



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

Appeal number: CA/2016/0008

CAMBRIDGE ISLAMIC COLLEGE

Appellant

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

First Respondent

CAMBRIDGE MUSLIM COLLEGE

Second Respondent

**Tribunal: Judge Alison McKenna
Sitting in Chambers on 9 May 2017**

**RULING ON THE ISSUES
AND DIRECTIONS**

Further to the Directions of 19 October 2016, 2 February 2017, 11 April 2017, 18 April 2017 and 9 May 2017

And Upon the parties agreeing to apply for a Ruling on the Issues

And Upon the Appellant applying on 3 May 2017 to amend its Grounds of Appeal

IT IS DIRECTED as follows:

1. The list of issues for the Tribunal is as set out below.
2. The Appellant's application for amendment of its Grounds of Appeal is refused.

REASONS

1. This appeal concerns a Direction made by the Charity Commission, pursuant to s. 42 (1) of the Charities Act 2011, on 12 September 2016. The Direction required the Appellant charity to change its name. The Appellant's Notice of Appeal is dated 17 October 2016 but the appeal was stayed on 19 October 2016 pending the Charity Commission's internal review, at which the Direction was confirmed on 8 December 2016.
2. The First Respondent filed its Response to the Grounds of Appeal on 30 January 2017. The Second Respondent was joined to the appeal by consent on 2 February 2017 and filed its Response to the Grounds of Appeal on 2 March 2017. The Appellant filed a Reply to each Response on 30 March 2017.
3. It follows that the pleadings stage was closed some time ago and the appeal has been listed for a one day hearing in Cambridge on 13 July 2017. Comprehensive Directions have been issued and preparations for the hearing by all parties are well-advanced. I am concerned that this matter should be brought to a hearing on the date fixed and that there should be no further delay.
4. Pursuant to paragraph 3 of my Directions of 11 April, the parties have agreed a Schedule of Agreed Facts and a Chronology. I am grateful to them for doing so. Unfortunately, they have been less successful in agreeing a list of issues for the Tribunal to decide. A list of issues is a helpful device but it is not required by the Tribunal's Procedural Rules and if no agreement about such a list is reached, my practice is invariably to direct that the issues are "as in the pleadings". However, in this case, the parties have asked me to issue a ruling because some of the issues identified by the Appellant in its draft List of Issues are said by the Respondents not to have been pleaded in the Grounds of Appeal. The First Respondent has expressed a concern that the hearing date may be jeopardised by this dispute as a proliferation of issues may require more than one day's hearing. It invites the Tribunal to issue preliminary rulings on some of the disputed content, if appropriate.
5. I consider this to be a regrettable state of affairs in a case where the Appellant has had the benefit of legal representation throughout. Clearly it is undesirable, as the hearing date approaches, for any party to be taken by surprise by the reliance of another on a new issue. The whole point of the exchange of pleadings prior to a hearing is that the parties go into the hearing room with their cards face up on the table. It would not be in accordance with the overriding objective for me to permit truly novel issues to be raised for the first time after the close of pleadings, unless there were exceptional reasons for doing so. The Appellant has not provided me with any reason why new issues have been raised so late in the day and I am not persuaded that I should exercise my discretion to permit an amendment of the Grounds of Appeal at this late stage. The application to amend the Grounds is formally refused.

6. It seems to me that the problem which has arisen in this case is primarily due to a misunderstanding by the Appellant of the Tribunal's jurisdiction and a failure by the Appellant to articulate its case properly in the Grounds of Appeal. In those circumstances, regrettable though they are, I am satisfied that it is fair and just to assist the Appellant to put all the issues on the table now. To the extent that I have included them in the List of Issues below, the disputed issues may be relied on at the hearing, notwithstanding the fact that they have not been pleaded in the usual way.
7. I will now comment on the Appellant's draft List of Issues, using the Appellant's numbering. Taking my comments in to account, I have set out a new List of Issues at the end of this Ruling. This is to be used by the parties in framing their arguments for the Tribunal.
8. Paragraphs 1, 2 and the first sentence of paragraph 3 of the Appellant's draft List are unnecessary. The Tribunal is aware of the background and the statutory framework, it is not necessary to repeat it here.
9. There is a typographical error in paragraph 3 (a) of the Appellant's draft List in its reference to s. 42 (2)(a) (iii), which does not exist. I assume it refers to s. 42 (2) (a) (ii) of the 2011 Act. The rest of paragraph 3 is accepted by the Respondents and is acceptable to the Tribunal, although I do not find it necessary to spell out the date options.
10. There is a dispute about paragraphs (c) (i) and (ii) of the Appellant's draft List. As to (i), I note that the Appellant's Grounds of Appeal are, in summary, that the statutory grounds for making a s. 42 Direction are not met. There is a brief reference in the Grounds to the fact that the Appellant's name is subject to a registered trade mark, but the relevance of that assertion to the appeal is not spelt out and it is merely stated that the Appellant is taking legal advice on the issue and will revert to the Charity Commission on that topic. It appears that the Appellant has now located that issue in its case.
11. I note that the Grounds of Appeal rely substantially on criticism of the Charity Commission's decision to make a s. 42 Direction and set out in some detail the Appellant's critique of the evidence put to the Charity Commission by the Second Respondent and on which it is said the Charity Commission relied in making the Direction. However, the Tribunal's jurisdiction on hearing this appeal is *de novo*, in other words, the Tribunal will be considering *afresh* whether it would make a s. 42 Direction. It follows that insofar as the Grounds of Appeal and the draft List of Issues are concerned to show that the Charity Commission misdirected itself when it decided to make the Direction, such arguments are misconceived and the Tribunal will not hear them. The question is whether the Tribunal itself would make the Direction and the Appellant's arguments and evidence must be framed accordingly.
12. This misconception has crept into the Appellant's draft List of Issues at paragraph 3 (c) (i) where it is suggested that the relevance of its registered trademark to the exercise of the Commission's decision should be considered. This is not a matter for the Tribunal to decide in a *de novo* appeal. However, it may be that the Tribunal will be asked in due course to consider evidence that the Appellant has indeed

registered a trade mark and I am satisfied that, if such evidence is adduced, it will be appropriate to ask the Tribunal to consider the relevance of that evidence to the matter it must decide. It seems to me that that issue may properly be the subject of submissions and so I include it in my List of Issues below.

13. As to paragraph 3 (2) (c) (ii) of the Appellant's draft List, this seems once again to be directed principally towards an argument that the Charity Commission misdirected itself in making the Direction under appeal. To that extent, it is not a relevant consideration for the Tribunal for the reasons set out above. However, it does seem to me that the question of whether a Direction made by the Tribunal itself under s. 42 of the 2011 Act would be effective in the context of the Appellant's stated constitutional arrangements may be relevant to the question of what Order the Tribunal could make if it allows the appeal. I have therefore moved this issue to the section of the List concerned with Remedies.
14. I do not consider that it would be helpful to issue any preliminary rulings at this stage. I have in mind that if there is insufficient time on 13 July for all parties to address the Tribunal on the question of Remedies, then submissions on issues 4 and 5 could be made in writing after the Tribunal has announced its Decision on whether to allow or dismiss the appeal. It seems to me that this would be a proportionate approach, given that the need to address these issues would only arise if the appeal is allowed.
15. I have today varied the Directions of 11 April 2017 to give the parties longer to prepare the bundle of documents for the hearing. The remaining paragraphs of those Directions stand and I would not expect to have to vary them again. I take this opportunity to remind the parties of their obligation to co-operate with the Tribunal in its furtherance of the overriding objective and generally.

LIST OF ISSUES FOR THE TRIBUNAL

- 1. Are the criteria for making a Direction under s. 42 of the Charities Act 2011 met under s. 42 (2) (a) (ii) or s. 42 (2) (d)?**
- 2. At what point in time should the Tribunal assess the Appellant's name against the criteria in s. 42 (2) (a) (ii) and s. 42 (2) (d) of the Act?**
- 3. To what extent is the existence of the Appellant's registered trade mark relevant to the exercise of the Tribunal's discretion?**
- 4. If the appeal is allowed, what remedy (if any) should the Tribunal order?**
- 5. In deciding what Order to make (if any) to what extent should the Tribunal take account of the Appellant's constitutional arrangements?**

(Signed)

Alison McKenna

9 May 2017

Principal Judge