



**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)**

Appellants

- AND -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

RULING

TRIBUNAL: Judge Alison McKenna

Sitting in Chambers on 4 February 2015

1. Under paragraph 5 of my directions of 15 December 2014 I agreed to provide a Ruling by 6 February on the question of whether the Appellant is to be permitted to cross-examine the Charity Commission's witnesses Mr Sladen and Ms White at the hearing listed to commence on 10 March 2015. That direction was made in the exercise of the Tribunal's discretion under rule 5 (1) to regulate its own procedure, and under rule 15 which allows it to determine the manner in which evidence is to be given. Those powers must of course be exercised in order to give effect to the overriding objective and in particular to ensure that the case is dealt with in a way which is proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties. As I indicated at the December directions hearing, in these circumstances the Tribunal must be satisfied that live witness evidence in general and the proposed cross examination in particular are necessary for a fair and just determination of the parties' pleaded cases.
2. The matter before the Tribunal in this case is a Review rather than an Appeal. The issue for the Tribunal at the final hearing in March will be whether it was

reasonable for the Respondent to have opened a statutory inquiry into the charity of which the Appellants are trustees on the date that it did and on the basis of the information then before it. The Tribunal will not be taking the decision afresh but must determine the issue in accordance with the principles that would be applied by the High Court on an application for judicial review. The Charity Commission has submitted that the Tribunal should follow the practice of the High Court in judicial review proceedings and admit oral evidence only exceptionally in a Review case. I note that in *Regentford v Charity Commission* [2014] UKUT 0364 (TCC) the Upper Tribunal heard a submission at [29] to the effect that the question of whether oral evidence should be permitted by the First-tier Tribunal in a Review would depend on the nature of the challenge made to the Charity Commission's decision. The Upper Tribunal neither agreed nor disagreed with this submission in deciding that case but it is an approach that I adopted in asking the Appellants to clarify the nature of their challenge to the Charity Commission's decision.

3. Under paragraph 3 of the Directions, the Appellants have submitted a schedule indicating which aspects of the Respondent's case are challenged and in respect of which they seek permission to cross examine the witnesses. The Appellants objected to my direction in this regard but I have refused them permission to appeal to the Upper Tribunal and I have also refused their application for a stay of these proceedings while they renew their application for permission to appeal to the Upper Tribunal.
4. Under paragraph 4 of the Directions, the Respondent has submitted a reply to the Appellants' schedule, in which it argues that the proposed cross examination will not materially advance the Appellants' pleaded case, and ought not to be permitted by the Tribunal. It submits that the nature of the Appellants' challenge has, even at this late stage, not been made sufficiently clear.

Issue 7

5. As the Appellants acknowledge, their substantive case is set out in paragraph 10 of the "Grounds" document, which was settled by leading counsel on 15 July 2014. Paragraph 10 describes the Appellants' case in six sub-paragraphs, which do not contain any mention of a challenge to the factual accuracy of the matters on which the Respondent relied to open its inquiry. Those six paragraphs are expanded upon in the section headed "Submissions" which also does not mention the issue of factual inaccuracy.
6. The Appellants have now contended in their schedule of proposed cross examination that the "Grounds" document also relies on a seventh issue, namely that the Respondent opened the inquiry on the basis of "factually incorrect information". I have noted that the issue of factual accuracy is not included in paragraph 10 nor indeed in the "Submissions" section (which stretches from page 23 to 33 of the "Grounds" document). The only reference that I can find to factually incorrect information in the Appellants' extensively-pleaded case is in paragraph 42 of the "Grounds" document, which falls into the section headed "Factual Background". I had not, for this reason, previously understood any issues of disputed fact to form part of the

Appellants' case. I now understand, having asked the Appellants to explain why cross examination is necessary to their case, that they do rely on this issue as a seventh ground. It is most regrettable that the Appellants' case was not made clearer sooner, especially in circumstances where they retained leading and junior counsel to settle the pleadings. I understand the Respondent's frustration on this point and if there is any respect in which the Respondent considers that it has been prejudiced in the preparation of its case or put to additional costs by the Appellants' lack of clarity, then I am willing to consider any applications it wishes to make.

7. In addition to arguing that the Appellants ought not now to be permitted to rely on a ground which was not clearly pleaded, the Respondent also questions the extent to which any factual dispute between the parties is relevant to the issues in a Review case. It submits that the purpose of the statutory inquiry was to establish and verify evidence and that it had not (and was not required to) make any firm findings of fact before opening the inquiry. Be that as it may, it seems to me that if (as it now appears) there is genuinely a dispute between the parties about factual matters, it would be fair and just for the Appellants to be permitted to test those issues in a proportionately short cross examination at a hearing. There are relatively few instances in the schedule where what is now referred to as issue 7 is proposed to be explored with a witness and it would in fact involve questioning the Respondent's witness Mr Sladen only, as issue 7 does not feature at all in the proposed cross examination of Ms White. The probative value of that exercise will be a matter for the Tribunal once it has heard the evidence, but I am satisfied that the proposed cross examination of Mr Sladen in relation to issue 7 should be permitted and so I direct that he attend to give oral evidence under rule 15 (1) (g) (i). The appropriate conduct of the cross examination will be a matter for the Tribunal at the hearing. I agree with the Respondent that the Appellants' counsel should not be permitted to introduce in cross examination questions directed to the additional grounds which the Appellants were previously refused permission to adopt.

“Advancing the Appellants’ Case”

8. Parts of the Appellants' schedule refer to “advancing the Appellants' case” through cross examination of a witness. The Charity Commission has understood this to mean that the Appellants' counsel will, in effect, be making submissions to the witness at that point and (understandably) objects to this. I had rather understood it to be a reference to counsel formally putting his lay clients' case to the witness as he would in a Court. I remind the parties that the Tribunal is not bound by the rules of evidence which apply in civil proceedings (rule 15 (2) (a) (i)) and that it is not therefore necessary in the Tribunal for the Appellants' counsel to “put his case” to a witness in order to found a basis for his closing submissions.
9. For that reason I now refuse permission for the Appellants' counsel to put to either of the Respondent's witnesses any of the questions which are referred to in the schedule as “advancing the Appellants' case”. To the extent that it is necessary for me to do so, I give the Appellants' counsel permission to make his submissions without having formally “put his case” to any witness.

Issues 1 – 6

10. Issues 1-6 as pleaded at paragraph 45 of the Appellants' Grounds are, in summary, as follows:

- (i) that the decision to open the inquiry was disproportionate and/or disproportionately interfered with the Appellants' Convention rights to freedom of religion and of association;
- (ii) that the scope of the inquiry is disproportionately broad and thus places restrictions on the Appellants' Convention rights to freedom of religion and of association;
- (iii) that the decision to re-open issues which the Respondent has previously accepted as being resolved was an abuse of process;
- (iv) that the Respondent erred in law in its approach to the duties of trustees;
- (v) that the decision to open the inquiry was irrational; and
- (vi) that the Respondent has discriminated against the Appellants contrary to article 14 HRA [*sic*].

11. The Appellants' schedule of proposed cross examination proposes to "challenge" and "explore" with the Respondent's witnesses a number of matters relating to issues 1-6. However, I consider that these are technical legal issues and I am not persuaded that the Appellants' proposed cross examination of the Respondent's witnesses in respect of issues 1-6 will materially advance the Appellants' case. Issues 1-6 are matters which will rightly form the basis of legal argument in counsel's submissions but I do not consider that witness evidence would be probative of the issues which the Tribunal must decide in relation to them. I therefore refuse permission under rule 15 (1) (c) for oral evidence to be called, and thus for the Appellant's counsel to cross examine Mr Sladen, in relation to issues 1 – 6.

12. In view of my decisions about issues 1-6 and 7 above, there are no remaining permissible questions for Ms White in the Appellants' schedule. Accordingly, I now refuse to direct Ms White to attend to give oral evidence and/or to submit to cross examination.

Revised Time Estimate

13. As I have in this Ruling refused permission to put in cross examination the majority of the questions which it was proposed to put to Mr Sladen and all of the questions which it was proposed to put to Ms White, I consider that the time estimate for the hearing should now be revised. The hearing estimate is now 1 day. I would be grateful if counsel for both parties could agree between them and send to me as soon as possible a timetable for the day of the hearing, taking into account the fact that we will be starting at 10 am.

**ALISON MCKENNA
PRINCIPAL JUDGE
4 February 2015**

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