



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

Case No. CA/2010/0005

Appellant: Mrs Pat Cumbers

Respondent: The Charity Commission for England and Wales

Determined on the Papers

By

**Jonathan Holbrook
Tribunal Judge**

**Subject matter: Melton Mowbray Town Estate;
Tribunal Procedure;
Jurisdiction of the Tribunal**

DECISION OF THE FIRST-TIER TRIBUNAL

This appeal is struck out pursuant to Rule 8(2) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

REASONS FOR DECISION

1. Background

- 1.1 The Appellant is a former trustee of Melton Mowbray Town Estate, registered charity number 222142 (“the charity”).
- 1.2 The Respondent received complaints about the charity from the Appellant and others raising concerns about its governance and the conduct of its trustees. The Respondent made enquiries and it responded to the complainants, including the Appellant, with its findings.
- 1.3 Being dissatisfied with the Respondent’s response, the Appellant apparently requested an informal review of the response (in particular, of the Respondent’s decision not to make use of its regulatory powers against the charity) under the Respondent’s internal procedures.
- 1.4 On 24 June 2010, the Respondent’s Outcome Review Panel considered a number of specific areas of complaint (in particular, in relation to the conduct of elections of the charity’s trustees; CRB/child protection matters; and access to financial information) and took into account representations from the Appellant and others. It issued a 5 page determination on 12 July 2010 in which it concluded that, although aspects of its original assessment of the complaints had not been handled particularly well, those complaints were not of a serious enough nature to warrant more formal regulatory action by the Respondent.
- 1.5 From the history of this matter provided by the Appellant, it does not appear that the Respondent has at any stage made a decision, order or direction falling within column one of the Table in Schedule 1C to the Charities Act 1993 (as amended by the Charities Act 2006).

2. The Jurisdiction of the Tribunal

2.1 The Tribunal's jurisdiction is established as follows. Section 2A of the Charities Act 1993 ("the Act") provides that

**"(4) The Tribunal shall have jurisdiction to hear and determine—
(a) such appeals and applications as may be made to the Tribunal in accordance with Schedule 1C to this Act, or any other enactment, in respect of decisions, orders or directions of the Commission....."**

2.2 Schedule 1C to the Act contains a table which lists, in column one, the decisions orders or directions of the Respondent in respect of which an application may be made to the Tribunal. Column two of the table sets out who can make an application to the Tribunal in respect of the decision order or direction and column three sets out the powers of the Tribunal in respect of such an application¹.

2.3 In this case, I have been unable to identify a relevant decision order or direction of the Respondent which falls within column one of the table. Although the Respondent has attempted to resolve the Appellant's complaints about the charity, it has not exercised any relevant statutory power in doing so. In the circumstances, I have concluded that the Tribunal does not have jurisdiction to determine the Appellant's application in this matter and that the application should therefore be struck out.

3. Procedure and Ruling

3.1 I now turn to consider the relevant procedure to be adopted in these circumstances. I have specifically considered rule 5(3)(k)(i) and rule 8(2) and 8(3)(c) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules")², which provide as follows:

"Case management powers

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

¹ The table is available on the Tribunal's website www.charity.tribunals.gov.uk under Rules and Legislation.

² The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 are available on www.charity.tribunals.gov.uk under Rules and Legislation.

....

(k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—

(i) because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or

(ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;

Striking out a party's case

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...

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

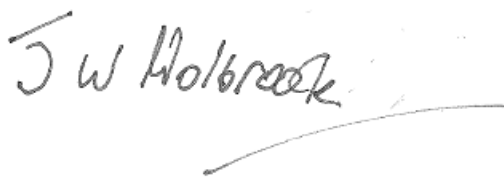
(a) does not have jurisdiction in relation to the proceedings or that part of them; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

- 3.2 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. Accordingly, I informed the Appellant of my provisional view that the Tribunal had no jurisdiction in relation to her application and also that I did not consider that the Tribunal could transfer her application to another court or tribunal which did have jurisdiction.
- 3.3 I sought the Appellant's comments on this ruling in draft and have finalised it having taken those comments into account. The Appellant responded by requesting that I use case management powers to transfer her application to the Administrative Court, so that it might proceed as an application for judicial review. The Appellant provided documentary evidence in support of this request. She argued, in essence, that judicial review is appropriate in these circumstances because the Respondent's failure to take formal regulatory action amounted to a breach of statutory duty or, in the alternative, because its decision not to take such action was unreasonable in the light of the evidence available to it about the conduct of the charity's trustees.
- 3.4 The Tribunal does have power, under rule 5(3)(k)(ii) of the Rules, to transfer these proceedings to another court or tribunal if it considers that court or tribunal to be a more appropriate forum for the determination of the case. Nevertheless, I have decided not to exercise that power in the present circumstances. In making this decision I have had regard to a number of factors. First, it is not apparent that the Appellant has complied with the Pre-Action Protocol for Judicial

Review.³ Second, I am concerned that a transfer of this matter to the Administrative Court could expose the Appellant to costs in that, unlike the Tribunal, there is a fee to pay and the risk of a costs order being made against the Appellant. Third, I note that the Appellant is within the time limits for initiating judicial review proceedings and is therefore able to commence such proceedings in the Administrative Court in any event. I make no comment on the merits of the Appellant's potential application for judicial review. However, should the Appellant be minded to make such an application, I would urge her to seek independent advice on the implications of doing so and on the procedure to be followed.

- 3.5 Having decided not to transfer these proceedings to the Administrative Court, it remains my view that the application should be struck out on the grounds of lack of jurisdiction.
- 3.6 The process required by the Rules does not include a right for the Respondent to make representations on a proposed strike out. I recognise, however, that the receipt of an application by the Tribunal Administration generates notification of the appeal to the Respondent, with the result that the "clock starts ticking" under rule 27 of the Rules for the filing of the response. It would be unfortunate if this were to put the Respondent to unnecessary work in relation to an application which must be struck out. Accordingly, the case management power in rule 5(3)(a) of the Rules, which allows the Tribunal to extend the time for complying with any rule, has been invoked in this case, suspending the requirement for the Respondent to file a response pending determination of the jurisdiction issue. In the circumstances it will not be necessary for the Respondent to file a response in relation to this application, which is hereby struck out on the grounds of lack of jurisdiction.



Signed:

Dated: 16 September 2010

Jonathan Holbrook
Tribunal Judge

³ http://www.justice.gov.uk/civil/procrules_fin/contents/protocols/prot_jrv.htm