



**Appeal number: CA/2013/0005**

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

**IAIN STOWE**

**Applicant**

**- and -**

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**      **Respondents**

**TRIBUNAL: JUDGE ALISON MCKENNA**

**Sitting in Chambers on 17 June 2013**

**© CROWN COPYRIGHT 2013**

## STRIKE-OUT DECISION

1. This matter concerns Mr Stowe's application to the Tribunal dated 10 May 2013. For the reasons given below, his application must be struck out because it falls outside the Tribunal's jurisdiction.

### *Background*

2. The background to Mr Stowe's application is that he made a complaint to the Charity Commission about a charity known as West Deeping Educational Foundation ("the Charity") on 22 April 2013. On that date Mr Stowe sent the Charity Commission a letter of complaint by e mail, together with a dossier of evidence running to some 150 pages. He concluded his letter with a request "*that this information be carefully analysed and that the Commission comes to a conclusion that it is inappropriate for these trustees to continue in office*".

3. On 23 April 2013, the Charity Commission's officer Ms Hinchliffe replied to Mr Stowe by e mail as follows:

Having considered the contents of the dossier of information sent in your emails yesterday, we do not believe that there are grounds for us to consider exercising our powers to remove the trustees of the West Deeping Church of England Foundation. We are aware of issues associated with this charity and we are working with the trustees to find an appropriate solution.

4. Mr Stowe was dissatisfied with this response, and expressed the view in further correspondence that inadequate consideration had been given to his complaint in the short time available to the Commission before it resolved not to take the action requested. He invoked the Commission's internal complaints process and asked for senior officers at the Commission to review Ms Hinchliffe's decision of 23 April.

### *The Tribunal Application*

5. On 10 May 2013, Mr Stowe submitted a Notice of Application to the Tribunal, in which he sought to appeal the decision contained in Ms Hinchliffe's email of 23 April. He asked the Tribunal to "*review my original complaint of April 22<sup>nd</sup> ...and if it is found to be valid, to direct the Commission to use their statutory powers to remove the trustees.....*" He asked that if the Tribunal were not minded to undertake this task, that it instruct the Commission to review the 23 April decision at a sufficiently senior level and respond with sufficient detail that he could be satisfied that the matter had been properly considered. Finally, he asked the Tribunal to rule on whether the Commission had followed its own procedure for the handling of complaints.

### *The Tribunal's Jurisdiction*

6. The Tribunal is a creature of statute and may only exercise the powers conferred on it by Parliament. Under the statutory scheme, a right of appeal to the Tribunal arises only in respect of those decisions listed in column one of what is now Schedule 6 to the Charities Act 2011.

7. Mr Stowe's application to the Tribunal was initially considered by Judge Nicholas Warren, Chamber President, who issued a Case Management Note to the parties dated 31 May 2013. Judge Warren noted that the appeal may be outside the jurisdiction of the Tribunal as it did not involve a decision falling within column one of schedule 6 to the Charities Act 2011. He invited Mr Stowe and the Commission to make representations on the question of the Tribunal's jurisdiction, pointing out that the Tribunal is under a duty to strike out any appeal which falls outside its remit.

#### *The Parties' Submissions*

8. The Commission responded on 7 June 2013, in a letter to the Tribunal from Kait White which was copied to Mr Stowe. Ms White expressed the view that Mr Stowe's application was indeed outside the Tribunal's jurisdiction. She noted that schedule 6 to the 2011 Act contains a right of appeal against a decision *to* remove a trustee, but not against a decision *not* to remove a trustee. Although the Case Management Note had also referred to the absence of jurisdiction for the Tribunal to consider a decision not to open a statutory inquiry, Ms White submitted that no such decision had been made on 23 April. She invited the Tribunal to strike out Mr Stowe's application as not being one involving a decision contained in schedule 6.

9. Mr Stowe replied to Ms White's letter on 8 June and copied his e mail to the Tribunal. In this reply, he referred to the Grounds of Appeal contained in his Notice of Application and to his assertion there that the Commission had not discharged its statutory functions and obligations in its conduct of this case. He also repeated an earlier allegation that the trustees of the Charity had knowingly failed to provide the Commission with a key document. Finally, he fairly acknowledged that he had not previously asked the Commission to open a statutory inquiry into the Charity and took the opportunity to make such a request.

#### *Tribunal Procedure*

10. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 provide at rule 8 (2) that

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or that part of them;

11. An Appellant has the right to make representations prior to a Tribunal taking the decision to strike out an appeal, under rule 8(4) of the Rules. I am content to treat Mr Stowe's email to the Commission of 8 June, copied to the Tribunal, as his representations for this purpose. He clearly understood from Judge Warren's Case Management Note what the issues were and the import of the representations made on behalf of the Commission by Ms White. I am grateful to him for his further submissions but I am afraid they have not persuaded me that the decision of 23 April gives rise to a right of appeal before the Tribunal.

12. Rule 8 does not include a right, nor does it impose any obligation, for the Respondent to make representations on a proposed strike out. I am therefore grateful to the Commission for voluntarily offering its comments on Judge Warren's Case

Management Note. In the circumstances, it will not be necessary for the Commission to file any formal Response in relation to Mr Stowe's application.

*Conclusion*

13. I agree with the Commission that the only decision contained in Ms Hinchliffe's email of 23 April was one not to remove the Charity's trustees from office. That was the only decision the Commission had been asked to make in Mr Stowe's letter of the previous day. It is not, as noted above, a decision appearing within column one of schedule 6 and so the Tribunal has no jurisdiction in relation to it.

14. Neither does the Tribunal have any power to accede to Mr Stowe's requests for it to review his complaint, to direct the Commission to take action, to direct the Commission to review the complaint at a senior level, or to give an opinion as to whether the Commission has followed its own complaints procedures. I conclude that the Tribunal must now reject Mr Stowe's Notice of Appeal as one falling outside its remit.

15. I have noted that Mr Stowe's reply to the Commission's comments on the question of jurisdiction raised some new issues. I am afraid that the Tribunal cannot, in an appeal against a decision taken on 23 April, consider matters which were not the subject of the Commission's decision of that date. However, if in due course the Commission makes a further decision, and it is one falling under column one of schedule 6 and in respect of which Mr Stowe is a person who may apply under column two of schedule 6, then he would be at liberty to submit a fresh Notice of Application to the Tribunal in respect of those matters.

**PRINCIPAL JUDGE**

**17 June 2013**