



Appeal number: CA/2013/0012

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

REGENTFORD LIMITED

Appellant

- and -

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 20 November 2013

RULING ON JURISDICTION AND PROPOSED STRIKE OUT

1. Regentford Limited has applied to the Tribunal by way of a Notice of Appeal dated 5 November 2013. It seeks to appeal against a decision of the Charity Commission not to remove it from the register of charities dated 11 October 2013.
2. This matter has a long and complicated history and this is the third application to the Tribunal by Regentford Limited this year. Two appeals have already been determined. The Upper Tribunal (Tax and Chancery Chamber) has given permission to appeal in relation to one of them.
3. When the Notice of Appeal was received, I was unsure whether the correspondence included with it indicated that a decision pursuant to s.34 of the Charities Act 2011 had been taken by the Charity Commission had been taken on 11 October. I asked the parties to provide further comments so that I could decide whether the Tribunal had jurisdiction in respect of the Notice of Appeal. I excused the Charity Commission from commencing any work on a formal Response to the Notice of Appeal until I had ruled on jurisdiction.

4. The Appellant's Notice of Appeal refers also to s. 15(4) of the Charities Act 2011 but the Appellant has helpfully clarified that it did not mean to suggest that there was a separate right of appeal in relation to that section (which there is not).

5. I am grateful to the Appellant and to the Charity Commission for their comments and the copy correspondence which they sent me by e mail. It is clear from the correspondence that on 19 June 2013 the Appellant made a request to the Charity Commission to remove it from the register of charities on the basis that it did not operate. On 5 July 2013 the Charity Commission replied that it would not consider the request until after the decision of the Tribunal on the appeal that was then before it. The Tribunal's decision was issued on 21 August following a hearing on 30 July 2013. The Appellant wrote to the Charity Commission on 6 August, citing the Judicial Review Pre Action Protocol. It is clear from the papers that the Appellant intended to apply for judicial review of the Charity Commission's decision not to consider the request to remove the charity from the register, dated 5 July 2013. In the course of that correspondence, the Charity Commission stated in an e mail dated 11 October that "we will not be removing the charity from the register". On 14 October the Appellant wrote that that it considered the Commission to have made an appealable decision under s.34 of the Charities Act 2011. On 22 October the Charity Commission replied that it had not made such a decision, it had merely responded to matters in the Appellant's Judicial Review Pre Action Protocol letter. On 5 November, the Appellant made its application to the Tribunal.

6. In response to my request for comments, the Appellant submitted that, although the Charity Commission's e mail of 11 October did not refer to s. 34 of the 2011 Act, it did refer to the Appellant's previous letters which had made a request for a decision under that statutory provision, and that on 11 October it had confirmed its refusal to accede to the Appellant's request for removal from the register of charities.

7. The Charity Commission submitted that the e mail of 11 October did not include an appealable decision under s. 34 of the 2011 Act. This was because (i) it was a response to the Pre Action letter about judicial review and not a substantive decision; (ii) the e mail was sent by a member of the Litigation and Review Team and not by a person with authority to make decisions about the register; (iii) that the e mail confirms the Commission's earlier decision not to reconsider its decision of 13 July 2011 to restore the charity to the register; (iv) that the Commission had confirmed on 22 October that it had not made an appealable decision and (v) that it would be burdensome for the Commission if every refusal of a request for review of an earlier decision was treated as a fresh decision, and that such an approach would circumvent the rules on time limits for bringing appeals.

8. I have considered the parties' submissions and the copy correspondence carefully and I am minded to take the view that the Charity Commission's e mail of 11 October did not contain a decision which gives rise to a right of appeal to the Tribunal. I must decide whether, as a matter of fact, a decision which engages the Tribunal's jurisdiction was made on 11 October. Having construed the correspondence in its context, I am inclined to the view that it formed part of a correspondence about the potential commencement of judicial review proceedings relating to the disputed decision of 5 July and did not constitute a discrete decision. That is not to say that rights of appeal are only engaged by decisions which are clearly signposted as such, but that, on the facts of this case, I am minded to find that no appealable decision under s. 34 of the 2011 Act was made on 11 October.

9. For the above reasons I have provisionally concluded that the Tribunal does not have jurisdiction in relation to the Notice of Appeal now before it on the basis that no decision falling within column one of schedule 6 to the Charities Act 2011 has been made. Accordingly, I am proposing to strike out this appeal pursuant to rule 8 (2) (a) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, but before making a final decision I must first consider any representations that the Appellant wishes to make pursuant to rule 8 (4). I direct that the Appellant is to make any representations on the proposed strike out in writing within 14 days of this ruling being sent to it.

10. Finally, I note that a clear request for removal from the register was made by the Appellant on 19 June, and that in its reply of 5 July the Charity Commission postponed the making of a decision about that request until after the Tribunal hearing. As the hearing has now taken place, it may be that the right course for the Appellant now would be to ask the Charity Commission formally to make the decision it was asked to make on 19 June but postponed making on 5 July 2013. Such a request should be made to the Commission as registrar and not as part of correspondence about other matters. I am sympathetic to the Charity Commission's concern about the potentially burdensome impact of treating the refusal of repeated requests for the review of earlier decisions as fresh decisions. However, it does not seem to me that it would be reasonable to treat a distinct request for removal from the register as a renewed request for the review of an earlier decision to enter the charity onto the register. They are two separate issues and I note that schedule 6 to the 2011 Act contains separate rights of appeal in relation to (i) a decision to enter an institution onto the register of charities and (ii) in relation to a decision not to remove a charity from the register. It seems to me that in this case the Appellant's request clearly fell under the second category and was not a repeated request for review of the Commission's prior decision.

TRIBUNAL JUDGE
RELEASE DATE: 20 November 2013

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