



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

Case No. CA/2010/0008

Appellants: DAVID HOLLAND & VINCE PIFFERO

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

Determined on the Papers

By

**Alison McKenna
Principal Judge**

**Subject matter: Litcham Relief in Need Charity
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 This matter concerns the Litcham Relief in Need charity (registered charity number 263113). The Appellants are two of its charity trustees.
- .2 The Appellants have been in correspondence with the Respondent about the charity since 2007. In short, they allege that the charity has acted outside its objects and that there have been irregularities in the appointments of fellow trustees. They have asked the Respondent to intervene in the affairs of the charity. The Appellants previously instructed solicitors to correspond with the Respondent but now represent themselves for the purposes of their application to the Tribunal.
- .3 The Appellants' solicitors requested an "Outcome Review Panel" in February 2010. They asked for a new trustee body to be appointed or for the charity to be dissolved and its assets distributed to another charity. They stated that a speedy resolution of the issues by the Respondent would avoid the need for a judicial review application.
- .4 The Respondent considered the Appellants' submissions in the context of a "Decision Review", conducted by Mr Harry Iles who is the Head of the Respondent's Wales Office. He had not previously been involved with the case. In a document dated 2 September 2010, Mr Iles concluded that *"I uphold the decision that the Charity Commission should not intervene as there are no grounds that would justify the use of our regulatory powers"*.
- .5 The Appellants now apply to the Tribunal in respect of the Respondent's decision dated 2 September.

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 they state that the Respondent has refused to make an Order under s.26² of the Charities Act 1993, as amended by the Charities Act 2006. A decision of the Respondent not to make a decision under s.26 of the 1993 Act is within the jurisdiction of the Tribunal because it appears in column 1 of the table in schedule 2 to the Act. However, by virtue of schedule 1C, paragraph 3(2) (e), such a decision is not amenable to appeal but is capable of review by the Tribunal.
- 2.4 In view of the fact that (a) the correspondence I have seen does not specifically mention an application for or a refusal of an Order under s.26 of the 1993 Act, and (b) the non-specific nature of the wording in Mr Iles' decision of 2 September, I sought the Appellants' further submissions and the Respondent's comments on the question of the Tribunal's jurisdiction in respect of this matter.
- 2.5 By letter dated 18 October, Mr Holland responded that the Respondent's failure to intervene when asked to do so included a failure to use its powers under s.26 of the 1993 Act.
- 2.6 By letter dated 29 October, the Respondent argued that the Tribunal has no jurisdiction in to this matter and that the appeal should be struck out. Its arguments were as follows:
- (i) The decision review was a response to the solicitor's letter, which asked the Respondent to appoint a new trustee body or wind up the charity and distribute its assets to another charity. There was no express request for a s.26 Order and therefore no express refusal to make a s.26 Order;

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

² The text of s.26 of the 1993 Act is set out at annexe A to this decision.

- (ii) The decision of 2 September should not be viewed as an implied refusal to make a s.26 order because s.26 is a facilitative measure and not a means by which the Respondent may compel certain actions; none of the outcomes requested could have been achieved by a s.26 order; for s.26 to be engaged, there must be an action proposed or contemplated in the administration of a charity.

2.7 I have considered the arguments carefully. In the circumstances of this case, I have concluded that the Tribunal does not have jurisdiction to determine the Appellants' application in this matter and that the application should therefore be struck out.

2.8 In a different set of circumstances, it seems to me that the Tribunal's jurisdiction could well be engaged by a decision of the Respondent which, in its practical effect, falls within the decisions set out in column 1 in the table in schedule 1C to the Act, notwithstanding the fact that (a) the applicant did not know what the legal provenance of the action they had asked the Respondent to take was, and did not refer to it specifically and/or (b) where the Respondent had not been specific about the nature of the legal powers available to it when reaching a decision "not to intervene" or "not to use its regulatory powers". In other words, if what the Appellants' solicitors had asked the Respondent to do had fallen squarely within the ambit of s.26 of the 1993 Act, but either the Appellant or the Respondent (or both) had failed to refer to s.26 specifically in the correspondence, I would have taken the view that the Tribunal's jurisdiction was engaged. In this case, however, I accept the Respondent's arguments that the solicitor's letter may not be viewed as an implied request for a s.26 order because the intervention it asked for was not achievable by means of such an Order.

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.

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.

(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

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...

(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

(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 his application to another court or tribunal which did have jurisdiction.
- 3.3 I sought the Appellants' comments on this ruling in draft and asked him to provide his comments within 7 days. He asked for some additional time to respond, which I allowed him. I have finalised this ruling having taken those comments into account. I have informed the Appellant about the Respondent's Independent Complaints Reviewer.
- 3.4 The Appellant copied me into his response to the Respondent's letter dated 29 October. He stated that he still maintained that Mr Iles' decision amounted to a refusal of a s.26 Order. He disagreed with the Respondent's interpretation of its powers under s.26. He asserted that the action proposed was not in fact supported by a minority of the trustee body because some of the trustee body had not been validly appointed in any event. Mr Wherrett repoded on behalf of the

Respondent on 10 November, informing the Appellant that he would now consider making an Order under s.26 of the 1993 Act upon receipt of certain information, which he set out in full. This included confirmation that the Appellant is acting on behalf of the trustee body which has been properly appointed; minutes of trustee meetings; an explanation as to why a s.26 Order is required over and above the statutory powers exercised by the trustees, for example the power to dispose of land; evidence that s.36 of the 1993 Act has been complied with in relation to a proposed disposition of land. I note that if the Appellant now provides the information requested by the Respondent and the Order sought is then refused, he will have a right of review by this Tribunal.

- 3.5 The Appellant also replied directly to the draft strike out ruling on 14 November. He asked me to explain what appeal rights he has if the appeal is struck out and he asked me for advice as to the best way to achieve his desired outcome in relation to the charity. The Tribunal Administration replied on 15 November that there is as yet no Upper Tribunal authority as to whether a strike out decision may be appealed to the Upper Tribunal or challenged by way of judicial review, and further that we cannot offer him legal advice but directed him to the free legal advice agencies shown on our website.
- 3.6 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.
- 3.7 I am grateful to the Respondent for responding to my request for its comments on the question of the Tribunal’s jurisdiction. 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:

Dated: 26 November 2010

Alison McKenna

Principal Judge

Annexe A

Section 26 Charities Act 1993, as amended.

26 Power to authorise dealings with charity property etc.

(1) Subject to the provisions of this section, where it appears to the Commissioners that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, they may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity; and anything done under the authority of such an order shall be deemed to be properly done in the exercise of those powers.

(2) An order under this section may be made so as to authorise a particular transaction, compromise or the like, or a particular application of property, or so as to give a more general authority, and (without prejudice to the generality of subsection (1) above) may authorise a charity to use common premises, or employ a common staff, or otherwise combine for any purpose of administration, with any other charity.

(3) An order under this section may give directions as to the manner in which any expenditure is to be borne and as to other matters connected with or arising out of the action thereby authorised; and where anything is done in pursuance of an authority given by any such order, any directions given in connection therewith shall be binding on the charity trustees for the time being as if contained in the trusts of the charity; but any such directions may on the application of the charity be modified or superseded by a further order.

(4) Without prejudice to the generality of subsection (3) above, the directions which may be given by an order under this section shall in particular include directions for meeting any expenditure out of a specified fund, for charging any expenditure to capital or to income, for requiring expenditure charged to capital to be recouped out of income within a specified period, for restricting the costs to be incurred at the expense of the charity, or for the investment of moneys arising from any transaction.

(5) An order under this section may authorise any act notwithstanding that it is prohibited by any of the disabling Acts mentioned in subsection (6) below or that the trusts of the charity provide for the act to be done by or under the authority of the court; but no such order shall authorise the doing of any act expressly prohibited by Act of Parliament other than the disabling Acts or by the trusts of the charity or shall extend or alter the purposes of the charity.

(6) The Acts referred to in subsection (5) above as the disabling Acts are the **M1** Ecclesiastical Leases Act 1571, the **M2** Ecclesiastical Leases Act 1572, the **M3** Ecclesiastical Leases Act 1575 and the **M4** Ecclesiastical Leases Act 1836.

(7) An order under this section shall not confer any authority in relation to a building which has been consecrated and of which the use or disposal is regulated, and can be further regulated, by a scheme having effect under the Union of Benefices Measures 1923 to 1952, the Reorganisation Areas Measures

1944 and 1954, the **M5**Pastoral Measure 1968 or the **M6**Pastoral Measure 1983, the reference to a building being taken to include part of a building and any land which under such a scheme is to be used or disposed of with a building to which the scheme applies.