



Appeal number: CA/2017/0014

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

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Applicant

- and -

GRAHAM HIPKISS

Respondent

**Judge Alison McKenna
Sitting in Chambers on 4 September 2018**

RULING ON APPLICATIONS DATED 3 SEPTEMBER

1. The application for a stay on the effect of the Tribunal's Decision is refused.
2. The application for amendment of the Decision under rule 40 is refused.

REASONS

3. Following the promulgation of the Tribunal's Decision on 24 August 2018, the Charity Commission has made several applications. Firstly, it identified a small number of typographical errors in the Decision, which it asked to be corrected. The Tribunal understood this to be an application under rule 40 (although it was not expressed as such) and agreed to make the corrections if Mr Hipkiss agrees. His views are awaited.
4. The Charity Commission then made a further application, as follows (it is not clear why the two applications were made sequentially). It was submitted that, as the Tribunal's Decision referred to the restoration of HOPRT to the Register at paragraph 3, and to its restoration to the Register "forthwith" at paragraph 126, that this should be corrected under rule 40 to clarify the time period for the Charity Commission to comply with the Tribunal's Direction. In the alternative, an application was made under rule 5 (3) (1) for suspension of the effect of the Tribunal's Decision pending the expiry of the time period for submitting an application for permission to appeal.
5. Dealing with the second application first, the power at rule 5 (3)(1) is a case management power which may be exercised in relation to the conduct or disposal of "proceedings". At present, there are no "proceedings" before the Tribunal because the substantive matter has been decided and no application for permission to appeal has been made. Rule 5 (3)(1) itself makes clear that it is a power to be exercised pending determination of an application for permission to appeal. My ruling is that the Tribunal has no power to suspend the effect of its Decision unless and until it is seized of such an application. For that reason, the application is refused.
6. Turning to rule 40, the Tribunal may not, following promulgation, alter the substance of its Decision unless exercising a power under part 4 of the Rules. It may correct "accidental" errors (schedule 5, paragraph 15 (1) TCEA 2017 and rule 40). In my view, "accidental" refers to matters such as typographical errors and I do not consider that this power may be relied upon to amend the time for

complying with the Tribunal's Decision, as that is a matter of substance. Accordingly, this application is also refused.

7. It does not seem to me that it makes any difference to the Charity Commission's position whether the time for compliance is expressed to be "forthwith" or not. The First-tier Tribunal's Decisions are enforced by referral to the Upper Tribunal under s. 25 TCEA 2007, as it is only the Upper Tribunal that may make a finding of contempt of court. It is completely unthinkable that the First-tier Tribunal would refer the Charity Commission to the Upper Tribunal for contempt proceedings prior to the expiry of the time permitted to it under the Rules for making an application to appeal the Decision.
8. In all the circumstances, it seems to me that the appropriate course is for the Charity Commission to focus on deciding whether it wishes to apply for permission to appeal by the usual deadline. If it does make such an application, it may also apply for a stay of the effect of the Decision and I will consider Mr Hipkiss's representations before ruling on that application. If the Charity Commission does not make an application, then it must take steps to comply with the Tribunal's Decision or, in the usual way, risk referral to the Upper Tribunal for contempt proceedings.

(Signed)

Alison McKenna
Chamber President

Dated: 4 September 2018

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