



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

CA/2009/0002

LENNOX RYAN

Applicant

- and -

**THE CHARITY COMMISSION FOR ENGLAND Respondents
AND WALES**

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 15 August 2012

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RULING ON JURISDICTION

1. This matter concerns the Tribunal's earlier Decisions and amended Scheme in the cases of *Ryan and Maidment versus The Charity Commission for England and Wales*, reported at [2009] UKFTT 377 (GRC).

2. Mr Ryan has applied to the Tribunal by way of Notice of Appeal dated 2 August 2012. In it, he asks for

A reversal of the Charity Commission's decision and an intervention to ensure the correct interpretation of and compliance with the Decisions and Scheme made by the Charity Tribunal on 16 November 2009 and 16 February 2010 including, as deemed necessary, revisions to Dartford Borough Council's Conflict of Interest Policy.

3. The Charity Commission's decision referred to is one contained in an e mail dated 5 July 2012, in which Kait White of the Commission's Litigation and Review Team explained that she had considered his application for Decision Review but decided that this matter did not fall within the scope of that process because it had already been given extensive consideration by the Commission at a high level of seniority and it would not therefore be appropriate for the matter to be re-considered.

4. Mr Ryan's Grounds of Appeal and enclosures explain the background to his request for a Decision Review. He considers that Dartford Borough Council (the charity trustee) has not complied with the Conflict of Interest policy which was required by the Tribunal's earlier Decisions and amended Scheme. He considers that an important planning decision has been taken in breach of that policy. He has asked the Charity Commission to intervene in what he regards as a regulatory matter, but the Commission declined to do so, and then refused to review that decision. In these circumstances, he seeks to bring the matter back before the Tribunal.

5. I asked the Charity Commission to provide the Tribunal with further details of recent events so as to enable me to rule on whether the Tribunal has jurisdiction in this matter. I have not, in the meantime, asked the Charity Commission to file a formal Response to the Notice of Appeal. The Charity Commission has helpfully explained that, following the Tribunal's decision, it approved the Conflict of Interest Policy on 16 April 2010. Following Mr Ryan's more recent complaints, it contacted Dartford Borough Council and satisfied itself that the drafting of the policy and its implementation conformed with the Tribunal's decision. It confirmed to Mr Ryan in May 2012 that it had not identified any regulatory concerns and it was this decision that Mr Ryan then asked to be reviewed through the Commission's internal process. Its refusal to do so is the decision of 5 July which Mr Ryan cites in his Notice of Appeal.

6. The Tribunal is a creature of statute and may only exercise the powers conferred on it by Parliament. This means that there is only a right of appeal in respect of the decisions listed in what is now Schedule 6 to the Charities Act 2011. A decision to refuse to consider a matter in its internal review process is not a decision specified in

the Schedule, and in those circumstances I must rule that the Tribunal has no jurisdiction in respect of the decision of 5 July 2012.

7. Mr Ryan also asks for an “intervention” by the Tribunal, which I understand to be a request for the Tribunal to take action to enforce its earlier Order if it were to find that the terms of the Scheme had been breached. It is interesting to note that neither the First-tier nor the Upper Tribunal have enforcement powers of their own, and that none is conferred by the provisions of the Tribunals Courts and Enforcement Act 2007 (“TCEA”), other than in respect of monetary awards (s 27 TCEA) and judicial review cases in the Upper Tribunal (s 15 TCEA). Some commentators have suggested that the absence of enforcement powers in respect of non-monetary awards is a lacuna in the TCEA which should be remedied, however at present the legislative framework is clear that the Tribunal has no jurisdiction and so no power to intervene where it is alleged that a party is acting in breach of its earlier decision. I am sorry that this means we cannot assist Mr Ryan and can only suggest that he takes advice about his other possible remedies.

8. Although Mr Ryan has sent in a fresh Notice of Application, I prefer to treat this matter as an application falling within his previous case number CA/2009/0002. This approach permits me to refuse his application on grounds of lack of jurisdiction now, rather than starting a new case and inviting representations on a proposed strike out. It seems to me that this approach is consistent with the Tribunal’s overriding objective, which includes the aim of dealing with cases in a way that is proportionate to the issues they raise. The application is accordingly refused.

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PRINCIPAL JUDGE
15 August 2012