



Appeal number: CA.2021.0013

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

MERMAIDS

Appellant

v

THE CHARITY COMMISSION FOR ENGLAND AND WALES

**First
Respondent**

And

THE TRUSTEES OF LGB ALLIANCE

Second Respondent

DIRECTIONS

1. This appeal is listed to be determined at a 6-day face to face hearing in London on 9-16 September 2022. The direction for a face-to-face hearing was made by Tribunal Judge Macmillan [as she then was] in directions dated 23 September 2021. The time estimate was extended by me in directions dated 5 April 2022.

Remote observation

2. On 19 August 2022 the second respondent requested a “hybrid hearing” for two reasons
 1. *Both the Appellant and the Second Respondent are crowdfunding for this case; this is a case that has garnered enormous public interest and members of the public as well as those who have crowdfunded have a strong interest in being able to attend the hearing virtually.*
 2. *The final hearing is listed for 6 days, and our client wants to avoid the possibility of the hearing*

being derailed by a positive Covid result. A hybrid trial would allow the hearing to continue without interruption if one of the witnesses were to test positive for Covid because they would be able to give their evidence remotely.

3. In a further communication with the tribunal the second respondent says

A direction for a remote CVP hearing was made on 21 April 2022. Neither the Appellant nor the First Respondent objected to this direction. The objections from the Appellant arose when the listing office informed us on 18 August 2022 that the matter was being listed for an in-person hearing, in response to which we made an application for a hybrid hearing on 19 August 2022.

4. I observe that the final hearing of this appeal was directed to be a face-to-face hearing in 2021 as set out above. However, while there was no direction from a judicial office holder to effect a change of hearing format the tribunal sent a notice of hearing dated 21 April 2022 that notified the parties that the hearing would be conducted by CVP. This has inevitably caused some confusion as to the format of the hearing not only for the parties but for the public and reporters.
5. The appellant objects to the provision of a link to allow remote observation of the hearing but would not oppose a direction under rule 5(3)(g) allowing a limited degree of attendance by video link by such parties and their representatives, and such witnesses as are reasonably unable to attend in person, as to which see below.
6. It is the appellant's submission that taking into account the considerations specified in the regulations and practice guidance it is neither necessary nor appropriate in the interests of justice to facilitate remote observation by members of the public.
7. The first respondent, Charity Commission, has stated that their position in relation to the hybrid hearing is in line with the Appellant's position.
8. The tribunal has received approximately 20 requests by interested members of the public, and journalists to be able to observe the proceedings by remote link.
9. I have read and considered the legal provisions to which I have been referred and the guidance issued by the Lord Chief Justice with the concurrence of the Senior President of Tribunals as regards remote observation of hearings.
10. I have established with HMCTS that the equipment and manpower is available to staff any remote observation.
11. It is possible to construct the link to the hearing room in such a way as those persons who are observing will not be able to interact in any way with the tribunal hearing room, whether verbally, visually or the use of any chat function. This will minimise any adverse effect of a witness being affected by such interaction or "playing to the crowd".
12. Pursuant to s85A Courts Act 2003, in the particular circumstances of this case, bearing in mind all of the relevant provisions, I have decided that it is in the interests of justice to make this direction to allow transmission by way of remote

observation to individual members of the public via a CVP link, subject to the following requirements

- a. No person may receive the transmission of the proceedings unless they are within the United Kingdom. No person outside the United Kingdom may join the CVP link to watch or listen to the proceedings.
 - b. Any person who wants to watch or listen to the hearing via the CVP link provided by HMCTS, must
 - i. identify themselves to the tribunal in writing (by email) by providing their full name, home address and email address before they are admitted to the CVP room.
 - ii. conduct themselves appropriately, and in accordance with the tribunal's directions, during the transmission.
 - c. No person in receipt of the transmission is permitted to record the proceedings in any format, whether by way of audio recording, visual recording, screen shot or otherwise.
 - d. Any person who wants to watch or listen to the hearing via the CVP link provided by HMCTS must indicate in writing that they understand and will comply with the requirements at a-c above before they are admitted to the CVP room.
13. The tribunal will keep this matter under review and may decide to cease the transmission for parts of the proceedings or completely.

Remote participation by witnesses/representatives and parties

14. There will be a CVP link provided to enable remote participation in the hearing. The tribunal will exercise its discretion to allow this participation on a case-by-case basis. I direct
- a. Attendance by video link may be permitted by (i) the parties and their representatives, and (ii) such witnesses as are reasonably unable to attend in person.
 - b. By 4pm on 7 September 2022 the parties are to provide a list of proposed remote attendees, together with an explanation of why they are reasonably unable to attend in person. This applies to the parties, representatives and witnesses.
 - c. Should a change in circumstances mean that any other person wishes to participate remotely once the hearing has begun then the tribunal must be notified as soon as possible.

Application to share witness statements

15. The appellant applies for permission to share all of the witness statements in this case with the Good Law Project, which is described as a not-for profit organisation that has supported the appellant during the litigation. The submissions in support are set out in the letter from Bindmans Solicitors to the tribunal and supplemented in their letter of 2 September 2022.
16. Judge Macmillan considered a similar issue and determined that it was necessary to make an order restricting sharing of documents, see her directions of 23 September 2021.
17. Then objection considered by Judge Macmillan is in essence, the same objection as is raised now by the second respondent as regards the witness statements.
18. It seems to me that there is no distinction to be made between the position as considered by Judge Macmillan as regards the documents in the case and the considerations that apply to the witness statements. Indeed, given the directions that the order would remain in force until the conclusions of the proceedings it is likely that she intended her direction to apply to all documents in the case including witness statements and exhibits. I can see no reason to depart from the substance of the order already made in these proceedings.
19. I direct
 - i. Pursuant to rule 14(1), all documents, including witness statements provided to the Parties in the course of these proceedings are prohibited from disclosure or publication, other than to named individuals and on receipt of a signed undertaking as to confidentiality.
 - ii. The Parties must provide the Tribunal and other parties with a list of the documents shared with 3rd parties, the date of such sharing and the names of those from whom undertakings were received in return.
 - iii. This Order will remain in force until the conclusion of proceedings, including the conclusion of any Upper Tribunal proceedings, subject to further order of the First tier or Upper Tribunal as to the publication of documents.
 - iv. This Order does not extend to a Party's own documents.

Timetable for the hearing

20. The tribunal would be grateful to receive a suggested agreed timetable for the hearing at the earliest opportunity.
21. At the hearing on Friday 9 September the tribunal will hear further submissions and take a decision about

- a. whether to substitute the company, LGB Alliance, for the current second respondent at the hearing on Friday 9 September. Any further necessary directions will be made then.
- b. the second respondent's application to adduce a further witness statement on Friday 9 September 2022.
- c. The tribunal will also consider and make directions to make about the publication of documents to the public at the hearing on Friday 9 September 2022.

Bundles

22. The tribunal would be grateful if, in addition to the bundles for the witness table, two copies are provided for the use of the tribunal panel. These need not be delivered in advance and should be brought to the hearing at Field House to be given to the tribunal on 9 September.

Lynn Griffin

Tribunal Judge Lynn Griffin

6th September 2022