



Appeal number: CRR/2014/0004

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

AUGUSTINE HOUSING TRUST

Appellant

- and -

**THE CHARITY COMMISSION
FOR ENGLAND AND WALES**

Respondents

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in public at Victoria House London WC1 on 24 July 2014

Having heard Kevin Gregory for the Appellant and Kenneth Dibble for the Respondents

And upon Kevin Gregory confirming that he appears before the Tribunal as a charity trustee and not as a legal or non-legal representative of the Appellant

And upon the Appellant withdrawing its applications for the Tribunal to direct:

- (a) disclosure of “secret correspondence”;
- (b) removal of the “accounts overdue” notices in relation to the Appellant from the Respondent’s website;
- (c) removal of the Respondent’s press release about the opening of the inquiry from its website;
- (d) the joinder of the Attorney General as a party to this appeal;
- (e) that the Charity Commission publishes an apology to the Appellant;

- (f) that a protective costs order is made in favour of the Appellant;
- (g) that the appeal be stayed pending disclosure of further information by the Respondent;
- (h) that the Respondent be disbarred from resisting the Appellant's appeal; and
- (i) that permission to appeal to the Upper Tribunal be given if applications are refused

And upon the Respondent undertaking to provide the Appellant with a copy of the withheld document by e mail forthwith

IT IS DIRECTED that

- (1) The Appellant's application to amend its Notice of Application to the Tribunal is refused;
- (2) The Appellant's application for an extension of time in which to file its Reply to the Respondent's Response is allowed. The Reply is to be filed by 5pm on 5 August 2014;
- (3) This matter is to be determined at a paper hearing on a date in October 2014 with a time estimate of one day. The hearing date will be notified to the parties;
- (4) By no later than 5pm on 22 August 2014 the Respondent is to serve on the Appellant a draft index of documents for the hearing bundle;
- (5) By no later than 5pm on 5 September 2014 the Appellant is to notify the Respondent if there are any additional documents it wishes to be added to the hearing bundle and provide copies if these are not already in the Respondent's possession;
- (6) By no later than 5pm on 12 September 2014 the Respondent is to provide the Appellant with the final indexed and paginated hearing bundle, including copies of all the items in the index;
- (7) The parties have permission to serve on each other any witness statements on which they seek to rely by no later than 5pm on 19 September 2014. If the witnesses refer to documents in the hearing bundle then the relevant page number is to be given;
- (8) By no later than 5pm on 12 September 2014 the Respondent is to serve on the Appellant a draft index to the authorities bundle for the hearing (containing the relevant statutory materials and authorities);
- (9) By no later than 5pm on 19 September the Appellant is to notify the Respondent of any additional materials which it wishes to be included in the authorities bundle;
- (10) By no later than 5pm on 26 September 2014 the Respondent is to provide the Appellant with the final authorities bundle for the hearing;
- (11) The parties have permission to exchange with each other and serve on the Tribunal by e-mail their outlines of case (skeleton arguments) not later than 7 days prior to the hearing date;

(12) By no later than 7 days before the hearing date, the Respondent is to provide the Tribunal with:

- (a) three hard copies of the final hearing bundle, including the documents and any witness statements;
- (b) three hard copies of the authorities bundle, edited so that only those materials and authorities referred to in the respective outlines of case are included;

(13) The parties have permission to apply to vary these directions or for further directions.

REASONS

1. The Tribunal convened an oral directions hearing to determine the Appellant's various applications for directions made on 29 May, 30 May, 2 June, 6 June and 14 July 2014. Mr Gregory had completed the Tribunal's Notice of Appeal form to show himself as the Appellant's "representative" but today he explained that, although he had received some legal training, he is not a qualified lawyer and did not "represent" the Appellant for the purposes of rule 11 of the Tribunal's rules. He appeared today as a charity trustee only.
2. Mr Gregory explained that the charity had previously been mis-advised about the powers of the First-Tier Tribunal, which was why it had made its previous applications. He would not say who had given this erroneous advice but he did say that the Appellant was now taking advice from someone else. He said he now accepted that the Tribunal does not have power to issue directions in relation to the Respondent's website. He withdrew most of the applications which were before the Tribunal, as referred to above.
3. Mr Gregory applied to amend the Appellant's Notice of Appeal because he said that he wished to assist the Tribunal by narrowing the issues. Having heard his account of the issues which he wished to raise in an amended Notice of Appeal (which concern a dispute over the validity of service of orders under s. 52 of the Charities Act 2011) I was satisfied that these issues are already before the Tribunal and that it would not be fair and just to permit further refinement of the pleadings with the inevitable delay in arranging a final hearing date which this would cause.
4. The Appellant had applied in writing on 14 July for an extension of time in which to file its Reply but that application was opposed and had been left for determination at today's hearing. Mr Gregory explained that he was asking for the extension of time because, at his request, the Respondent had served him with copies of all the documents listed in its Response and he now needed time to read them all and draft the Reply. Having heard from Mr Dibble that he was concerned about any delay to the final hearing, I allowed Mr Gregory's application but was satisfied that it would be fair and just for the Appellant to file its Reply on 5 August. It is hoped that the Reply will help to clarify, and not proliferate, the issues for the final hearing. In the meantime, preparations for the final hearing can commence in any event and I have issued directions which allow for a final hearing on the papers in early October 2014.

5. Both parties agreed that this matter was suitable for determination on the papers. I am satisfied that the Tribunal can properly determine the issues in this case without an oral hearing.
6. Mr Dibble explained that the Respondent had withheld one document from the earlier papers served on the Appellant because it was awaiting the consent of its author before disclosing it. That consent had now been given and Mr Dibble undertook to provide the Appellant with that document by e mail forthwith.
7. I would like to remind the parties of their duties to co-operate with the Tribunal under the overriding objective in rule 2. The Upper Tribunal has interpreted this duty in *Dorset Healthcare NHS Foundation Trust v MH* [2009] UKUT 4 (AAC) as:

“an express obligation upon the parties to assist in the furtherance of the objective of dealing with cases fairly and justly, which includes the avoidance of unnecessary applications and unnecessary delay. That requires parties to cooperate and liaise with each other concerning procedural matters, with a view to agreeing a procedural course promptly where they are able to do so, before making any application to the tribunal. This is particularly to be expected where parties have legal representation. Parties should endeavour to agree disclosure issues without the need for the tribunal to make a ruling. However, even where a direction from the tribunal may be requiredit will assist the tribunal to further the overriding objective if the parties can identify any directions they are able to agree, subject to the approval of the tribunal. Where they are unable to agree every aspect, this liaison will at least have the advantage of crystallising their positions, and more clearly identifying the issue(s) upon which the tribunal will have to rule”.
8. Mr Gregory informed the Tribunal that he thought its powers inadequate to deal with some of the injustices faced by the Appellant and he had wished to raise them with the Upper Tribunal and the Court of Appeal so that greater powers could be authorised. He thought this would be for the benefit of all charities. I explained that the powers of the Tribunal are a matter for Parliament. I advised Mr Gregory to concentrate on the issues relevant to this appeal only, as seeking to conduct litigation for the benefit of charities generally might lead him into the realms of unreasonable conduct in these proceedings. I referred him to the Tribunal’s power to award costs in respect of the unreasonable conduct of proceedings, including wasted costs, under rule 10 of Tribunal’s rules.

PRINCIPAL JUDGE
24 July 2014

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