



**Appeal number: CA/2013/0013**

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

**HUMAN DIGNITY TRUST**

**Appellant**

**- and -**

**THE CHARITY COMMISSION  
FOR ENGLAND AND WALES**

**Respondents**

**RULING ON THE APPLICATION TO INTERVENE BY JUSTICE AND THE  
REDRESS TRUST**

1. JUSTICE and The Redress Trust (“the Applicants”) seek the permission of the Tribunal to “intervene” in HDT’s appeal. They have provided the Tribunal with written submissions in support of their application dated 26 November 2013, 22 January and 14 March 2014. They are legally represented in making the application with *pro bono* assistance from Freshfields Bruckhaus Deringer LLP. The Tribunal has agreed to rule in writing on the question of whether to permit the intervention and to issue any necessary consequential directions relating to the scope and manner of the intervention, if it is permitted.
2. The term “intervene” is used in the application and in this ruling to refer to a request for the Tribunal’s permission to make submissions and/or file evidence pursuant to rules 5 (3) (d) and/or rule 33 (2) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. The Tribunal, in exercising its discretion under rule 5 and/or rule 33, must have regard to the overriding objective in rule 2 of the Rules.
3. HDT’s appeal is against the Charity Commission’s decision, made pursuant to s. 30 of the Charities Act 2011, to refuse to enter it into the register of charities. The Tribunal’s role in deciding HDT’s appeal is to “consider afresh” the Charity Commission’s decision (s.319 (4) (a) Charities Act 2011). If the Tribunal allows the appeal it may quash the Charity Commission’s

decision, remit the matter and direct the Charity Commission to rectify the register of charities (Schedule 6 to the Charities Act 2011). In making its decision, the Tribunal can consider evidence which was not before the Charity Commission when it made the decision under appeal (s. 319 (4) (b) Charities Act 2011).

4. Following the Tribunal's directions of 13 February 2014, the parties agreed between them a list of issues which the Tribunal would be asked to address in determining HDT's appeal. The Tribunal gave the Applicants permission to make additional submissions to explain, in the light of the agreed list of issues, (i) how the proposed intervention would assist the Tribunal in determining the matter before it and (ii) how the proposed intervention would differ from the submissions of the parties so as to avoid the duplication of argument before the Tribunal. The parties were also given permission to file a written response to the Applicants' submissions. Neither HDT nor the Charity Commission has opposed the application to intervene, although they have both made representations about it which I summarise below.
5. The Applicants have requested to make submissions and/or provide evidence to the Tribunal in respect of the following matters from the list of issues:

***Issue 3: The scope of 'human rights' in s.3(1)(h) of the Charities Act 2011***

- a. *Does the term 'human rights' in s.3(1)(h) have a "particular meaning under the law relating to charities in England and Wales", for the purposes of section 3 (3) of the Charities Act 2011?*
- b. *If so, what is that meaning?*
- c. *Are 'human rights' in s.3(1)(h) limited to rights accepted under, or defined by reference to, the law of England and Wales?*
- d. *Do the 'human rights' in s.3(1)(h) extend to the rights set out in (i) the UDHR; (ii) subsequent United Nations conventions and declarations including the ICCPR; (iii) the ECHR?*

***Issue 5: The promotion of the sound administration of the law***

- a. *Is the object set out in article 2.1.3 of the Appellant's articles of association, as properly construed, an exclusively charitable purpose?*
- b. *In particular, is that object prevented from being an exclusively charitable purpose by reason of its not being expressly limited to the provision of legal advice and assistance to person otherwise unable to afford them?*
- c. *Is the conduct and support of litigation with the relevant aim a proper means of pursuing, for the public benefit, the promotion of the sound administration of the law?*

***Issue 7: Are the Appellant's purposes political?***

*Whether the Appellant's purposes are in whole or part political, and hence not charitable, in the circumstances of this case, in particular having regard to:*

*a. The criminalisation of consensual homosexual conduct:*

*Is a law that purports to criminalise private, consensual, non-violent homosexual acts between adults ('relevant conduct') a breach of the human rights recognised by any (or all) of the following:*

- i. The Universal Declaration of Human Rights ('UDHR'); and/or*
- ii. The International Covenant on Civil and Political Rights ('ICCPR'); and/or*
- iii. The European Convention on Human Rights ('ECHR')?*

*b. The scope of remedies:*

- i. What remedies may be granted where a court finds that a legislative provision is inconsistent with a binding constitutional provision or a binding provision of international law?*
- ii. In particular, in the context of this case, may such a court declare a legislative provision criminalising relevant conduct to be (a) void and/or (b) invalid and/or (c) unenforceable to the extent of any inconsistency with superior provisions of binding constitutional and/or international law?*

*c. Whether the purposes are seeking to change the law:*

- i. If a court declares a legislative provision criminalising relevant conduct to be (a) void and/or (b) invalid and/or (c) unenforceable to the extent of any inconsistency with superior provisions of binding constitutional and/or international law, does the court uphold or change the law?*
- ii. In particular, does litigation having the relevant aim (as set out in paragraph 28 (1) of the Grounds of Appeal) seek to change the law?*

***Issue 8: Are the Appellant's purposes for the public benefit?***

- d. Are the Appellant's purposes in whole or in part political, and for that reason not for the public benefit?"*

**The Applicants' Submissions**

6. The Applicants have stressed in making their application that they have considerable experience and expertise in relation to human rights matters and also of the advancement of human rights as a charitable purpose. Both of them also have previous experience of intervening in legal proceedings and it is said on their behalf that they are well-placed to assist the Tribunal. I

entirely accept that that is the case and I am grateful for the Applicants' offer of assistance. However, I note here that it has not been asserted by the Applicants that they are qualified to give expert evidence to the Tribunal. The parties have acknowledged the Applicants' "special expertise" but I have assumed in the absence of any claim to expert witness status that the evidence they seek to file would be as to fact only and not involve the expression of opinion. The Tribunal has already issued directions in respect of the preparation of the expert evidence about human rights law, so it will have this evidence before it in determining HDT's appeal.

7. HDT has suggested in its recent submissions that the Applicants are in fact persons affected by the appeal, although they have not themselves suggested this and have not applied to be joined as parties. The Applicants' have explained that their motivation in seeking to intervene as one of assisting the Tribunal, in the public interest. The reason for this is that they see HDT's appeal as raising issues of significance as to the implementation of international human rights law both in the UK and abroad and in respect of the advancement of human rights as a charitable purpose. They submit that the Charity Commission's approach to HDT's registration application may have the effect of limiting the role that charities may play and inhibit their participation in the arena of human rights and the sound administration of the law. HDT has also suggested that the intervention should not be limited to considering the particular activities of HDT because "it is plain that the Tribunal's decision is likely to have significant consequences for other activities of the Applicants and other charities with human rights purposes".
8. It seems to me that the opinions expressed by the Appellants and HDT about the impact of HDT's appeal on the wider field of human rights must be understood to consist of a perception on their part that it may have a chilling effect on the operational activities of human rights charities. If they mean to suggest that the strict legal effect of the Tribunal's decision in the appeal will have the wider impact to which they refer then I must disagree with them, as the Tribunal's decision at first instance will turn on its own facts and will have no precedential value in legal terms. It will obviously bind the parties to the appeal, but it will not set any legal precedent in terms of charitable status for other organisations and still less will it set a legal precedent in relation to the permitted operational activities of charities promoting human rights or the sound administration of the law. Accordingly, there being no "public interest" in a case which will have no legal effect beyond the interests of the parties, I have concluded that the Applicants' motivation for making their application is not a relevant consideration in determining this application. I have concentrated rather on the central question of whether the proposed intervention would help the Tribunal to make the decision it must make on the appeal before it.
9. The Charity Commission has not opposed the application but it has expressed the view that as the appeal concerns the sole question of whether HDT is in law a charity, any evidence or submissions which are permitted should be confined to that issue rather than the wider context. It is concerned that the Applicants should be required to take a neutral stance in the intervention rather than that of an interested party, that the Applicants should be permitted to make submissions or file evidence only where they can add something over

and above the parties' respective submissions and evidence and that any permitted intervention should be relevant and proportionate so as to avoid delay, prejudice or distortion of the issues before the Tribunal.

10. HDT has welcomed the application and considers that it may assist the Tribunal to have a different perspective before it when considering the work of charities promoting human rights and the sound administration of the law. It considers that the Applicants should not be required to take a neutral stance before the Tribunal.
11. Turning to the particular issues in respect of which the Applicants have offered the Tribunal their assistance, it seems to me that in respect of issue 5, the Applicants' proposed submission of evidence about international human rights law and its relevance to the work of charities active in advancing human rights and promoting the sound administration of law would be of assistance to the Tribunal. I stress that this evidence must be as to fact and not opinion and is to be directed towards describing the activities of the Applicants "on the ground", especially in relation to the conduct of legal proceedings as a means of furthering their charitable purposes. The filing of a single witness statement, which will stand as evidence in chief unless one of the parties requires the witness to attend for cross examination, is a proportionate means of putting before the Tribunal relevant evidence which it would not otherwise be able to consider.
12. The Applicants have also asked, in relation to issue 3, for permission to submit evidence about the possible impact of the Charity Commission's interpretation of the law on the work of charitable organisations working in the field. I have accepted above that there may be such an impact in a non-legal sense only, but it does not seem to me that witness evidence directed to that issue would be relevant to any matter which is formally before the Tribunal for determination in the appeal. Accordingly, I allow the application to intervene by the submission of evidence in relation to issue 3 only, and I have issued additional directions to that effect below.
13. The Applicants have also sought the permission of the Tribunal to make submissions with regard to the following issues:
  - (1) On issue 3, as to the correct interpretation of the term "human rights" in the list of charitable purposes in s.3 (1) (h) of the Charities Act 2011 and the interpretation of "public benefit" in HDT's appeal;
  - (2) On issue 5, to make submissions on the nature of the international human rights framework and the Charity Commission's approach to it in its consideration of the HDT application;
  - (3) On issues 7 and 8 (d), to explain the importance of distinguishing between the purpose of an organisation and the means it uses to achieve that purpose and to refer to the types of activity commonly performed by charities, including those concerned with human rights and legal reform.
14. The Applicants were invited by the Tribunal in its directions of 13 February to state how their proposed submissions would differ from those of the parties so as to avoid the duplication of argument before the Tribunal. Their letter of 14 March confirms that they understand the need to avoid duplication, but does

not indicate how their submissions would differ from those of the parties. I note here once again that the only issue before the Tribunal is the question of whether HDT should be registered as a charity. Both parties are ably represented and, having seen their submissions so far, I would expect the full range of legal argument and authority about that question to be explored in their respective submissions. Having regard to the overriding objective and to the need for the Tribunal to deal with HDT's appeal in a way which is proportionate to its importance, the complexity of the issues, the anticipated costs and the resources of the parties (who do not have *pro bono* representation), I am not at this point persuaded that it would be fair and just to make a direction under rule 33 (2) to permit the Applicants either to make written or oral submissions at the hearing of HDT's appeal because I am not satisfied that the submissions would avoid duplication of argument before the Tribunal.

15. I would be willing to consider a further application from the Applicants if the parties were willing to disclose their draft skeleton arguments to the Applicants well in advance of the hearing, and the Applicants were able, having considered the parties' proposed submissions, to identify a discrete line of argument, relevant to the issue before the Tribunal, that they wished to seek permission to advance. I would need at that stage to be satisfied that the Applicants' proposed submissions would be relevant to the issue before the Tribunal, that they would not duplicate those of the parties, and that permitting them to be made would not cause delay or significantly increase the parties' costs. I make no direction at this stage but leave it to the Applicants to discuss that matter further with the parties and to make a further application if they think it appropriate.

## **DIRECTIONS**

The Tribunal now makes the following directions of its own motion.

These directions are supplemental to those issued on 13 February 2014, which remain in force

### **IT IS DIRECTED THAT**

1. JUSTICE and The Redress Trust are to be referred to as "the Interveners" in this appeal;
2. The Interveners are hereby given permission, pursuant to rules 5 (3) (d) and 15 (1) (c) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, to file one witness statement containing factual evidence about the relevance of international human rights law to the work of charities active in advancing human rights and promoting the sound administration of law, and in particular describing the activities of the Interveners in relation to the conduct of legal proceedings as a means of furthering their charitable purposes;
2. The Interveners' witness evidence is to be served on the parties to the appeal by 4pm on 30 April 2014;

3. Paragraphs 11 and 12 of the Directions of 13 February apply to the Interveners' witness evidence, save that the date by which the parties are to notify the Interveners of a request to cross examine the witness is 4pm on 7 May 2014;
4. The Interveners' witness statement is to be included in the hearing bundle.

**ALISON MCKENNA**

**PRINCIPAL JUDGE**

**27 March 2014**

**© CROWN COPYRIGHT 2014**