



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

**CRR/2014/0005**

**TAYO, BAILEY, HALLS, JONES, ROWARTH & FLANAGAN  
(TRUSTEES OF MANCHESTER NEW MOSTON CONGREGATION OF  
JEHOVAH'S WITNESSES)**

**Applicants**

**- AND -**

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**

**Respondent**

**DECISION  
ON AN APPLICATION FOR PERMISSION TO APPEAL**

*Background*

1. The Applicants' application to the Tribunal was heard on 10 March 2015 and dismissed in a reserved decision containing full reasons on 9 April 2015. A corrected decision was issued, at the request of the parties, on 22 April 2015. The Applicants now apply for permission to appeal in respect of that decision.
2. The Charity Commission has applied for permission to make submissions in respect of the application now before me. The Applicants have responded, in forceful terms, that such an application is out-with the Tribunal's Rules and should not be permitted. I accept that there is no rule permitting a Respondent to comment on an application for permission to appeal and that it would be unusual for the Tribunal to permit this. I note, however, that the Tribunal may regulate its own procedure (rule 5 (1)). Having given the matter careful consideration, I am satisfied that I am able to decide the Applicants' application fairly and justly without the benefit of further comment from the Charity Commission. In so deciding, I take into account the overriding objective and the desirability of avoiding further delay.
3. The Applicants' substantive application to the Tribunal was for a Review (pursuant to s. 321 of the Charities Act 2011) of the Charity Commission's decision to open a statutory inquiry into the charity of which they are trustees. The Charity

Commission's inquiry concerned safeguarding procedures in the charity following the conviction of one of its trustees for sexual offences against children. At the hearing, the Applicants' case was (i) that the Respondent's decision to open a statutory inquiry was disproportionate, a breach of their human rights under Articles 9 and 11 ECHR and unlawful under s. 6 of the Human Rights Act 1998; (ii) that the Respondent had misdirected itself as to the duties of charity trustees in a safeguarding context; and (iii) that the Respondent had discriminated against the Applicants under Article 14 ECHR.

4. Prior to the hearing on 10 March, the Applicants applied for permission to appeal in respect of certain case management directions. I refused permission and the Applicants renewed their application to the Upper Tribunal (Tax and Chancery Chamber). On 18 February 2015, Mr Justice Nugee refused permission to appeal in respect of the Tribunal's directions concerning cross-examination, but granted permission to appeal in respect of the Tribunal's approach to the Charity Commission's application for a non-disclosure direction under rule 14 of the Tribunal's Rules. As I understand it, that matter remains to be heard and directions for the listing of that matter will be made by the Upper Tribunal.

#### *Grounds of Appeal*

5. The application for permission to appeal now before me runs to 41 pages but the grounds may be succinctly described as follows. It is alleged that the Tribunal erred in law by:

- (a) failing to find that the Charity Commission interfered with the Applicants' Article 9 rights;
- (b) failing to find that the interference with the Applicants' Article 9 rights was disproportionate;
- (c) finding that Article 14 was not engaged because the Tribunal was not satisfied that the Applicants' Article 9 and 11 rights were infringed by the opening of the inquiry;
- (d) failing to find that the Charity Commission's treatment of the Applicants could not be justified;

#### *Decision*

6. I have considered in accordance with rule 44 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 whether to review the Tribunal's decision, but have decided not to undertake a review as I am not satisfied that it contains an error of law.

7. I have considered the Applicants' grounds of appeal carefully but I am not satisfied that they raise arguable errors of law as alleged, for the following reasons:

- (a) This ground, as pleaded, appears to consist of a disagreement with the Tribunals' findings of fact on the evidence before it. It is submitted at paragraph 59 that "*the FTT erred in law in failing to find that the Commission interfered with the Appellants' Article 9 rights on the ground that Mr Sladen expressly conceded in the decision log that there was an interference, although he asserted that the interference was justified*". The Tribunal's decision considered the evidence (written and oral) from

Mr Sladen about his entry into the decision log at paragraphs [36] and [58] to [59]. It does not seem to me arguable that the Tribunal's findings on the evidence before it were perverse so as to constitute an error of law and I therefore refuse permission to appeal on this ground;

(b) The Tribunal's principal finding was that, on the evidence before it, there was no interference with the Applicants' Article 9 rights – see paragraphs [54] to [63]. The Tribunal stated that, if it was wrong on that point, then such interference was minimal – see paragraph [62]. It does not seem arguable to me in these circumstances that there was an error of law in failing to find that the alleged interference was disproportionate and so I refuse permission to appeal on this ground;

(c) The Applicants' case to the First-tier Tribunal was clearly put on the basis that that their Article 9 and 11 rights had been infringed by the opening of the inquiry and that Article 14 was thereby engaged. They did not argue that, even if there had been no infringement, Article 14 was nevertheless engaged because the decision to open the inquiry was within the “ambit” of Article 9. It follows that this ground of appeal relies upon an alleged error of law in respect of an argument which was not put to the First-tier Tribunal. Accordingly, I refuse permission to appeal in respect of it;

(d) The Tribunal did not accept that the Applicants had established on the evidence before it a difference of treatment between their charity and other charities in analogous or relevantly similar situations – see paragraph [68] to [69] of the decision. This ground relies (paragraphs 87 to 92) upon an argument that the Tribunal failed to adopt an approach which it could only have adopted if it had accepted the Applicants' case that there was evidence of differential treatment so as to raise the issue of justification. As the Tribunal was not so persuaded on the evidence, I do not consider that this ground is arguable.

8. For these reasons, I now refuse permission to appeal.

**ALISON MCKENNA**

**PRINCIPAL JUDGE**

**22 May 2015**

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