



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

Case No. CA/2010/0002

Appellant: Professor Leon Poller

Respondent: The Charity Commission for England and Wales

Determined on the Papers

By

**Alison McKenna
Principal Judge**

**Subject matter: Manchester and District Home for Lost Dogs Ltd;
Tribunal Procedure;
Jurisdiction of the Tribunal**

DECISION OF THE FIRST-TIER TRIBUNAL

This appeal is struck out pursuant to Rule 8(2) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

REASONS FOR DECISION

1. Background

- 1.1 The Appellant is a former trustee, former Vice Chairman and former Honorary Chairman of the Manchester and District Home for Lost Dogs, registered charity number 1001346 (“the charity”).
- 1.2 In 2008, the Respondent received complaints about the charity from the Appellant and others raising concerns about its governance and the conduct of its trustees. The Respondent made enquiries and in March 2009 it responded to the complainants, including the Appellant, with its findings.
- 1.3 The Appellant then made further complaints about the conduct of the charity’s 2009 AGM and, being dissatisfied with the Respondent’s response, he requested an informal “decision review” under the Respondent’s internal procedures.
- 1.4 The Respondent’s decision review panel considered seven specific areas of complaint and took into account both oral and written representations from the Appellant and others. It reached a decision in March 2010 and issued a 22 page determination.
- 1.5 From the history of this matter provided by the Appellant, it does not appear that the Respondent has at any stage made a 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).

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 decision order or direction and column three sets out the powers of the Tribunal in respect of such an application¹.
- 2.3 In this case, I have been unable to identify a relevant decision order or direction of the Respondent which falls within column one of the table. Although the Respondent has attempted to resolve the Appellant’s complaints about the charity, it has not exercised any relevant statutory power in doing so. In the circumstances, I have concluded that the Tribunal does not have jurisdiction to determine the Appellants’ application in this matter and that the application should therefore be struck out.

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)(i) and rule 8(2) and 8(3)(c) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“the Rules”)², which provide as follows:

“Case management powers

5.—(1) Subject to the provisions of the 2007 Act³ 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—

¹ The table is available on the Tribunal’s website www.charity.tribunals.gov.uk under Rules and Legislation.

² The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 are available on www.charity.tribunals.gov.uk under Rules and Legislation.

³ This is a reference to the Tribunals Courts and Enforcement Act 2007.

(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

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...

(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 a 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 and also that I did not consider that the Tribunal could transfer his application to another court or tribunal which did have jurisdiction.

3.3 I sought the Appellant's' comments on this ruling in draft and asked him to provide his comments within 7 days. I have finalised this ruling having taken those comments into account. The Appellant is understandably unhappy that the Tribunal cannot determine his appeal and commented that "*There needs to be a way whereby the Charities Acts 1993 and 2006 are implemented to provide adequate opportunity for genuine appeals against Charity Commission's decisions to be considered by the Tribunals Judiciary other than on the narrow grounds listed in the official documentation*". Under the terms of the Tribunal's Memorandum of Understanding with the Independent Complaints Reviewer⁴, I have made him aware of the availability of the ICR service.

3.4 The process required by the Rules does not include a right for the Respondent to make representations on a proposed strike out. I recognise, however, that the receipt of an application by the Tribunal Administration generates notification of the appeal to the Respondent, with the result that the "clock starts ticking" under rule 27 of the Rules for the filing of the response. It would be unfortunate if this were to put the Respondent to unnecessary work in relation to an application which

⁴ Published on www.charity.tribunals.gov.uk under Useful Links

must be struck out. Accordingly, the case management power in rule 5(3)(a) of the Rules, which allows the Tribunal to extend the time for complying with any rule, has been invoked in this case, suspending the requirement for the Respondent to file a response pending determination of the jurisdiction issue. In the circumstances it will not be necessary for the Respondent to file a response in relation to this application, which is hereby struck out on the grounds of lack of jurisdiction.

Signed:

Dated: 3 June 2010

Alison McKenna

Principal Judge