



**Appeal number: CA/2014/0001
CA/2014/0002**

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

BRYAN GUNN

**First
Appellant**

DONNA NAGHSHINEH

**Second
Appellant**

- and -

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in public in Norwich on 30 July 2014

Having heard Mr Colman for the first Appellant, the second Appellant in person and Mr Willis Pickup for the Respondent

IT IS DIRECTED that

1. The final hearing of this matter will take place in Norwich between 8 and 12 December 2014, at a venue to be notified to the parties;
2. The two appeals will be heard together in respect of the Respondent's case. The Appellants have permission to rely on different evidence in respect of each appeal;
3. The Respondent is to serve the draft index to a consolidated hearing bundle for both appeals on the Appellants by 5pm on 27 August 2014;

4. The Appellants are to notify the Respondent of any additional documents that they wish to be included in the consolidated hearing bundle and provide copies of any documents not already in the possession of the Respondent by 5pm on 24 September 2014;
5. The Respondent is to serve an indexed and paginated copy of the consolidated hearing bundle on the Appellants by 5pm on 1 October 2014;
6. The parties are to exchange copies of the witness statements on which they seek to rely in relation to both appeals by no later than 5pm on 5 November 2014. If the witness refers in the statement to a document in the consolidated hearing bundle then the page number is to be given. Unless the witness is required to attend for cross examination in accordance with paragraph 7 below, the witness statement will stand as their evidence;
7. The parties are to notify each other of the names of any witnesses whom they require to attend for cross examination at the final hearing by no later than 5pm on 19 November 2014;
8. If Mr Colman serves a witness statement in relation to either or both of the appeals in accordance with paragraph 6 above, then he shall cease to be Mr Gunn's representative in these proceedings;
9. There is to be a case management hearing by telephone conference call on either 20 or 21 November 2014, at a time to be agreed between the parties and the Tribunal, at which a timetable for the hearing will be finalised and any necessary directions given. The parties are to use their best endeavours to agree a draft timetable for the hearing in advance of the case management hearing;
10. The Respondent is to serve the draft index to the authorities bundle on the Appellants by 5pm on 12 November 2014;
11. The Appellants are to notify the Respondent of any additional statutory materials or legal authorities which they wish to have included in the authorities bundle by 5pm on 19 November;
12. The Respondent is to provide the Appellants with a copy of the authorities bundle by no later than 14 days before the final hearing;
13. The parties are to exchange with each other and send to the Tribunal by e-mail their skeleton arguments in relation to each appeal by no later than 7 days before the final hearing;
14. The Respondent is to provide the Tribunal with 4 copies of the consolidated hearing bundle and 3 copies of the authorities bundle (edited so as to include only those authorities referred to in the skeleton arguments) by no later than 5 days before the hearing date. The Respondent is also to bring an additional copy of the consolidated hearing bundle to the final hearing, for the use of witnesses.
15. The parties have permission to apply to vary these directions or for new directions.

REASONS

(1) The Appellants have consistently opposed the consolidation of these appeals. The Respondent is in favour of consolidation. If I were to direct that these appeals be heard separately I am satisfied that there would be significant duplication of evidence in relation to the Respondent's case and probably also in relation to the Appellants' case. The Tribunal must consider the overriding objective and the need for a proportionate approach.

(2) Prior to the directions hearing, I suggested that the parties look at the decision of Mr Justice Turner in *Maharani Restaurant v HMRC* (1999) STC 295, in which the Court outlined a number of factors which should properly be considered in deciding whether to exercise the power to consolidate separate proceedings. These include the commonality of identity of the Appellants, the commonality of witnesses, the degree of overlap of evidence, the desirability of sparing witnesses the need to give evidence more than once (and the risk that their evidence on the same point might be accepted in one appeal but not in another), the comparative cost and length of holding separate and consolidated appeals and, importantly, the risk of prejudice to the Appellants in relation to the presentation of similar fact evidence. Having considered these factors, the Appellants maintained their request for separate hearings. I have therefore considered whether it would be possible to make directions which accommodate the Appellants' request for non-consolidation but which nevertheless would reduce the costs and time involved and the duplication of evidence.

(3) I note that rule 5 (3) (b) of the Tribunal's rules allows for parts of the proceedings to be heard together and for other parts to be heard separately. I have accordingly directed that the appeals should be heard together in relation to the Respondent's case but that the Appellants may rely on different evidence in relation to each appeal. This somewhat novel approach will require careful thought to be given to a timetable of evidence for the final hearing. It will probably mean that the Respondent's evidence and submissions should be heard first and that the Appellants present their cases sequentially. The Appellants will need to think about how they can do this without repeating evidence on the issues common to both appeals.

(4) It is not yet possible for me to give directions in relation to the timetable for the final hearing, as I have not yet seen the witness evidence on which each party seeks to rely. In the circumstances I have directed a further case management hearing at which these matters can be considered further and appropriate directions given. It is hoped that the parties can agree a draft timetable for the final hearing in advance of the case management hearing.

(5) Mr Colman appeared today as the non-legal representative of the First Appellant. He was a charity trustee at the time of many key events in these appeals and it seems likely that he will be a witness at the final hearing. It is not appropriate for him to act as both a representative and a witness in the same proceedings for a number of reasons, not least that witnesses may be excluded from the hearing until they give their evidence but a representative needs to remain in the hearing room throughout. I asked him to consider which role he wants to play in these proceedings and to notify the other parties and the Tribunal accordingly.

(6) The other directions given are procedural in nature and were agreed by the parties. I am grateful to everyone for their cooperation and assistance at the directions hearing today.

ALISON MCKENNA

PRINCIPAL JUDGE

DATE: 30 July 2014

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