

Appeal number: CA/2014/0004

CA/2014/0006 CA/2014/0007

FIRST-TIER TRIBUNAL (CHARITY) GENERAL REGULATORY CHAMBER

JOHN NICHOLSON AND FIVE OTHERS TONY GREENSTEIN AYED ABU EQUTAISH

Appellants

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

RULING ON PRELIMINARY ISSUE OF STANDING TO BRING THE APPEALS

Sitting in Chambers on 4 August 2014

1. This is my ruling on the preliminary issue of whether the Appellants are persons entitled to appeal to the Tribunal in respect of the Charity Commission's decision of 31 January 2014, which was a decision under s. 34 of the Charities Act 2011 ("the Act") not to remove certain charities from the Register of Charities. The parties have agreed to the determination of the preliminary issue on the papers.

Background

- 2. On 11 March 2014, John Nicholson and five others appealed to the Tribunal in respect of the Charity Commission's decision not to remove JNF Charitable Trust (225910), JNF Educational Trust (2902667) and KKL Charity Accounts (1105598) ("the Charities") from the Register.
- 3. The appeals were made on the basis that the Appellants are persons who are or may be affected by the Charity Commission's decision. They described themselves

- as: "(i) tax payers whose tax is affected by charitable relief for these racist organisations; (ii) Jewish people whose contributions to the JNF "charities" were made unwittingly without knowledge that they had no entitlement to call themselves charitable; (iii) personal supporters (including financially) of Palestinians whose families have been displaced by JNF demolitions and replacement of their lands by "parks" for Israeli recreation".
- 4. On 6 May, Tony Greenstein filed a Notice of Appeal in respect of the same decision. He described himself as "a Jewish person who has unwittingly donated to the JNF through school and family without awareness of the atrocities that they have been carrying out on behalf of the Israeli state; a Jewish person who feels personally that the actions of the JNF and the Israeli state against the Palestinians are racist and that by carrying out these actions in the name of all Jews they cause harm to the reputation or well being of Jewish people elsewhere in the world. It is well known that the JNF is responsible for ethnic cleansing within Israel as well as extensive involvement with the illegal settlements on the West Bank".
- 5. Also on 6 May, Ayed Abu Equtaish filed a Notice of Appeal with the Tribunal in respect of the same decision. He describes himself as "a Palestinian whose family has been displaced by the JNF, through demolition of our house and village. These have been replaced by a JNF "park" (the "Canada Park") for Israeli recreation. The same has happened to those Palestinians whose villages were demolished and the land turned into the "British Park", with a large sign proclaiming that this "park" was built with funds provided by JNF support in Great Britain".
- 6. The Tribunal allowed Mr Greenstein and Mr Equtaish's appeals to proceed out of time and consolidated them with Mr Nicholson's appeal. Mr Nicholson agreed to act as the sole point of contact with the Tribunal for all the Appellants. Further Notices of Appeal have subsequently been filed by other persons in respect of the same decision of the Charity Commission, but the Tribunal has refused to permit them to proceed out of time.
- 7. The Charity Commission's Responses to all three of the appeals submitted that the Appellants had not established that they were persons who are or may be affected by the decision not to remove the Charities from the Register. The Tribunal therefore directed that this matter should be determined as a preliminary issue.
- 8. On 6 June the Tribunal received an application under rule 5 (3) (d) of the Tribunal's Rules from solicitors acting on behalf of the Charities, seeking to place factual information before the Tribunal to assist it in ruling on the preliminary issue. The parties agreed that the Tribunal should have regard to this information in reaching its decision on the preliminary issue and the Tribunal granted the Charities' application. Mr Nicholson asked for a copy of documents referred to in the Charities' submission to the Tribunal, but the Tribunal was informed by the Charity Commission that the Charities were not wiling to disclose the documents to him.
- 9. The Tribunal directed the Appellants to file a Reply, limited to the question of standing, after they had seen the Charity Commission's and the Charities' submissions so that they could respond substantively to all the points made. Mr Nicholson filed a Reply on behalf of all the Appellants, on 17 July.

The Law

- 10. An appeal against a decision under s. 34 of the Act can be brought by "any other person who is or may be affected by the order" (column 2 of schedule 6 to the Act.)
- 11. There is no definition of "any other person who is or may be affected by the order" in the Act and I have not been referred to any Parliamentary materials which clarify the legislative intention behind the use of that term. Under the rule in Pepper (Inspector of Taxes) v Hart [1993] AC 593 a Judge may have regard to certain extraneous materials in construing a statutory provision. If I were satisfied that the provision in column 2 of schedule 6 to the Charities Act 2011 was "ambiguous, obscure or led to absurdity" then I could properly have regard to a clear statement, directed to the ambiguity in question, made by or on behalf of the Minister promoting the Bill, and which discloses the otherwise ambiguous legislative intention. However, I have not been referred to any such statement and my own research indicates that none was made.
- 12. The Charity Commission has referred me to the decision of Lord Carlile of Berriew QC (sitting as a Deputy High Court Judge) in *R* (on the application of International Peace Project 2000) v Charity Commission for England and Wales [2009] EWHC (Admin) 3446, in which the Charity Commission opposed an application for judicial review on the basis that the alternative remedy of an application to this Tribunal was available to the claimant. The Judge, in considering whether the claimant would be able to apply to the Tribunal in the circumstances of that case commented that "A person who is or may be affected, in my judgment, means someone who has an interest that is materially greater than, or different from, the interests of an ordinary member of the public".
- 13. Mr Nicholson referred me to decisions of the Courts regarding a different statutory test, namely whether persons had an "interest" in a charity, so as to bring charity proceedings: *Hampton Fuel Allotment Charity and Others v Rogers and Others* (1988) The Times 30 March, and *RSPCA v AG* [2001] EWHC 474 (Ch). He also referred me to rulings of the First-tier Tribunal in two previous appeals. These decisions turn on their own facts and do not bind me in making this decision.
- 14. In seeking to interpret the rights of appeal to the Tribunal, I note that the Parliamentary draftsman did not see fit to create two distinct categories of "(d) a person who is affected and (e) a person who may be affected". It seems to me that that there is one broad category of potential appellants, which encompasses those who are definitely affected and those who only "may be affected". I have considered the Appellants' case accordingly.

Submissions

The Charity Commission

15. The Charity Commission's submissions in relation to John Nicholson and the five others who submitted the first Notice of Appeal were that the Appellants have not particularised how and in what way they have suffered any material or special consequences arising from the registration of the Charities and that they have failed to demonstrate by way of evidence how they are in the position of being affected by the Charities' registration. With regard to the three arguments in favour of standing

given in the Notice of Appeal, the Charity Commission's response was that, firstly, the fiscal interest of an ordinary taxpayer is insufficient to confer standing; secondly, that whilst donors may be in a different position from ordinary members of the public, there is no evidence to support the assertion that donations were made; thirdly, that the Appellants' statements do not meet the legal test for being a person who is or may be affected by the Charity Commission's decision.

- 16. The Charity Commission's Response in relation to Tony Greenstein's Notice of Appeal was that his arguments in support of standing do not particularise any material or specific consequences arising from the registration of the Charities. In respect of his position as a donor, it was submitted that he had provided no evidence of when the donations were made and whether they were substantial.
- 17. The Charity Commission's Response in relation to Mr Equtaish's Notice of Appeal was that he had not established a link between the displacement event described and the Charities which are the subject of the decision.

The Charities

18. The Charities' solicitor submitted a letter containing a short history of the Charities and the relationship between them. It also denied that the Charities had been involved in building Canada Park. Mr Nicholson immediately made clear to the Tribunal that the factual accuracy of the statements contained in the solicitor's letter was disputed. As noted above, the Tribunal was informed that the Charities had declined to provide him with documentary evidence in support of their submissions.

The Appellants

- 19. The Appellants submitted firstly that there is considerable public interest in the question of the Charities' continued registration as charities and in the question of the Charity Commission's ability to regulate them effectively, so that the appeals should be permitted to proceed. The Appellants complain that the Charity Commission has not kept them informed of regulatory discussions with the Charities and provide examples of other organisations denied charitable status in support of a submission that the Charity Commission has taken a partisan approach.
- 20. Secondly, it was submitted that the Charity Commission's conduct of the correspondence in this matter was such as to give Mr Nicholson the impression that he would have standing in the Tribunal and that it would therefore be unfair now to refuse him a right of appeal.
- 21. The first ground on which the Appellants rely in the Notices of Appeal is that, as taxpayers, they do not wish to see tax reliefs extended to the Charities. No additional submissions were made on this point.
- 22. The second ground in the Notices of Appeal is that the Appellants have in the past been misled into making donations to the Charities as a result of their registered status, which they would not have made had they been aware of the full facts about the Charities. Mr Nicholson introduced some evidence from the other Appellants into his submissions on this point. Barbara Iqbal is one of the five original Appellants. A brief statement from her refers to having made a compulsory annual donation to the Charities when she was at school between the years 1958 and 1962.

Tony Greenstein's brief statement refers to his having made donations to the Charities prior to attaining the age of 16.

23. The third ground relied on by the Appellants refers to support for displaced Palestinians. No further information about this ground is given in the submissions.

Conclusion

- 24. I recognise that there are some profoundly important and highly complex issues which form the back-drop to this case. I also acknowledge that the Appellants (and, indeed, others) hold very strong feelings about those issues. However, there is no public interest test in respect of standing in the Tribunal and I must decide this matter without regard to the wider issues and only having regard to the question of whether the Appellants fall within the category of persons in column 2 of schedule 6 to the Act so as to allow their appeals to proceed.
- 25. I am not persuaded that a taxpayer who disagrees with the views or actions of a charity is "affected" by its continued registration so as to pass the threshold for having standing in the Tribunal. It seems to me that the nature of every taxpayer's relationship to every registered charity is essentially the same and that Parliament cannot have intended that every taxpayer should be able to bring an appeal to the Tribunal on the basis merely of his or her disagreement with the enjoyment of fiscal advantage by any particular registered charity. To apply Lord Carlile's test (see paragraph 12 above) I am not persuaded that, by virtue of being taxpayers, the Appellants are persons who have "an interest that is materially greater than, or different from, the interests of an ordinary member of the public" in the decision which it is sought to appeal.
- 26. The Charity Commission accepted that some donors to charity may pass the threshold test for standing in the Tribunal, but it submitted that the Tribunal had no evidence before it on which it could take that view. Having considered the evidence subsequently produced by the Appellants, I find that it is weak, referring to donations made years ago and in what one must assume (as the donations were from children) to have been insignificant amounts. I am not persuaded that the evidence regarding donations is sufficient for Ms Iqbal or Mr Greenstein to pass the test for standing in the Tribunal.
- 27. It does not seem to me that a person can become an "affected person" solely as a result of the terms of their engagement with the Charity Commission, either before or subsequent to the decision which it is sought to appeal. The key issue in column 2 of schedule 6 to the Act is their relationship to the decision itself. I am accordingly not persuaded that even if misleading information about appeal rights were given by the Charity Commission it could confer standing where it did not otherwise exist. It would concern me if the Charity Commission had relied upon a decision of the First-tier Tribunal in correspondence or guidance without also making it clear that such decisions do not create legal precedent. However, whilst I accept that Mr Nicholson was an "addressee" of the Charity Commission's decision, and I also accept that the information about appeal rights given by the Charity Commission could have made it clearer that there was an initial threshold of standing to be crossed before such an appeal could be heard, I am not persuaded that the contents of any correspondence about the decision could serve, without more, to give any person standing to bring an appeal to the Tribunal.

- 28. The Charities asked to assist the Tribunal by providing factual information but in the event their submissions consisted solely of assertions made by their solicitors, without supporting evidence. As the Charities did not wish to become parties to the appeals, I was unable to direct the filing of evidence on their behalf. As noted above, the Charities apparently declined to provide Mr Nicholson with copies of the documents he requested informally. In these circumstances, I am unable to make any findings of fact (in favour of the Appellants or the Charities) about the disputed history of the displacement of Palestinians, about the alleged effect on any particular individual of disputed events, or about the disputed history of the Charities' alleged involvement in such events. This creates particular problems for Mr Equtaish's case, which relies solely upon his own and his family's connection to disputed historical events about which I am unable, for the purposes of this ruling, to make relevant findings of fact.
- 29. However, for the reasons that follow, I do not think that findings of fact about historical events are necessary for the purposes of making this preliminary ruling. The question of whether a person is or may be affected by the decision under appeal is highly fact-specific. But the facts on which it turns are connected to the nature of the disputed decision and the effect it has on the would-be Appellants, not the wider factual background. In this case, both parties have addressed the issue of whether the Appellants have shown that they are affected by the continued registration of the Charities, but it seems to me that the question is in fact narrower than that. It is whether the Appellants are persons who are or may be affected by the specific decision of 31 January 2014 not to remove the Charities from the Register.
- 30. Returning to the generic test adopted by Lord Carlile of Berriew QC (see paragraph 12 above) i.e. whether the Appellants are persons who have "an interest that is materially greater than, or different from, the interests of an ordinary member of the public" in the decision which it is sought to appeal, it does not seem to me that the Appellants have really addressed that point. They have directed themselves to the question of why they have an interest in opposing the continued registration of the Charities (as Mr Nicholson puts it, to end support for the toleration of the expropriation of Palestinians) but not specifically why the decision made on 31 January 2014 impacts upon them.
- 31. I entirely understand and respect the fact that the Appellants have a deeply-held and continuing objection to the views and activities of the Charities, but it does not seem to me that that holding a particular viewpoint about a charity can ever serve to create an interest in the Charity Commission's decision which is greater than that of an ordinary member of the public. The Appellants have not pointed to any particular disadvantage that they have experienced as a result of the making of the decision under appeal. They have not suggested that their rights were in any way infringed by the making of the decision under appeal. And they have not explained how the specific decision which they seek to appeal affects them more than anyone else.
- 32. Accordingly, and for all these reasons, my ruling is that the Appellants are not persons who are or may be affected by the Charity Commission's decision of 31 January 2014. For that reason I must now strike out the appeals for lack of jurisdiction.

PRINCIPAL JUDGE DATE: 4 August 2014

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