefit of considering written submissions from the Appellants and the Respondent, and notes that as these issues concern requests for directions, it may proceed to determine them without an oral hearing as permitted by Rule 25(b) of the Rules. The Tribunal is satisfied that a just, expeditious and economical determination of these issues is

best achieved at this juncture by a determination without an oral hearing.

14. The Tribunal notes that Rule 14 of the Rules allows the Tribunal to direct that any preliminary question of fact or law which appears to be in issue in relation to the appeal shall be determined at a Preliminary Hearing. The Tribunal's objective in so doing is to determine the relevant issues and ensure the just, expeditious and economical determination of the appeal.
15. The Respondent's case in relation to the Preliminary Hearing is, in summary, that even if (which the Respondent does not accept) the Appellants could lawfully bring themselves within the Regulation 18 exemption by adopting the Proposed Objects, and even if (which the Respondent does not accept) the provision of services to prospective adopters is a charitable purpose in law, the true construction of the Proposed Objects as drafted does not have the effect of making it a purpose of the charities to provide services to prospective adopters. The Respondent argues that if this is the case then the Tribunal would be bound to dismiss these appeals as it could not reasonably decide to quash the Respondent's earlier decision if the Proposed Objects did not in fact permit the Appellants to operate adoption services in the way they wish to.
16. The Appellants' case in relation to the Preliminary Hearing is that issue (2) is too narrow, when taken alone, to allow them to advance their case, and they argue that the Tribunal would need to hear evidence in relation to issue (3) in order to determine issue (2). (Issue (1) appears to be agreed by the parties although they seek the Tribunal's formal ruling on the matter).
17. The Appellants submit that the "true objects" of the charities may only be discerned by the Tribunal hearing evidence of the services already provided by them under their current objects, in order to demonstrate that the s.64 application was by way of regularisation of an existing situation and should have been granted. The Tribunal has therefore considered whether the Appellants would be prejudiced by the consideration of issues (1) and (2) only at a Preliminary Hearing. It concludes that they would not. The Appellants are entitled to adduce evidence of their *modus operandi* in support of their arguments as to the scope of the Proposed Objects. The Tribunal notes that it is able to hear evidence that was not before the Respondent in taking its original decision, pursuant to Schedule 1C to the Charities Act 1993, paragraph (4) (b). The Directions Order of 16 December already permits the Appellants to file such evidence.
18. The Respondent has informed the Tribunal that it would not be able to prepare its own evidence in relation to issues (3) and (4) in advance of the Preliminary Hearing, as these issues are wider than those in (2) and involve obtaining additional evidence from third

parties, including other Government Departments. The Respondent's case is that it agreed to the expedited timetable for this hearing on the basis that only issues (1) and (2) would be considered and it would apply for a longer preparation period if additional issues were involved.

19. The Appellants have further submitted that it would save time and costs for issue (4) also to be heard at the Preliminary Hearing, but that there would be insufficient time to hear issue (5). They submit that issues (5) and (6) should be remitted to the Respondent for a decision after the conclusion of the Preliminary Hearing, but without a final determination of the appeals. The Tribunal notes that its powers in relation to a s.64 appeal, as set out in the table in Schedule 1C to the Charities Act 1993, are to "*quash the decision and (if appropriate) remit the matter to the Commission*". The Tribunal's view is that the power to remit any decision to the Respondent arises only where it has first quashed the decision appealed against, and is not a free-standing power. It would therefore be unable to proceed as suggested.
20. The Appellants have also invited the Tribunal to direct the Respondent to consider the Revised Proposed Objects. The Tribunal notes that it has no power to direct the Respondent to consider the Revised Proposed Objects because the Respondent has not yet considered them. The Tribunal notes that it is open to the Appellants to make a fresh application to the Respondent for s.64(2) consent, with fresh objects, at any time and to make a fresh appeal to the Tribunal thereafter if consent is refused.
21. Having taken all these matters into account, the Tribunal has concluded that issues (1) and (2) are appropriate issues to be considered at a Preliminary Hearing. The Tribunal reserves its position in relation to the appropriate issues for a final hearing of these appeals and will consider further argument if necessary.
22. At the telephone directions hearing, the Tribunal directed, by agreement, that these Appeals should be heard together pursuant to Rule 12(iii) of the Rules, as they involve the same or similar issues. The Tribunal's Order of 16 December 2008 made a number of other Directions of a procedural nature, to enable preparation for the Preliminary Hearing. The Tribunal still has before it a number of other applications for directions from both sides. However, it does not consider that it needs to adjudicate on these in advance of the Preliminary Hearing. If the Preliminary Hearing effectively disposes of the appeals as the Respondent contends, then any further consideration of those issues at this stage will have served merely to cause delay and increase costs. If the appeals proceed to a final hearing, those issues will be determined by the Tribunal (which will also make any further necessary directions) at the conclusion of the Preliminary Hearing, which will take place as previously directed on

12 and 13 February 2009. The Tribunal now makes the directions in the attached Order.

Dated: 7 January 2009

Alison McKenna  
President of the Charity

Tribunal