



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

**Case No. CA/2010/0003**

**Appellant: Basharat Hussain**

**Respondent: The Charity Commission for England and Wales**

**Determined on the Papers**

**By**

**Alison McKenna  
Principal Judge**

**Subject matter: Imamia Mission London (UK)  
Tribunal Procedure;  
Jurisdiction of the Tribunal  
Judicial Review**

## DECISION OF THE FIRST-TIER TRIBUNAL

**This appeal is transferred, pursuant to rule 5(3)(k)(ii) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, to the Administrative Court as an application for permission to bring judicial review proceedings.**

### REASONS FOR DECISION

#### 1. Background

- 1.1 The Appellant was a founder trustee of Imamia Mission London (UK), registered charity number 269886 (“the charity”).
- 1.2 In September 2009, the Appellant sent to the Respondent a “disqualification petition” complaining that one of the members of the Executive Committee had been convicted of criminal offences which would prevent him from continuing to serve as a charity trustee. He further complained that the remaining members of the Executive Committee were aware of this and so in breach of their own fiduciary duties towards the charity and should be removed from office by the Respondent. The Appellant was particularly concerned that the charity’s property remains registered in the disqualified individual’s name (as a holding trustee) at the Land Registry.
- 1.3 The Appellant chased the Respondent for a substantive response on a number of occasions, and received holding replies. Eventually on 9 June 2010 he sent a further letter to the Respondent which complied with the Pre-Action Protocol for a Judicial Review claim. He informed the Respondent that he now intended to seek judicial review of the Respondent’s failure to act in the matter.
- 1.4 On 18 June 2010 the Respondent wrote to the Appellant and apologised for not responding sooner. The Respondent said that the disqualified individual had in fact resigned as a charity (i.e. administrative) trustee in 2007 and that he is now disqualified from acting as such by virtue of s.72 of the Charities Act 1993. With regard to his continuing role of holding trustee, the letter stated that the Respondent is “currently engaging” with the individual concerned.
- 1.5 The Respondent commented that the Appellant, whilst describing himself in correspondence as a “life trustee” of the charity, does not

currently hold any office within the charity. The Appellant's lack of official position within the charity would not, however, prevent him from making an application to the Tribunal, provided that he is a person falling within column 2 of the relevant entry in Schedule 1C to the Charities Act 1993 (see section 2 below). The question of his standing to bring judicial review proceedings is one for the Administrative Court.

- 1.6 The Appellant states in his Grounds of Appeal that the Respondent is in breach of its statutory duty to investigate misconduct in the administration of charities. He further alleges that the Respondent's decision not to take any action in respect of the "disqualification petition" itself falls under s.18 (1)(a) of the Charities Act 1993, as amended, albeit (he says) that the Respondent obscured this fact in its correspondence with him. He 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 18 June 2010 and to hold a hearing into the question of whether the "disqualification petition" should be acted upon by the Respondent.
- 1.7 From the history of this matter provided by the Appellant, it does not appear that the Respondent has at any stage made a specific decision, order or direction falling within column one of the table in Schedule 1C to the Charities Act 1993 (as amended by the Charities Act 2006). The relevance of this fact is explained in section 2 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 application<sup>1</sup>.
- 2.3 In this case, I have been unable to identify a decision order or direction of the Respondent which falls within column one of the table. The Appellant refers to section 18(1)(a) of the 1993 Act, however this

---

<sup>1</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.

provision merely sets out a condition for exercising a power to act for the protection of charities. The table in schedule 1C does provide a right of appeal to the Tribunal in respect of a decision by the Respondent to exercise its powers under section 18(1) of the Act (when the relevant conditions are satisfied) however there is no corresponding right of appeal to the Tribunal in respect of a decision by the Respondent not to act in reliance on its statutory powers. I have, in all the circumstances, concluded that the Tribunal does not have jurisdiction to determine the Appellants' application in this matter.

2.4 Having reached that provisional conclusion, I sent to the Appellant a draft ruling on this matter and sought his comments. In my draft ruling I proposed to "strike out" his application under rule 8(2)(a) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, on the basis that the Tribunal did not have jurisdiction to determine it. The Appellant responded by providing me with "Skeleton Arguments on the Jurisdiction of the Tribunal". He argued that:

- (i) The fact that the decision not to make a s.18 Order is absent from the table in schedule 1C does not deprive the Tribunal of jurisdiction;
- (ii) The Respondent's failure to act on the "disqualification petition" amounts to procedural impropriety;
- (iii) The Appellant's application complies with the Tribunal's procedural rules; and
- (iv) The striking out of a case is to be used as a last resort and the Tribunal must consider the interests of justice in exercising this power. Accordingly, if the Tribunal does not consider that it has jurisdiction, it should exercise its power to transfer this matter to the Administrative Court or to the Upper Tribunal in order to ensure that the Appellant has access to justice. He also argued that his application fulfils the requirements of Part 54 of the Civil Procedure Rules 1998 (which govern judicial review proceedings).

2.5 I am not persuaded by the arguments at (i) to (iii) above and confirm my earlier view that the Tribunal does not have jurisdiction in relation to this matter for the reasons set out at paragraph 2.3 above. I have therefore proceeded to consider point (iv).

### **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)(ii) and rule 8(2)(a) and (b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules")<sup>2</sup>, which provide as follows:

---

<sup>2</sup> The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 are available on [www.charity.tribunals.gov.uk](http://www.charity.tribunals.gov.uk) under Rules and Legislation.

***“Case management powers***

*5.—(1) Subject to the provisions of the 2007 Act<sup>3</sup> 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*

*(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 the 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. As stated above, the Appellant asked me to use case management powers to transfer his application to the Administrative Court or the Upper Tribunal, so that it might proceed as an application for judicial review.

**4. Ruling on Transfer Application**

- 4.1 I have considered whether, in view of the Tribunal’s lack of jurisdiction and the administrative law points raised by the Appellant, the Administrative Court would be a more appropriate forum for the determination of this matter. In doing so, I have specifically considered

---

<sup>3</sup> This is a reference to the Tribunals Courts and Enforcement Act 2007.

the requirement to deal with this matter fairly and justly and to give effect to the Overriding Objective in rule 2 of the Rules. I am concerned that a transfer of this matter to the Administrative Court could expose the Appellant to costs in that, unlike the Tribunal, there is a fee to pay and the risk of a costs order being made against the Appellant. However, he has specifically asked me to transfer the case into the Court system and appears to be familiar with the relevant requirements. I note that the Appellant is within the time limits for initiating judicial review proceedings and says that he has complied with the Pre-Action Protocol, so that he could commence judicial review proceedings in the Administrative Court in any event. I have also considered the impact of a transfer on the Respondent's resources, and note that at the permission stage of judicial review proceedings it can file written submissions in the same way that it would usually be required to do in a Tribunal case. The Respondent has not so far been required to spend any resources on dealing with this Tribunal application (see paragraph 4.4 below) and I do not consider that formulating a response to notice of judicial review proceedings would be any more onerous for it than a response to the Tribunal application.

- 4.2 I have considered whether the Upper Tribunal (Tax and Chancery Chamber) would be an appropriate forum for the determination of this matter, in the exercise of its judicial review function under s.15 of the Tribunals Courts and Enforcement Act 2007 ("TCEA").<sup>4</sup> This would be a quicker and cheaper remedy for the Appellant than a transfer of his case to the Administrative Court. However, my understanding is that I may not transfer this case to the Upper Tribunal directly. This is because, although the Upper Tribunal (Tax and Chancery Chamber) does have jurisdiction to hear a judicial review application relating to a function of the Charity Commission<sup>5</sup>, that jurisdiction is exercisable only where a judicial review case is transferred from the Administrative Court to the Upper Tribunal, and not where an application for judicial review is made to the Upper Tribunal directly, unless it falls within a class of proceedings specified in the Lord Chief Justice's Practice Direction for the purposes of s.18(6) TCEA, which this case does not.<sup>6</sup> I note, however, that the Administrative Court has discretion to transfer the matter to the Upper Tribunal (Tax and Chancery Chamber) under s.31A of the Supreme Court Act 1981 (as amended by s. 19 TCEA),<sup>7</sup> either before or after granting permission.

---

<sup>4</sup> See [http://www.opsi.gov.uk/acts/acts2007/ukpga\\_20070015\\_en\\_1](http://www.opsi.gov.uk/acts/acts2007/ukpga_20070015_en_1)

<sup>5</sup> By virtue of the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment No. 3) Order 2009, available at [http://www.opsi.gov.uk/si/si2009/uksi\\_20091590\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20091590_en_1)

<sup>6</sup> See [http://www.tribunals.gov.uk/financeandtax/Documents/forms/Direction\\_ClassOfCaseSpecifiedUnSec18\\_6.pdf](http://www.tribunals.gov.uk/financeandtax/Documents/forms/Direction_ClassOfCaseSpecifiedUnSec18_6.pdf)

<sup>7</sup> See [http://www.opsi.gov.uk/acts/acts2007/ukpga\\_20070015\\_en\\_1](http://www.opsi.gov.uk/acts/acts2007/ukpga_20070015_en_1)

- 4.3 Taking into account the administrative law nature of the Appellant's complaints, the Tribunal's lack of jurisdiction in this particular matter, and my inability to transfer the case directly to the Upper Tribunal (Tax and Chancery Chamber), I have concluded that the Administrative Court would be the most appropriate forum for the determination of this matter. Accordingly, I now direct that the papers should be transferred by the Tribunal Administration to the Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL, together with a copy of this ruling. In exercising my power to transfer this matter, I make no comment as to the merits of the Appellant's application and I should make clear to him that this matter will now be considered merely as an application for permission to bring judicial review proceedings, with no certainty of outcome. He may well be required to file further papers and I understand he will be required to pay a fee to the Court. I would refer him to the guidance on Judicial Review proceedings published by Her Majesty's Court Service which is available at <http://www.hmcourts-service.gov.uk/cms/1220.htm>.
- 4.4 I note that the Respondent has not yet had an opportunity to comment on this case. The Rules do not require me to seek the Respondent's views before making a decision on strike out or transfer, and (in accordance with the Tribunal's usual practice) I had previously suspended the requirement for it to file a response to this application in order to save it from carrying out any unnecessary work while I considered the jurisdictional issue. The Respondent will now have an opportunity to make representations directly to the Administrative Court as to the merits of this application, as it will be served with notice of the application in accordance with Part 54 of the Civil Procedure Rules 1998 as amended<sup>8</sup>.
- 4.5 Finally, in view of the Appellant's complaints about the delay he experienced in gaining a substantive response from the Respondent, I have also provided the Appellant with information about the Independent Complaints Reviewer for the Charity Commission, in accordance with our Memorandum of Understanding<sup>9</sup>.

Signed:

Dated: 30 July 2010

**Alison McKenna**  
**Principal Judge**

---

<sup>8</sup> See [http://www.justice.gov.uk/civil/procrules\\_fin/contents/parts/part54.htm](http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part54.htm)

<sup>9</sup> See [http://www.charity.tribunals.gov.uk/documents/11\\_ICRmemoofunderstandingApril10.pdf](http://www.charity.tribunals.gov.uk/documents/11_ICRmemoofunderstandingApril10.pdf)