



**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**

---

**RULING ON APPLICATIONS FOR REINSTATEMENT OF  
APPEAL AND FOR PERMISSION TO APPEAL TO THE UPPER  
TRIBUNAL**

---

**Determined on the Papers by Alison McKenna, Principal Judge**

**Subject matter: Litcham Relief in Need Charity  
Tribunal Procedure;  
Jurisdiction of the Tribunal  
Permission to Appeal to Upper Tribunal**

**DECISION OF THE FIRST-TIER TRIBUNAL**

**The Appellants' applications for reinstatement of the appeal and for permission to appeal to the Upper Tribunal are hereby refused.**

**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. The Appellants made an application to the First-tier Tribunal (Charity), which was struck out for want of jurisdiction on 26 November 2010<sup>1</sup>.

- .2 The Appellants had sought to appeal against the Respondent's alleged refusal to make an Order under s.26 of the Charities Act 1993, as amended by the Charities Act 2006 ("the Act")<sup>2</sup>. A decision of the Respondent not to make a decision under s.26 of the Act is within the jurisdiction of the Tribunal because it appears in column 1 of the table in schedule 1C to the Charities Act 1993. However, by virtue of schedule 1C paragraph 3(2) (e), such a decision is not amenable to appeal by way of rehearing but is capable of review by the Tribunal, applying the principles which would be applied by the High Court on an application for judicial review.
- .3 In view of the fact that the substantial copy correspondence provided with the appeal application did not specifically mention an application for an Order under s.26 of the Act, and also in view of the rather non-specific nature of the wording of the Respondent's decision letter of 2 September 2010, the Tribunal sought the Appellants' further submissions and the Respondent's comments on the question of its jurisdiction in respect of the appeal that had been lodged. Having considered the further representations received, the Tribunal concluded that the correspondence from the Appellants and their solicitors included neither an express nor an implied request for an Order under s.26 of the Act, and that the Respondent's decision had also included neither an express nor an implied refusal to make such an Order. Accordingly, the Tribunal concluded that it had no jurisdiction to consider the appeal and struck it out.
- .4 An Appellant has the right to make representations prior to a Tribunal taking the decision to strike out an appeal on the basis of having no jurisdiction. In this matter, the Tribunal had informed the Appellants of its provisional view that it had no jurisdiction in relation to the application and also that it did not consider that it could transfer the application to another court or tribunal which did have jurisdiction. The Tribunal sought the Appellants' comments on the strike out ruling in draft and finalised it having taken their comments into account.
- .5 In reaching its decision of 26 November, the Tribunal considered the statutory jurisdiction of the Tribunal carefully, and took into account the fact that charity trustees should not generally be expected to know the precise legal provenance of the Orders

---

<sup>1</sup> The strike out decision is published on [www.charity.tribunals.gov.uk/decisions](http://www.charity.tribunals.gov.uk/decisions)

<sup>2</sup> Section 26 of the Act permits the Respondent to sanction by Order any action proposed or contemplated in the administration of a charity which is expedient in the interests of that charity.

they were seeking in asking the Respondent for help. The ruling explained that, if the correspondence had supported a reasonable conclusion that a s.26 Order had been sought by the Appellants (albeit not referred to as such), then the Tribunal may well have claimed jurisdiction. In reaching the conclusion that the facts did not support such an interpretation, the Tribunal also accepted the Respondent's submission that a s.26 Order could not, in any event, have been used to remedy the breaches of trust that the Appellants had previously complained of because s.26 cannot be used to impose a course of action on a charity. The ruling noted that the Respondent had, since the appeal was lodged, written to the Appellants offering to consider using its powers to assist them upon receipt of relevant supporting evidence and further noted that a fresh right of appeal to the Tribunal would arise if such Orders were refused in due course.

## **2. The Application for Reinstatement of the Appeal**

- 2.1 The Appellants' solicitors have now requested reinstatement of the proceedings pursuant to Rules 8 (5) and (6) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules"). If successful, this would have the effect of overturning the strike out decision and bringing the original appeal "back to life".
- 2.2 The grounds advanced for seeking reinstatement are that (i) it has not been asserted by the Respondent or the Tribunal that the charity is being run in accordance with its governing document and (ii) the Tribunal's decision that it lacks jurisdiction means that the Respondent's decisions are effectively exempt from appellate review and this is unjust. For the reasons set out below, there is no right to apply for reinstatement in this case. I have therefore considered these arguments as additional grounds for seeking permission to appeal to the Upper Tribunal.
- 2.3 The Tribunal's decision of 26 November 2010 was clearly stated to be made pursuant to rule 8 (2) of the Rules. The related requirement of rule 8(4), that the Appellants be given an opportunity to make representations on the proposed strike out, were met in this case, as described above.
- 2.4 The right to seek reinstatement of proceedings under rule 8 (5) of the Rules specifically refers to a situation where the Tribunal's decision to strike out an appeal was made under rules 8(1) or rule 8 (3)(a) (which both relate to circumstances of non-compliance with the Tribunal's directions). The decision in this case was clearly stated to be made pursuant to rule 8 (2) of the Rules and the right to apply for reinstatement of proceedings under rule 8 (5) is not therefore engaged by the strike out decision in this case. It follows

that the application for reinstatement is misconceived and must be refused. The Appellants' proper remedy in relation to a rule 8(2) strike out decision is to seek permission to appeal to the Upper Tribunal and/or to apply for judicial review (see paragraph 4 below).

### **3. The Application for Permission to Appeal to the Upper Tribunal**

3.1 Rule 42 of the Rules provides that an Appellant may apply in writing for permission to appeal against the Tribunal's decision, identifying the alleged error or errors of law in the decision. If the First-tier Tribunal refuses to give its permission, a further application for permission may be made to the Upper Tribunal itself (see paragraph 4 below).

3.2 The grounds upon which permission to appeal to the Upper Tribunal is now sought may be summarised as follows:

- (a) The Tribunal erred in concluding that a s.26 Order could not have been used to achieve the Appellants' desired outcome;
- (b) The Tribunal erred in concluding that its jurisdiction was not engaged in this matter;
- (c) The Tribunal failed to deal with this matter fairly and justly as required by the overriding objective in rule 2 of the Rules;
- (d) The Tribunal failed to take into account the fact that the Respondent appeared disinclined to assist the Appellants, even if additional evidence were provided;
- (e) The Tribunal failed to take into account representations made by the Respondent prior to its decision of 2 September 2010;
- (f) The Tribunal should give permission to appeal to the Upper Tribunal so that the charity can in future be managed in accordance with its governing document, which will require the Respondent either to appoint a new trustee body and vest the charity's property in the new trustee body or to direct that the charity be wound up and its assets distributed to similar charities.

3.3 I have also considered as additional grounds for appeal the grounds advanced for reinstatement, namely:

- (g) that it has not been asserted by the Respondent or the Tribunal that the charity is being run in accordance with its governing document; and
- (h) that the Tribunal's decision that it lacks jurisdiction means that the Respondent's decisions are effectively exempt from appellate review and so the decision is unjust.

3.4 In considering the grounds of appeal, it is important to reiterate the statutory basis of the Tribunal's jurisdiction, with reference to section 2A and schedule 1C of the Act. Section 2A (4) of 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.....”.*

- 3.5 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 application<sup>3</sup>.
- 3.6 These provisions in the Act provide the jurisdictional basis for the exercise of the Tribunal’s powers, which clearly arise only in relation to the decisions orders or directions that are listed in the table in schedule 1C to the Act. Unlike the Chancery Division of the High Court, the Tribunal does not have an inherent supervisory jurisdiction in relation to charities and therefore has no power to hear appeals in the absence of a specified decision order or direction being found to have been made by the Respondent. Similarly, the Tribunal has no free-standing jurisdiction to provide a public law remedy against the Respondent’s actions or inaction. In *Oxfam v Her Majesty’s Revenue and Customs* [2009] EWHC 3078 (Ch), Mr. Justice Sales considered an appeal relating to the jurisdiction of the VAT and Duties Tribunal. He concluded that the Tribunal had jurisdiction to consider general questions of public and of private law, but only where it was necessary for it to do so in order to determine the outcome of an appeal, the subject matter of which fell within the Tribunal’s statutory remit.
- 3.7 To the extent, therefore, that the grounds of appeal suggest that the Tribunal enjoys but erroneously failed to exercise jurisdiction to remedy a breach of trust (grounds (f) and (g)) or to provide a public law remedy against the Respondent (grounds (d), (e) and (h)), I reject these grounds of appeal as misconceived. In relation to ground (h) I would additionally comment that the Appellants could have brought judicial review proceedings against the Respondent (and indeed originally told the Respondent that they intended to do so) so it is not quite correct to say that they have no remedy as a result of the unsuccessful application to the Tribunal. I do understand the Appellants’ frustration at the Tribunal’s inability to hear their appeal, however the question of whether the Tribunal’s remit is sufficiently wide is ultimately one for Parliament and not for the Tribunal itself, which can only act within its statutory powers.
- 3.8 A strike out decision under rule 8(2) of the Rules is a non-discretionary decision, as the Rules state that the Tribunal “must” strike out an appeal where it does not have jurisdiction. It follows that the Tribunal

---

<sup>3</sup> The table is available on the Tribunal’s website [www.charity.tribunals.gov.uk](http://www.charity.tribunals.gov.uk) under Rules and Legislation.

had no power to consider whether it could have exercised its discretion differently so as to give greater effect to the overriding objective in rule 2 of the Rules, because it had no discretion to exercise once it had concluded that the Respondent had not made the relevant decision. In any event, rule 2 is contained within a statutory instrument which cannot be relied upon to override a provision in primary legislation and I accordingly reject ground (c) for those reasons.

- 3.9 It seems to me that the only potentially arguable grounds that have been advanced for seeking permission to appeal are grounds (a) and (b), which together strike at the heart of the Tribunal's decision in this matter. In reaching the decision that it had no jurisdiction, the Tribunal was required to engage in a process of fact-finding as to the nature of the interaction between the Appellants and the Respondent and it had to decide as a matter of fact whether that interaction included (in substance if not in form) the making of a decision falling within the Tribunal's jurisdiction. The Appellants have not expanded upon those reasons in their grounds of appeal, however I understand their argument to be that the Tribunal made an erroneous finding on the facts so as wrongly to conclude that a s.26 Order had not been applied for and refused. Furthermore, that the Tribunal wrongly concluded that a s.26 Order could not in any event have been employed by the Respondent to respond to the Appellants' particular request for assistance.
- 3.10 The Courts have previously considered the nature of the judicial process whereby a statutory Tribunal must establish precedent facts in order to determine whether its jurisdiction is engaged, see for example *R v Fulham, Hammersmith and Kensington Rent Tribunal, ex parte Zerek* [1951] 2 KB 1. Rule 8 of the Rules provides a procedural framework for this process in the First-tier Tribunal by requiring the Appellant to be given an opportunity to comment on the proposed strike out decision and, implicitly, on the facts found by the Tribunal to support the proposed strike out. As mentioned above, the Tribunal in this case afforded the Appellants an opportunity to expand upon their argument that they had implicitly made an application for a s.26 Order and that the Respondent had implicitly refused their application. The Tribunal was not persuaded by the arguments advanced. Whilst the Appellants evidently disagree with that decision, they have not provided any further argument as to the error of law it is suggested the Tribunal made in reaching its conclusions or suggested that no reasonable Tribunal could have reached those conclusions on the evidence before it. In the circumstances I must also now reject permission in relation to grounds (a) and (b).

#### **4. Renewal of Application to Appeal to the Upper Tribunal**

- 4.1 The Appellants now have a right to renew their application for permission to appeal to the Upper Tribunal itself under rule 21(2) of

The Tribunal Procedure (Upper Tribunal) Rules 2008 following the refusal of permission by the First-tier Tribunal. Under rule 21(3) of the Upper Tribunal Rules, the Appellants have one month from the date this ruling is sent to them to lodge an appeal at The Upper Tribunal Office (Tax and Chancery Chamber), 45 Bedford Square, London WC1B 3DN. Further information about the process is available on the Upper Tribunal (Tax and Chancery Chamber) website at <http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

Signed:

**Alison McKenna**

**Principal Judge**

Dated: 6 January 2011