



Appeal number: CA/2016/0006

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

KEITH COLMAN

Appellant

- and -

**THE CHARITY COMMISSION FOR ENGLAND AND
WALES**

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 6 April 2017

RULING ON RULE 15 APPLICATION AND DIRECTIONS

Background

1. This matter is currently listed for hearing on 30 and 31 May 2017. In my Directions of 9 December, I set out the issues for the Tribunal to decide at that hearing and agreed to issue a ruling under rule 15 of the Tribunal's Rules if either party objected to the admission into evidence (and inclusion in the hearing bundle) of any documents relied on by the other party. My Directions were later varied so that my Ruling is due by today's date.
2. The Charity Commission has made an application dated 27 March 2017 for me to exclude from evidence under rule 15 numerous documents which Mr Colman has asked to be included in the hearing bundle, on the basis that they are not relevant to an issue the Tribunal must decide. Mr

Colman has requested the inclusion of 76 additional documents and the Charity Commission has objected to 52 of them. Mr Colman has replied to the Charity Commission's application by e mail dated 4 April 2017, explaining why he wishes each of these documents to be included.

3. I have seen all the disputed documents and considered them carefully before making this Ruling.

The Issues for the Tribunal

4. As set out in my earlier Directions, the issues for the Tribunal to decide at the hearing are as follows:

“The Tribunal in this appeal is to decide afresh the question of whether to make an Order under s. 76 (3) (d) of the Charities Act 2011, and will consider the following questions:

- (i) Has an undertaking from a solicitor been given to the Respondent in respect of the distribution of the proceeds of sale of Park Farm (“the property”)? If so, is that undertaking sufficient to protect the charity’s interest in the property?*
- (ii) Is the existing Land Register entry sufficient to protect the charity’s interest in the property?*
- (iii) Is it possible to protect the charity’s equitable interest in the property by converting it voluntarily into a legal charge? If so, is there an agreement to do this?*
- (iv) Is it necessary or desirable to protect the charity’s interest in the property by Order, having taken into account the answers to the questions above?”*

Rule 15

5. The relevant parts of rule 15 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 provide as follows:

Disclosure, evidence and submissions(a)

15.—(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Tribunal may give directions as to—

...

- (c) issues on which it requires evidence or submissions;
- (d) the nature of the evidence or submissions it requires;

(2) The Tribunal may—

- (a) admit evidence whether or not—
 - (i) the evidence would be admissible in a civil trial in [the United Kingdom]; or
 - (ii) the evidence was available to a previous decision maker; or
- (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
 - (iii) it would otherwise be unfair to admit the evidence.

...

6. In applying rule 15, the Tribunal must seek to give effect to the overriding objective in rule 2 so as to ensure that its decisions are fair and just. I have adopted a proportionate approach, taking into account the aims of facilitating the parties’ participation in the proceedings but also the potential impact on their costs and resources.

Ruling

7. Having considered the disputed documents carefully, together with Mr Colman’s reasons for seeking to include them, I am not persuaded that they are relevant to the issues the Tribunal must decide. I understand that Mr Colman wishes to give the Tribunal the fullest possible overview of his dealings with the Charity Commission, but it is important for him to recognise that the Tribunal will not be

undertaking a review of the Charity Commission's conduct. There are other ways of providing an overview, and I have included a Direction aimed at achieving this below.

8. Accordingly, I find that it is not relevant for the Tribunal to have before it documentation related to the making of regulatory decisions directions and orders which are different to the Order now under appeal, or proceedings in the High Court, or Mr Colman's dealings with the police.
9. I also find that it is not relevant to this appeal for the Tribunal to consider views expressed by third parties about the Commission's general regulatory conduct.
10. I have also excluded documents which consist purely of media reports about the charity or the Charity Commission. These are not relevant to the appeal and they are not evidence of the matters reported.
11. The Charity Commission has helpfully given each of the disputed documents a number, which I adopt in the Directions which follow:

IT IS DIRECTED

That the Respondent's application dated 27 March 2017 is allowed.

- (1) The following documents are excluded from evidence (and may not be included in the hearing bundle) because they are not relevant to the issues the Tribunal must decide in the appeal:

Documents 1, 5, 6, 18, 19/54, 20, 22, 23, 25, 26, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54/19, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 71, 72, 73.

- (2) The following document is said by the Charity Commission to be the duplicate of a document already included in the bundle. I have no means of establishing if that is the case. Accordingly, I leave it to the parties to resolve this issue. In the absence of agreement, I permit both documents to be included in the bundle:

Document 7.

- (3) A brief overview of the long interaction between the parties can be made known to the Tribunal through the preparation of an agreed chronology. This is to be filed alongside the skeleton arguments.
- (4) The parties are to provide the Tribunal with a draft timetable for the hearing, (including details of any live witness evidence) by 5pm on 13 April 2017, following which the Tribunal will consider whether the time estimate should remain at 2 days or be reduced to one day.

(Signed)
Alison McKenna
Principal Judge

Dated: 6 April 2017