FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Charity

Tribunal Reference:	CA/2013/0002
Appellant:	Regentford Limited
Respondent:	The Charity Commission
Judge:	NJ Warren

DECISION NOTICE

1. On 23 October 2012 the Charity Commission ("the Commission") decided to open an enquiry into a registered charity called Regentford Limited ("Regentford"). The Commission's general power to institute enquiries is now to be found in section 46 Charities Act 2011. Notice of the enquiry was given on 1 March 2013 and Regentford have asked for a review of this decision.

2. Although the Tribunal rules, for the sake of brevity, treat applications for a review as appeals, the legal powers of the Tribunal are very different. The Tribunal does not hear the whole case afresh, as it would do if there were a right of appeal against the decision to open an enquiry. Instead it must apply the principles which would be applied by the High Court on an application for judicial review. It is important also to bear in mind that, at this stage, the Commission has not made any final findings. The question whether there is sufficient material on which to "look and see" is very different from the question of whether there is sufficient material on which to make a finding of fact.

3. It is convenient to start with an account of the facts as they appear at the moment.

4. Regentford was incorporated in 1990 and was put on the register of charities in early 1991. Its principal charitable objects were the advancement of religion in accordance with the orthodox Jewish faith and the relief of poverty. The last set of

accounts which it filed with the Commission was for the year ending 30 September 2006. These indicated assets of about £1million and an annual income of about £80,000.

5. In July and August 2012 the Commission obtained copies of Regentford's bank statements disclosing significant receipts and payments in May and July 2006 which do not appear in those accounts. They are of the order of about £400,000 and include two large sums paid to two of the trustees.

6. On 19 July 2007 there was a meeting attended by the company secretary and the same two trustees. The minutes record a decision to grant 99 year leases of eight flats owned by Regentford to a company called Quain Limited ("Quain") on the basis that the directors of Quain, described as a wholly owned subsidiary of Regentford, would declare that they held the leases on trust for Regentford. Quain would mortgage the flats on terms approved by Regentford.

7. That is the account given by the minutes. However:-

   (a) Quain was not a subsidiary of Regentford. It was owned by one of Regentford's trustees, Mr Markovic. He and Mr Ratnasingham were the two directors of Quain. They were also the two trustees of Regentford who attended the meeting. (It is fair to add that the shares in Quain were transferred to Regentford nearly five years later.)

   (b) A minimum of three trustees would have been required to make a quorate decision.

   (c) The declaration of trust anticipated by the meeting appears faulty. It refers to the leases having been granted on 2 July 2007, about a fortnight before the meeting. It declares that Quain holds the leases in trust for Regentford "…. jointly entitled in equity".

8. On 9 November 2007 Quain borrowed £950,000 on an interest only mortgage secured on the flats. It is said that the mortgagee has since sold the flats at a loss of

£400,000. Regentford has, of course, filed no accounts covering the period of these transactions or any later period.

9. In April 2010 Regentford was fined £250,000 at Croydon Crown Court for breaches of health and safety legislation. This followed the death of a man doing building work on scaffolding at premises said to be owned by the company. The Judge who sentenced the company formed the view that it had operated in an irregular way for a number of years and asked the prosecutor to draw this to the attention of the Commission. This he did in a letter dated 9 June 2010. On 29 July 2010 Regentford was dissolved and removed from the register at Companies House for failure to file accounts. On 22 September 2010 the Commission simply removed Regentford from the register of charities.

10. Pausing there, it seems to me that I should not allow the Commission's action in September 2010 to pass without remark. At that time, the Commission did not know everything that they know today but they did know:-

    (a) Regentford had substantial assets.

    (b) It had filed no accounts with the Commission since 2006.

    (c) It had filed no accounts as a limited company since 2006

    Even without the letter written at the request of the Crown Court Judge, it might be thought that this should have rung alarm bells about what had happened to the charity's assets. I do not criticise the Commission because I do not have the full facts. By s34(1)(b) Charities Act 2011 the Commission were under a duty to remove Regentford from the Register because it had ceased to exist. The possibility arises that, within the Commission's operations, the removal was seen as a comparatively low level automatic operation. If that is so, then the Commission may wish to enquire as to whether some refinement is needed to deal with cases involving substantial funds. There is an indication in the material before me that what happened to Regentford was not unique (see page 349).

11. To return to the narrative, Regentford was restored to the register of companies by an order of the Companies Court in February 2011. The application was made by Mr Markovic who described Regentford as having been incorporated "to provide varying service activities". Mr Markovic indicated that the purpose of restoring the company to the register was in order to conduct litigation in its name. There are references in the papers to litigation with the solicitors who acted for Regentford in the criminal trial; with Thanet Borough Council; and against two named individuals for debt.

12. On 13 July 2011 the Commission reinstated Regentford on the register of charities.

13. There followed correspondence between the Commission and a solicitor acting for Regentford. By the time the enquiry was opened both Mr Markovic and Mr Ratnasingham had resigned leaving a single trustee who now describes herself as living abroad and possessing no records relating to the charity.

14. The application for review was lodged by the company secretary and there was a hearing on 30 July. The Commission was represented by Ms Thakor and Ms Wills. Regentford was represented by Mr Davey. I record my thanks to all three for their assistance at the hearing.

15. Mr Davey began by asking me to adjourn the hearing to allow the Commission to first conduct their own review. The application was resisted on behalf of the Commission.

16. Mr Davey rightly pointed to elements of ambiguity and confusion in the dealings between the parties immediately after notice of the enquiry was given. The notice stated that the trustees could ask the Commission to review their decision to open an investigation provided they did so within three months. This might be thought to be a slightly odd time limit in the circumstances. Surely, by the time of its expiry, the enquiry would be well under way. The letter went on to say that it may be possible to challenge the decision before the First Tier Tribunal. The time limit for an appeal, as it was described, was 42 days. Regentford wrote promptly stating they wished to challenge the decision and asked that their letter be treated as such a

challenge. The Commission replied enquiring whether this was meant to be a Tribunal appeal or an internal review. Regentford did not receive that reply and accordingly lodged an application for a review by the Tribunal before the 42 days expired.

17. I took the view that it was better to go ahead with the hearing and give a decision either stopping the enquiry now or refusing the application. I took into account first that, in theory, an internal review might be more wide-ranging than a Tribunal review conducted on judicial review principles. I enquired whether there was any factual material not before me on which Regentford might wish to rely but none was forthcoming. In any event, in recent years, the line between a clear error of fact and an error of law has become somewhat blurred. I was satisfied that there was no injustice to Regentford on this account.

18. My main reason for proceeding was that in fact, if not in form, the Commission had already looked again carefully at their decision. It is implicit in the Tribunal rules that on receipt of an appeal the respondent reviews the decision in order to decide whether or not to oppose the appeal. Thereafter, the respondent's duty to assist the Tribunal to deal with the case fairly and justly means that if the decision, on reflection, appears to them to be wrong then they inform the Tribunal accordingly. Preparation for a hearing inevitably requires consideration of whether the decision can be adequately defended. In my judgement, therefore, nothing was to be gained by putting off the case to another day to permit the Commission to go through that process again.

19. Mr Davey next submitted that the Commission had no jurisdiction to embark on an enquiry for two reasons.

20. First, he submitted that because we are dealing here with events that took place in 2006 and 2007, the Charities Act 2011 cannot apply and instead the governing statute is the Charities Act 1993. This submission was not developed in any detail and it does not seem to me to require a detailed response. The 1993 Act contained a similar power to open an enquiry. It was not until the Charities Act 2006 came

into force that there was any authority given to the Tribunal to intervene. This argument therefore cannot possible avail the appellant.

21. The second argument was that Regentford was no longer a charity and was therefore outside the regulatory scope of the Commission. Mr Davey submitted that the company now existed for one purpose only – the litigation. It could not undertake any other activity including charitable activity. It had no means of doing so. It had been quite wrong to restore Regentford to the Commission's register.

22. I was unable to accept these submissions.

23. First, it seems to me that whether or not Regentford appears on the Commission's register is not germane. The power to institute an enquiry under section 46 applies to charities whether they are registered or not. Second, I accepted Ms Thakor's submission to the effect that section 46 is not restricted to charities which are currently operational. There is nothing in the statutory language to suggest that the Commission is unable to enquire into the affairs of a defunct charity. From time to time that would be necessary if charitable assets are to be traced. No sensible purpose would be achieved by reading in to the statute such a restriction.

24. Finally, it is instructive to refer to the wording of the Order of the Companies Court. After referring to undertakings given in respect of litigation by Mr Markovic the Order provides that once an office copy has been delivered to the registrar of companies, Regentford "is thereupon to be deemed to have continued in existence as if its name had not been struck off". The company's objects were unchanged and it remained a charity.

25. For the Commission, Ms Thakor outlined three grounds of concern which prompted the opening of the enquiry:-

    (a) <u>The transfer of leasehold property to Quain</u>

    I need not repeat the unusual circumstances surrounding the transfer. Ms Thakor asked whether the trustees understood their responsibilities and whether sections 117-118 Charities Act 2011 had been properly observed.

(b) The subsequent mortgage by Quain

Ms Thakor raised the question of whether section 124 Charities Act 2011 had been satisfied.

(c) Outgoing bank transfers not accounted for as proper to a charity

Ms Thakor pointed in particular to the need for evidence of the investments and transactions which led to large payments out to the trustees in May and July 2006.

Underlying this of course is the persistent failure to file any accounts.

26. An attempt is made in Regentford's written submissions to suggest that, having regard to the Commission's published policies, these are not matters with which the Commission should concern itself and that on this ground the Tribunal should direct that the enquiry be closed. I reject this submission without hesitation. Given the evidence available so far, it is difficult to conceive of how the Commission could properly stand aside and take no action.

27. The written material also makes accusations of bias against the Commission on the ground that they have failed to accept the explanations offered by Regentford's solicitor. There is nothing in the material before me to suggest bias on the part of the Commission's staff. To assert that the Commission is biased because they have not accepted submissions made to them carries little weight. In any event this submission misunderstands the stage proceedings have reached. No final findings of fact have yet been made.

28. At the hearing, Mr Davey submitted what he called an attack "on the merits" of the decision to open an enquiry, although he was aware of course of the limitations on the Tribunal's jurisdiction to entertain such a submission. He pointed to a long statement since produced by the company and argued that there was nothing reasonably left for the Commission to enquire into. The deed of trust now produced was a complete explanation of the Quain transaction. The outgoing bank transfers were explained by unfortunate investment decisions.

29. I cannot accept that there remains nothing to enquire about. In my judgement, even now, there has been no proper account of the trustees' stewardship of charitable assets. For example, why did the 2006 transactions not appear in the annual accounts? What exactly happened to the £950,000 received by Quain purportedly on behalf of and with the approval of Regentford? These and other questions remain unanswered and the "attack on the merits" must fail.

30. Finally, Mr Davey submitted that the decision to institute an enquiry was disproportionate and that the matter should have been resolved informally. I do not agree. At the date the Commission opened their enquiry they had been in correspondence with Regentford and their solicitors for 15 months. Informal approaches were going nowhere and use of the Commission's statutory power at this stage was, in my judgement, entirely appropriate.

31. For these reasons the application for review fails.

NJ Warren
Chamber President
Dated 21 August 2013