



Appeal number: CA/2014/0017

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

DAVID JENNINGS

Appellant

- and -

**THE CHARITY COMMISSION
FOR ENGLAND AND WALES**

Respondents

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 21 November 2014

Upon the Tribunal receiving a Notice of Appeal which appeared to be out of time and in relation to which the Tribunal would have to decide whether to allow the appeal to proceed

And upon the Tribunal receiving the Respondent's submissions dated 14 November and the Appellant's further submissions dated 19 November

IT IS DIRECTED as follows:

1. The Respondent is to provide the Tribunal and the Appellant with its further submissions on the following issues within 14 days of the date below:

- (a) Is it correct that, as asserted by the Appellant, it has represented him to be a *de facto* trustee in one set of proceedings whilst arguing that he has no standing in another set of proceedings because he was not a trustee?
- (b) Should a person whom the Respondent regards as a *de facto* trustee have been considered to fall under column 2 in relation to the decision to open a statutory inquiry, at least to the extent of providing him with information about appeal rights and explaining that the Tribunal would have to rule on the matter?

(c) How can the Appellant influence the contents of the proposed Statement of the Results of the Inquiry? How can he challenge any assertions of fact about himself made in it? If he has standing in the Tribunal and no other avenue of challenge available to him, would this be a good reason for the Tribunal to exercise its discretion to conduct a review even if the inquiry had by then been closed?

2. The Appellant is to provide the Tribunal and the Respondent with his further submissions on the following issue within 14 days of receiving the Respondent's further submissions:

(a) Whether, if he had been informed that, as a *de facto* trustee he could have applied to the Tribunal for a ruling as to whether he had a right to apply for a review of the decision to open the inquiry, would he have taken any action and, if so, what would he have done given that he denies that he was a *de facto* trustee?

REASONS

3. The Respondent opened a statutory inquiry into a charity known as the Greenfinch Charitable Trust on 25 January 2014. It notified the charity trustees of the opening of the inquiry in March 2014, by writing to all the trustees then named on the register of charities. The Appellant has had a long association with the charity, but was not then named on the register as one of its trustees. The Respondent accepts that, whilst it informed the Appellant of the opening of the inquiry, he was not given information about his right to apply to the Tribunal because the Respondent took the view that he had no standing to bring an appeal under column 2 of schedule 6 to the Charities Act 2011 because he was not a person who had "control or management" of the charity at that time. The Appellant's initial application to the Tribunal was unclear as to the decision he wished to appeal. He appeared mainly to be concerned with challenging the draft Statement of the Results of the Inquiry.

4. The Respondent's position on this application is as follows:

(a) it is not sufficiently clear from the Appellant's correspondence which decision of the Charity Commission it is that he seeks to appeal. It may be the opening of the inquiry but if so he was not, at the relevant time, a person with standing to challenge that decision. Alternatively, it may be that he seeks to challenge a decision about the settlement of concurrent High Court proceedings concerning the charity and in which he is a party. If so, that is not a decision which is capable of appeal to the Tribunal. In any event it is anticipated that the High Court proceedings are shortly to come to an end, following which the statutory inquiry will be closed. As the only remedy available to the Appellant is the quashing of the inquiry, there is no practical purpose in allowing the Appellant to proceed out of time.

(b) that the application to the Tribunal was made 19 months out of time and ought not to be allowed to proceed so late without a good reason for the delay, and no good reason has been advanced.

5. The Appellant's position is as follows:

(a) His application for permission to appeal out of time is based upon the fact that the Respondent failed to advise him of his right to appeal to the Tribunal at the relevant time.

(b) He has been in contact with the Respondent for some years about this charity, has acted as a “whistle-blower” and previously asked the Respondent to open an inquiry, which it did not. Subsequently the Respondent has opened an inquiry, and has instituted High Court proceedings in which he is a respondent on the basis that he was a *de facto* trustee. The charity is now in liquidation.

(c) That the Respondent’s position is contradictory in stating that he is not a person with sufficient control of the charity to have a right of appeal to the Tribunal and yet, in separate proceedings, arguing that he is a *de facto* trustee.

(d) He is concerned, having seen a draft Statement of the Results of the Inquiry, that the Respondent will publicly suggest that he was involved in conduct which he denies. It would be unfair to deny him a hearing in the Tribunal which could allow him to challenge the Respondent’s reasons for opening the inquiry insofar as they relate to him.

6. I am troubled by the Appellant’s assertion that the Respondent represented him to be a *de facto* trustee in one set of proceedings whilst arguing that he has no standing in another set of proceedings because he was not a trustee. I have directed the Charity Commission to make further submissions on this point, and also to make further submissions on the question of whether a person whom the Respondent regarded as a *de facto* trustee should fairly have been regarded as falling under column 2 in relation to the decision to open a statutory inquiry, at least to the extent of providing him with information about appeal rights and explaining that the Tribunal would have to rule on the matter.

7. However, it seems to me that even if the Respondent had informed the Appellant about a right of appeal to the Tribunal at the relevant time, he may well not have exercised it because, as I understand it, he denied and still denies that he was ever a *de facto* trustee. I have asked the Appellant to address this point in his further submissions.

8. Assuming for the moment that the Tribunal is satisfied that the Appellant did have a right of standing in the Tribunal as a *de facto* trustee (and I have reached no firm conclusion on that issue as yet) then I would need to consider whether the Respondent’s acknowledged failure to inform the Appellant of his potential right of appeal to the Tribunal at the relevant time provides a good enough reason to extend time so as to allow the Appellant to apply for a review of the decision to open the statutory inquiry. I am happy to consider the parties’ further comments on that issue but I have not specifically directed them to make additional submissions on this point.

9. Finally, if by the time the Appellant had a review hearing the inquiry had been closed, I take the view that the Tribunal retains a residual discretion to review the lawfulness of the Respondent’s original decision to open the inquiry. I would need to decide whether this was a case where that discretion should be exercised. I have directed the Respondent to make further submissions as to how the Appellant might influence the contents of the proposed Statement of the Results of the Inquiry and

how he might challenge any assertions of fact made in it otherwise than in a review hearing in the Tribunal.

Alison McKenna

**PRINCIPAL JUDGE
21 November 2014**

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