



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

Appeal number: CA/2016/0008

**THE CHARITY COMMISSION FOR ENGLAND
AND WALES**

Applicant

and

**CAMBRIDGE ISLAMIC COLLEGE
CAMBRIDGE MUSLIM COLLEGE**

Respondents

**Judge Alison McKenna
Sitting in Chambers on 4 October 2017**

**RULING ON APPLICATION FOR PERMISSION TO APPEAL AND FOR SET
ASIDE OF PARAGRAPH 57 OF THE TRIBUNAL'S DECISION**

1. The Applicant's application for permission to appeal dated 25 September 2017 is granted.
2. The Applicant's application of the same date for a set aside of paragraph 57 of the Tribunal's Decision is refused. The alternative application for permission to appeal against paragraph 57 alone is refused.
3. I have considered in accordance with rule 44 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 whether to review the Tribunal's

Decision but have decided not to undertake a review, as I am not satisfied that there was an error of law in the Decision.

REASONS

Background

4. On 29 August 2017, the Tribunal issued a Decision in which it allowed the appeal of Cambridge Islamic College against the Charity Commission's Direction under s. 42(1) of the Charities Act 2011.

5. The Charity Commission's Direction had ordered Cambridge Islamic College to change its name because it was "in the opinion of the Commission too like" that of Cambridge Muslim College (s. 42 (2) (a) (ii) of the 2011 Act) and also that it infringed s. 42 (2) (d) of that Act, as the name Cambridge Islamic College "gave the impression that it was connected in some way" with Cambridge Muslim College. Cambridge Muslim College was joined as the Second Respondent to the appeal.

6. The Tribunal's Decision was made following an oral hearing at which evidence was given. Due to pressures of time, the parties (all of whom were legally represented) made their closing submissions in writing. The Tribunal's Decision was reserved.

Application for Permission to Appeal

7. The grounds of appeal relied on by the Applicant may be summarised as follows: (i) that the First-tier Tribunal erred in law in interpreting s. 42 (2) (a) (i) of the 2011 Act too narrowly as a test of visual or aural likeness; and (ii) that, in applying this test, the First-tier Tribunal erred in focussing on only two words in the respective charities' names ("Islamic" and "Muslim") and not considering sufficiently the similarity of the entirety of the charities' names.

8. The Applicant has also cited points of public importance grounds for seeking permission to appeal but these are not a necessary criterion for giving permission to appeal from the First-tier Tribunal to the Upper Tribunal under s. 11 of the Tribunals, Courts and Enforcement Act 2007 ("TCEA"). Such considerations become relevant only when applying for permission to appeal from the Upper Tribunal to the Court of Appeal under s. 13 (6) TCEA and the Appeals from the Upper Tribunal to the Court of Appeal Order 2008.

9. The grounds of appeal do not mention the Tribunal's conclusions in relation to s. 42 (2) (d) of the 2011 Act. I have therefore assumed that these are not challenged.

10. Appeals from the First-tier Tribunal to the Upper Tribunal can only be made if there is an arguable error of law in the First-tier Tribunal's decision. Rule 42 of the Tribunal's Rules requires a person requesting permission to appeal to identify an alleged error of law in their application for permission to appeal. I have considered whether the grounds of appeal identified above are *arguable*. This means that there must be a realistic (as opposed to fanciful) prospect of success – see Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.

11. I am satisfied that both of the Applicant's grounds of appeal are arguable. There is no authority on the interpretation of s. 42 of the 2011 Act and it will be helpful for the Upper Tribunal to determine the correct approach.

12. The Applicant has made submissions about the outcome it seeks but I have no power to influence how the Upper Tribunal decides the appeal, as that is a matter for its own discretion under s. 12 TCEA. The Applicant's submissions must be made to the Upper Tribunal.

Application for Set Aside

13. In a separate application of the same date, the Applicant has applied for a set aside of paragraph 57 of the Tribunal's Decision or, in the alternative, permission to appeal against that paragraph alone. This is on the basis that it contains a criticism of the Charity Commission's decision making, which is said to be (i) inappropriate in a *de novo* hearing, (ii) procedurally unfair because the Commission had no prior warning of the criticism; (iii) the source of adverse press comment, and (iv) upsetting to the staff involved.

14. Rule 41 of the Tribunal's Rules allow a Decision, or part of it, to be set aside where it is in the interests of justice to do so and one of the criteria in rule 41 (2) (a) to (d) are met. The criteria focus on procedural irregularities.

15. I am not persuaded that the grounds for a set aside under rule 41 are met. The comment at paragraph 57 is clearly *obiter* and does not indicate that the Tribunal erred in approaching its task of considering the Commission's decision afresh. There is no interests of justice requirement to give a party notice of a comment which is *obiter dicta*.

16. It would be wholly inappropriate for a Court or Tribunal to set aside a part of its Decision merely to save a party from upset or press criticism. I hope that the Applicant has explained to its staff that any criticism made by the Tribunal is of the Charity Commission corporately and not of any individual staff member. I note that the Applicant has responded to the press report by explaining its position.

17. I am not satisfied that there is an arguable error of law in paragraph 57 and so I also refuse permission to appeal.

(Signed)

Alison McKenna

4 October 2017

Principal Judge

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