



**First-tier Tribunal
(General Regulatory Chamber)
Charity**

**Appeal Reference: CA/2015/0011
CA/2017/0002**

**Decided without a hearing
On 22 September 2017**

Before

JUDGE J HOLBROOK

TRIBUNAL MEMBER H CARTER

TRIBUNAL MEMBER A KHAN

Between

PAULINE DENSHAM

Appellant

and

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

DECISION AND REASONS

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DECISION

The application to set aside the Tribunal's decision dated 14 August 2017 is refused.

The decision will not be reviewed.

Permission to appeal is refused.

REASONS

Introduction

1. By a decision dated 14 August 2017 ("the Decision"), the Tribunal dismissed two appeals made by Miss Pauline Densham against decisions of the Charity Commission.
2. On 10 September 2017, Miss Densham applied for the Decision to be set aside. We consider this application below. We have, in addition, treated it as an application to appeal the Decision to the Upper Tribunal (Tax and Chancery Chamber).

Application to set aside

2. Miss Densham seeks to rely on various provisions of the Arbitration Act 1996. The provisions of that Act do not apply to proceedings before this Tribunal, which are instead governed by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.
3. Rule 41 of the 2009 Rules provides that the Tribunal may set aside a decision and re-make it if (a) the Tribunal considers that it is in the interests of justice to do so; and (b) one or more of a number of conditions are satisfied. Those conditions include the following:
 - A document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative.
 - There has been some other procedural irregularity in the proceedings.
4. Miss Densham asserts that both of these conditions are satisfied. First, she says that she did not receive the bundle of authorities in time (and that pages were missing from the bundle when it was received). Second, she says that there were procedural irregularities in that the Tribunal failed to consider all the evidence and improperly permitted the Respondent to introduce new evidence during the hearing.
5. As far as the receipt of documents for the hearing is concerned, Miss Densham says that, although the Tribunal's directions required the Respondent to send her an authorities bundle by 12 June 2017 (seven days before the hearing), she did not

actually receive it until the day of the hearing itself. Following an earlier failed attempt by the Respondent to post the authorities bundle to her, Miss Densham had apparently agreed to it being handed over on the day of the hearing. She had agreed to this because she had been concerned that a second (late) attempt to post the authorities bundle might have resulted in her not receiving it before the hearing at all.

6. Miss Densham now argues that she was prejudiced by the late delivery of the authorities bundle. This is not a concern which she has raised previously. In particular, Miss Densham made no reference to it when, at the outset of the hearing, Judge Holbrook obtained confirmation that both parties had received copies of the hearing and authorities bundles and the skeleton arguments.

7. We accept that Miss Densham did not receive her copy of the authorities bundle on time. However, the Decision should only be set aside for this reason if we consider that to be in the interests of justice. We do not. It was clear to us at the hearing that Miss Densham was familiar with all the key authorities in this case. She had seen most of the authorities in the bundle before: indeed, many of them appear to have been included in the bundle at her request. There is nothing to indicate that Miss Densham would have presented her case differently at the hearing had the authorities bundle been provided to her sooner and we do not consider that she suffered any significant prejudice as a consequence of its late delivery.

8. In addition, Miss Densham says that, when she eventually received it, the following pages were missing from her copy of the authorities bundle:

- Allotments Extension Act 1882 (the introductory notes and sections 1 - 8 were missing).
- John Lithiby, "The Law of District and Parish Councils" (1894) pp 95 - 97 (page 96 was missing).

9. Having examined the Tribunal's own copy of the authorities bundle, we note that the pages referred to are not in our bundle either, and that there is no 'gap' in its sequential pagination. It is not clear whether the Respondent omitted these pages intentionally or whether a clerical error was made when assembling the bundle. However, it is not the case that the Tribunal was provided with documents which Miss Densham did not see. Moreover, the authorities concerned were not referred to during the hearing anyway.

10. Turning to Miss Densham's allegations concerning the manner in which evidence was considered by the Tribunal, we take the view that, if they are arguable, those allegations would amount to grounds for an appeal to the Upper Tribunal. However, they would not constitute grounds to set aside the Decision for procedural irregularity. It is for this reason that we have gone on to consider whether permission to appeal should be granted in this case.

Application for permission to appeal

11. By virtue of section 11 of the Tribunals, Courts and Enforcement Act 2007, the Decision may be appealed on a point of law to the Upper Tribunal (Tax and Chancery Chamber), but such an appeal may only be made with permission given either by this Tribunal or by the Upper Tribunal.

12. Miss Densham argues, in effect, that the Tribunal made an error of law by failing to consider all the evidence. The 'evidence' to which she refers comprises extracts from various legal texts and several individual decisions of the Commons Commissioners. Miss Densham had referred to these in her written submissions and copies of them were included in the authorities bundle. However, it is clear that none of these documents were presented as evidence of facts relevant to this case, but rather as authorities in support of Miss Densham's legal arguments. The Tribunal did not accept those arguments, but it is not required to rebut the authorities on a point by point basis. It is sufficient for the Tribunal to state the relevant facts, to explain the applicable law, and to give reasons to show how it has applied the law to arrive at its conclusions. In our view, the Decision achieved these things.

13. For similar reasons, we do not accept that the Tribunal improperly permitted the Respondent to introduce new evidence during the hearing. Counsel for the Respondent did not attempt to introduce new factual evidence. She merely commented – in the context of the disputed validity of an appointment of trustees – that statutory provisions other than those which were the focus of the case may have a bearing on the question. Counsel was thus making a legal submission. The fact that that submission might not have been made previously did not cause the point made to be any less valid.

14. We note that Miss Densham is dissatisfied with the Tribunal's findings generally on the issue concerning the appointment of trustees and with the adequacy of the reasons given for those findings (at paragraphs 46 – 48 of the Decision). However, we do not consider that the Decision contains an error of law in this regard.

15. We have also considered (taking account of the overriding objective of dealing with cases fairly and justly) whether to review the Decision. However, the Tribunal may only undertake such a review if, on an application for permission to appeal, it is satisfied that there was an error of law in the Decision. For the reasons stated above, we are not satisfied that this is the case. It follows that the Decision cannot be reviewed.

16. In accordance with section 11 of the Courts, Tribunals and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant may make further application for permission to appeal to the Upper Tribunal (Tax and Chancery Chamber). Such application must be made in writing

and received by the Upper Tribunal (Tax and Chancery Chamber) no later than a month after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

Signed JW HOLBROOK

Judge of the First-tier Tribunal

Date: 22 September 2017