



Appeal number: CA/2020/0004

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

**RACHEL TYNAN
(Safe Ground 1048181)**

Applicant

- and -

**CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

**Judge Alison McKenna
Sitting in Chambers on 2 March 2020**

RULING ON RULE 14 ANONYMITY APPLICATION

1. The Applicant filed a Notice of Appeal dated 31 January 2020, by which she challenges the Respondent's decision dated 20 December 2019 to refuse to grant her a waiver from disqualification. She wishes to become a trustee of the charity

Safe Ground, which is concerned with the rehabilitation of offenders. She has the charity's support in making that application.

2. The Applicant has unspent criminal convictions so that she is automatically disqualified from acting as a charity trustee unless the respondent grants her a waiver under s. 181 Charities Act 2011. The Respondent has refused her application and so she has a right of appeal to this Tribunal.
3. The Applicant applied in her Notice of Appeal for an anonymity order under rule 14 of the Tribunal's Rules¹ to prevent publication of information likely to identify her or third parties. Further to the Tribunal's directions on the matter, the Applicant and the Respondent have both made helpful written submissions on that application, which I have considered carefully.
4. The Tribunal has the power to prohibit the disclosure of the identity of any person if it is satisfied that it would be likely to cause that person or some other person serious harm and that it is proportionate to give such a direction, having regard to the interests of justice.
5. The Applicant has not pointed to any particular risk of harm to herself or to any other person if she were to be named in these proceedings. She points to the fact that the Respondent does not itself identify applicants for waivers and submits that, if public identification is a necessary consequence of applying to the Tribunal, it will discourage others from applying. She relies on her right to a private life under ECHR article 8 and submits that details of her conviction constitute sensitive personal data which ought not to be placed into the public domain by this Tribunal.
6. The Respondent opposes the making of an anonymity direction. It points to the extensive case law emphasising the fundamental principle of open justice. The

¹ <https://www.gov.uk/government/publications/general-regulatory-chamber-tribunal-procedure-rules>

Respondent submits that the Applicant has not provided a sufficiently compelling case to depart from that important principle in her application.

7. I now understand that the Notice of Appeal in this case was filed in a name different from the name by which the Applicant was convicted. Nevertheless, the Respondent states that she remains identifiable from press reports of her conviction.
8. Before they made their submissions, I referred the parties to some examples of where the Courts and Tribunals have had to balance privacy interests against the public's right to open justice. I referred them to the Supreme Court's judgment in *Khuja v Times Newspapers Limited*² and to the Upper Tribunal's Decision in *D v Information Commissioner*³ (which is awaiting a hearing in the Court of Appeal).
9. It is clear from both of those authorities that the principle of open justice is fundamentally important and that there needs to be a strong fact-based case for departing from it. Open justice includes the naming of the persons involved in the case and the ability of the press to report on proceedings held in open court. The common law and article 6 ECHR protect the right to a public hearing and the right of the media to report on public hearings is protected by article 10 ECHR. The publication of the Tribunal's decisions about the details of appeals involving waivers from disqualification may assist others in deciding whether to apply.
10. I note that the Applicant has not in her application put forward a fact-based case for departure from the principle of open justice. She has not identified any specific risk to herself or to any other person from her identification in these proceedings.

² <https://www.bailii.org/uk/cases/UKSC/2017/49.html>

³ https://assets.publishing.service.gov.uk/media/5c5bf0f0e5274a3158cea9f8/GIA_0594_2018-00.pdf

As I understand it, her conviction took place in open court and information about her un-spent convictions is publicly available. These factors weaken the strength of her case as to privacy rights under article 8 ECHR because the information she seeks to protect is already in the public domain.

11. In undertaking the appropriate balancing exercise, I have considered the importance of the principle of open justice and the right of the public to know all the details of a case, including the name of the person bringing an appeal to this Tribunal. Weighing those important factors against the weaknesses of the Applicant's case as I find it, I conclude that the Applicant has not provided me with sufficient justification for departing from the principle of open justice. I find that the article 6 and 10 rights of others in this case outweigh her own article 8 rights.
12. Accordingly, I have decided to refuse her application for anonymity. The Respondent's Response to the appeal will now be due within 28 days.

(Signed)

Alison McKenna
Chamber President

Dated: 2 March 2020

© CROWN COPYRIGHT 2020