



Appeal number: CA/2013/0012

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

REGENTFORD LIMITED

Appellant

- and -

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 4 December 2013

STRIKE OUT

1. On 20 November 2013 I issued a preliminary ruling on jurisdiction and proposed a strike out on grounds of lack of jurisdiction in this case. I invited the Appellant's representations on the proposed strike out in accordance with rule 8 (4) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. I am now able to make a final decision in the light of those representations.
2. The Appellant wrote to the Tribunal on 22 November to take issue with my ruling and complained that I appeared to be criticising it when I had observed that this was a long and complicated matter, resulting in the Appellant's third application to the Tribunal this year. I am happy to make clear that this was a mere statement of fact and no criticism was intended.
3. The basis of my proposed strike out was that it did not seem reasonable to me to construe the Charity Commission's statement in its e mail of 11 October 2013 as a decision under s. 34 of the 2011 Act. The Charity Commission's statement relied upon by the Appellant was made by a member of its litigation team in the course of a correspondence with the Appellant about the potential commencement of judicial review proceedings and so did not appear to constitute a discrete decision by the

Charity Commission as registrar not to remove Regentford Limited from the register of charities.

4. The Appellant's submissions reiterate its argument that the Charity Commission's e mail of 11 October constituted a decision under s. 34 of the 2011 Act so that the Tribunal has jurisdiction in relation to it. The Appellant further submits that, in making its requests to the Charity Commission of 19 June and 6 August, it had sought to confirm that the situation that it intended to seek judicial review of still pertained i.e. that the Commission was still refusing to make a decision on its request to be removed from the register. The Appellant submits that the statement contained in the 11 October e mail clearly constituted a decision because the earlier request to be removed from the register had been held in abeyance by the Charity Commission but the e mail of 11 October made it clear that the issue was no longer in abeyance. That information resulted in a decision by the Appellant that judicial review was no longer the appropriate course as a decision giving rise to a right of appeal in the Tribunal had been made. I accept that the e mail of 11 October resulted in an important decision by the Appellant about its litigation strategy. However, that decision rested on the Appellant's own interpretation of the correspondence and accordingly does not constitute independence evidence on which I can rely in making this decision.

5. The Appellant submits that it is not reasonable to view its correspondence with the litigation team as failing to constitute a decision on the basis that it falls outside of the parameters of the correct decision making process in relation to the register. The Appellant asserts that it addressed its requests to the Charity Commission corporately rather than to the litigation team, and that if the litigation team did not have authority to make a decision under s. 34 then it should have referred the letter elsewhere. I have considerable sympathy with this argument: it cannot be the responsibility of members of the public to check that the Charity Commission officer with whom they are in correspondence has the authority to make relevant decisions. However, it also seems to me that those who correspond with the Charity Commission must bear some responsibility for making themselves clear. In my ruling of 20 November I accepted that the Appellant's letter of 19 June, addressed to the Commission's "First Contact" address, constituted a clear request for removal from the register under s. 34 of the 2011 Act. Thereafter, the tone and content of the Appellant's letters of 6 August and 7 October was overwhelmingly concerned with the subject of proposed litigation. The letter of 6 August is addressed to the litigation team and headed "*Letter Before Claim*" and the letter of 7 October, addressed simply to the Charity Commission, was headed "*Application for Judicial Review*" but sought a response to the letters of 19 June and 6 August. The e mail of 11 October was a response to the letter of 7 October. It seems to me that the Appellant muddied the waters in the course of this correspondence and that a discrete request for a decision under s.34 (as had been made in the letter of 19 June, but which had been put "on hold" by the Commission) may well have been responded to differently by the Commission. In my ruling of 20 November I suggested that such a request could even now be made. In conclusion, it does not seem reasonable to me to write to the Commission about one matter and to rely on its response as a formal decision about another matter, but that is what the Appellant seeks to do in this appeal.

6. Having considered the Appellant's representations carefully, I have concluded that the Charity Commission's e mail of 11 October 2013 did **not** constitute a decision under s. 34 of the 2011 Act and consequently that there is no right of appeal to the

Tribunal in respect of it. In all the circumstances I find that the Tribunal does not have jurisdiction in relation to the Notice of Appeal now before it on the basis that no decision falling within column one of schedule 6 to the Charities Act 2011 has been made. Accordingly, there is no jurisdiction to entertain an appeal and I direct that this appeal is struck out pursuant to rule 8 (2) (a) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

ALISON MCKENNA

TRIBUNAL JUDGE

DATE: 4 December 2013

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