



**Appeal number: CA/2018/0007**

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

**DAVID SWETTENHAM  
HELEN KING**

**Appellants**

**- and -**

**THE CHARITY COMMISSION FOR  
ENGLAND AND WALES**

**Respondent**

**RULING ON APPLICATION FOR DIRECTIONS**

**Before:**

**Judge Alison McKenna**

**Sitting in Chambers on 29 October 2018**

**DECISION**

1. The Respondent's application for the Tribunal to direct the Appellants to amend their Notice of Appeal is refused.

## REASONS

2. The Appellants lodged an appeal dated 7 September 2018 against the Respondent's decision not to discharge protective orders. The decision appealed against is dated 31 July so the appeal to the Tribunal was made in time.
3. On 2 October 2018, whilst the Appellants' appeal was *sub judice*, the Respondent carried out a further statutory review and decided not to discharge the protective orders. That decision engages a fresh right of appeal.
4. As the Respondent has pointed out, the appeal against the 31 July review, even if successful, would not discharge the 2 October decision. The Respondent's suggested solution to this difficulty is to ask the Tribunal to direct the Appellants to amend their notice of appeal so that it includes a challenge to the 2 October review. I would be happy to give the Appellants permission to make this amendment but to mandate them to do so would be unprecedented. I have not been referred to any authority for such a direction.
5. The Appellants have submitted that they do not wish to challenge the 2 October decision. They affirm their right to challenge the 31 July decision and point out that if the Respondent conducts a statutory review whenever an appeal is before the Tribunal then it could frustrate the rights of appeal granted by Parliament. I have some sympathy with the Appellants' view. It seems to me that there are a number of possible solutions to the present dilemma, as follows:
  6. Firstly, I could initiate a strike out of the Notice of Appeal on the basis that, even if it were to succeed, the Appellants could have no effective remedy whilst the 2 October decision remains in place. It does not seem to me that this would be a fair and just way to proceed where it is the Respondent's actions which have brought this situation about. If the Respondent wishes me to consider this possibility further, it will need to explain why it carried out a statutory review during a period when the Tribunal was seized of its earlier decision.
  7. Secondly, I note that on hearing an appeal, the Tribunal may take into account fresh evidence which post-dates the decision appealed. It follows that, on hearing an appeal against the 31 July decision, the Tribunal could in any event consider the evidence relied on to make the 2 October decision. No amendment to the Appellants' pleadings would be required to permit this.
  8. Thirdly, I note that, if the Tribunal allows the appeal, it may remit the matter to the Respondent. A remittal may be general or include a direction for a fresh decision to be taken in accordance with any findings of fact by the Tribunal. This means that, if the appeal succeeds, the Respondent could be directed to undertake a fresh review in accordance with the Tribunal's own findings in relation to the totality of the evidence relating to both decisions.

9. Fourthly, it may be appropriate for the Tribunal to ask the Respondent to undertake not to carry out further reviews during the currency of this appeal.
  
10. I am minded to direct options two, three and four above in combination, but I would initially like to give the parties the opportunity to reflect on them and discuss an agreed order. If no agreement is reached within seven days of the date appearing below I will ask the Tribunal's administration to convene an oral directions hearing.

Signed

**Alison McKenna**  
**Chamber President**

Dated: 29 October 2018

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