

BETWEEN:

TAYO, BAILEY, HALLS, JONES, ROWARTH & FLANAGAN

**(TRUSTEES OF MANCHESTER NEW MOSTON CONGREGATION OF
JEHOVAH'S WITNESSES)**

Appellants

- AND -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Directions

Tribunal: Judge Alison McKenna

Upon hearing from Richard Clayton QC for the Appellants and Iain Steele of counsel for the Respondent at a case management hearing on 15 December 2014

IT IS DIRECTED AS FOLLOWS

1. This matter is to be determined at an oral hearing (with a 2 day time estimate) at a venue in London to be notified to the parties, on 10 and 11 March 2015 or 16 and 17 March 2015.
2. No direction is made on the Respondent's rule 14 application, but the Tribunal directs under rule 15 (1) (c) that, as the information provided in the redacted documents is not relevant to either party's pleaded case, it does not require that evidence to be disclosed in un-redacted form to the Appellants and it shall not be put in evidence before the Tribunal at the final hearing of this appeal.
3. The Appellants are to serve on the Respondent and the Tribunal by 15 January 2015 a statement indicating, with reference to the paragraph numbers in the witness statements of Mr Sladen and Ms White, which matters they seek to test in cross examination at the final hearing and explaining how such cross-examination would advance their pleaded case.
4. The Respondent is to serve on the Appellants and on the Tribunal its response to the Appellants' statement by 29 January 2015.

5. The Tribunal will rule on whether the Appellants' proposed cross examination of Mr Sladen and Ms White is to be permitted by 6 February 2015, and will simultaneously issue any necessary consequent directions.
6. The Respondent has permission to serve on the Appellants by e-mail by no later than 8 January 2015 an additional witness statement from Ms White, to contain further details of regulatory action taken by the Respondent with respect to the charities mentioned in paragraphs 65, 67, 68 and 69 of Richard Cook's witness statement.
7. The Respondent shall, by no later than 8 January 2015, write to the Appellants outlining the guidance and training which is provided to staff in its PIAM Unit relating to the issues of human rights, sex abuse, historic sex abuse, how to conduct investigations, how to deal with information given by informers, and the role of trustees in relation to any duty of care to safeguard the beneficiaries of the charity.
8. The Appellants' application to amend the grounds of appeal is refused.
9. The Appellants' application for a witness summons for PC Redfearn is refused.
10. The Appellants' application to produce an additional file of evidence for the final hearing of this matter is allowed to the extent that it is to be served on the Respondent by 19 December 2014, following which the Respondent must inform the Appellants and the Tribunal whether the admission of such evidence is agreed by 8 January 2015. If it is not agreed, then it is to be served on the Tribunal with the agreed bundle, and the Tribunal will rule on the Appellants' application at the final hearing of this appeal.
11. The directions of 16 September 2014 are amended so that the Appellants are to file and serve their written submissions by no later than 20 February 2015 and the Respondent is to file and serve its written submissions by no later than 27 February 2015.
12. The parties have permission to amend the hearing bundle by agreement between them to the extent necessary to incorporate the changes necessitated by these directions. The Respondent is to serve the Appellant with the final version of the bundle by 13 February 2015 and is to file it with the Tribunal by 3 March 2015.

REASONS

13. The Respondent had applied for certain information to be withheld from the Appellants under rule 14 (2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules"). The withheld information had been provided in un-redacted form to the Appellants' counsel following the Tribunal's earlier directions. The Appellants had not complied with paragraphs 2 (c) and 7 of the Tribunal's earlier directions by specifying

why it was said that disclosure of the redacted information was necessary to a fair and just disposal of the proceedings. The Respondent did not seek to rely on the redacted information at the hearing of this appeal. In the circumstances it did not appear to the Tribunal that the redacted information was relevant to an issue before it and accordingly that it would be fair and just to exclude it under rule 15 of the Rules. As the redacted information was not relevant to an issue in the proceedings, there was no need to rule on the Respondent's rule 14 application.

14. The Appellants had notified the Respondent that they wished to cross examine Mr Sladen and Ms While at the final hearing of this matter but had not explained what matters it was sought to test and how such cross examination would advance their case. Mr Clayton accepted that the Appellants' letter to the Respondent could have been more helpful in this regard. However, now that the witness statements are available to the Tribunal and having regard to the Upper Tribunal's guidance in *HMRC v Fairford Group plc* [2014] UKUT 0329 (TCC), the Appellants agreed to file a statement explaining the matters which it is proposed to test in cross examination and what aspects of its pleaded case such cross examination is intended to advance. The Respondent agreed to respond to the Appellants' statement explaining whether it opposed the proposed cross examination, following which the Tribunal will rule in writing on whether the proposed cross examination should be permitted under rule 15 of the Rules. The Tribunal may have to issue consequential directions at that stage, for example, to reduce the time estimate of the hearing if no cross examination is permitted.
15. The Appellants sought orders for additional disclosure in respect of regulatory action taken by the Respondent in relation to certain charities identified in the witness statement of Mr Cook and in respect of the training offered to the Respondent's staff in a number of areas. The Respondent agreed to provide an additional witness statement from Ms White dealing with the former and to write to the Appellants setting out details of the latter.
16. The Appellants asked for permission to amend their grounds of appeal so as to raise the issue of unfairness. The Appellants' case was that the Respondent should have put to the Appellants certain allegations made to it so as to take the Appellants' comments into account prior to the decision to open the inquiry. The Appellants' draft amended grounds were produced at today's hearing for the first time. The Tribunal's view was that the Appellants had not complied with the overriding objective in leaving this important application until such a late stage and that they should have raised the matter with the Respondent sooner. The Respondent opposed the application on the basis that the draft new ground did not relate to a matter which the Tribunal was required to decide because, whilst certain allegations had been made to the Respondent, it was clear from the contemporaneous decision log that the Respondent had not relied on those allegations when deciding to open the inquiry. Mr Steele also referred the Tribunal to paragraph [38] of the Upper Tribunal's decision in *Regentford Limited v Charity Commission for England and Wales* [2014] UKUT 0364 (TCC), in which it is made clear that there was no legal obligation on the Respondent to canvas all issues with a

charity before deciding to open an inquiry.

17. The Appellants applied for a witness summons in respect of a police officer who had provided information to the Respondent. The Appellants had not approached the police officer to ask her to make a witness statement and had not asked her if she was willing to attend the hearing voluntarily. In these circumstances the Tribunal refused to issue the order sought because it would not be appropriate to compel a witness to attend a hearing unless they had indicated they would not attend voluntarily. Further, without any indication of the evidence the officer might give, it was not possible to say whether the Tribunal would agree to admit the evidence under rule 15 of the Rules as being relevant to an issue before it. If the Appellants do obtain a witness statement from the officer then they can ask the Tribunal to rule on the matter, having sought the Respondent's comments before asking the Tribunal to rule in writing.
18. The Appellants asked for permission to file additional evidence for the main hearing. This was not contained in the agreed bundle and they had not complied with paragraph 5 of the Tribunal's earlier directions so the Respondent is unaware of the nature of the additional evidence. In the circumstances, the Tribunal will have to rule on this matter, if it is not agreed between the parties, at the final hearing. The Tribunal will at that stage have the Appellants' additional proposed evidence in front of it and will be able to assess its relevance to the matters to be decided at the hearing taking the Respondents' views into account. Accordingly, the directions provide for the service of the evidence on the Respondent, and time for the Respondent to consider it and indicate whether its admission before the Tribunal is agreed. If the admission of the evidence is not agreed then the Tribunal will rule on it as a preliminary matter at the final hearing.

Signed:

Alison McKenna
Principal Judge

Dated: 15 December 2014