



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

**Case No. CA/2010/0006**

On appeal from Charity Commission Decn No. C-286046-W29C of 4 August 2010

**Appellant: Mr Christopher Lasper  
Respondent: The Charity Commission for England and Wales**

**Determined on the Papers**

**By  
Vivien Rose  
Tribunal Judge**

**Subject matter: The Town Field, Brigham, Keswick  
Jurisdiction of the Tribunal**

## **DECISION OF THE FIRST-TIER TRIBUNAL**

**The application to strike out the appeal pursuant to Rule 8(2) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 is refused.**

### **REASONS FOR DECISION**

#### **1. Background**

- 1.1 Mr Lasper has lodged a Notice of Appeal challenging a decision of the Charity Commission (“the Commission”) not to remove an institution from the register of charities maintained by the Commission. The institution concerned is called “The Town Field” and comprises a piece of open land in the town of Keswick in Cumbria.
- 1.2 On 1 February 2009, Mr Lasper asked the Commission to remove the Town Field from the register of charities. He contends that because of the operation over the years of various statutes dealing with village greens and open spaces, any charitable trusts on which the Town Field may originally have been held have been extinguished. The Charity Commission disagrees and has refused to remove the Town Field from the register. Mr Lasper’s appeal seeks to challenge the decision dated 4 August 2010, a decision made by the Head of Legal Compliance after Mr Lasper invoked the Commission’s internal review process.
- 1.3 After lodging its response to the Notice of Appeal, the Commission now applies to strike out Mr Lasper’s challenge on the grounds that the Tribunal does not have jurisdiction to hear the appeal.

#### **2. The Jurisdiction of the Tribunal**

- 2.1 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 Commission 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 that decision, order or direction and column three sets out the powers of the Tribunal in respect of such an application.<sup>1</sup> The first item in column one of the table includes a decision of the Commission “to remove or not to remove an institution from the register”. The persons who can make an application to the Tribunal in respect of such a decision are listed in column two as being:

- “(a) the persons who are or claim to be the charity trustees of the institution,
- (b) (if a body corporate) the institution itself, and
- (c) any other person who is or may be affected by the decision.”

2.3 There is no doubt here that the Commission has taken a decision falling within the first item of column one. The question raised is whether Mr Lasper is a person “who is or may be affected by” the decision not to remove The Town Field from the register of charities.

### **3. A person “who is or may be affected by the decision”.**

3.1 In the Notice of Appeal, Mr Lasper relies on two matters as establishing that he is affected by the decision. First he says that as a regular donor to other charities, he is concerned that the tax concessions available to charities under the Gift Aid scheme “may cease to be politically acceptable” if the Commission is not vigilant in confining the register to those institutions entitled to remain there.

3.2 On this point I agree with the Commission that this interest is too speculative and too remote to bring Mr Lasper within the class of people covered by the relevant wording of Schedule 1C. The Commission has not demonstrated a lack of vigilance in responding to Mr Lasper’s request. Mr Lasper’s interest in the decision would not be materially greater than or different from the interest of many millions of people who make charitable donations covered by the Gift Aid scheme. Mr Lasper’s concern on this score is not, in my judgment, sufficient to make him a person who is or may be affected by the decision.

3.3 Mr Lasper’s second point is that he is a council tax payer to Allerdale Borough Council which is the district council within whose area the land falls, though he is not resident in the parish precept of Keswick Town Council. He asserts that his ability to object to council accounts in respect of the expenditure on the maintenance of the land depends on whether that maintenance is a statutory duty of the town council or a discretionary grant. The Commission responds that the Town Field’s accounts show that its expenditure for the year ended 31 March 2010 was £847 and this was entirely financed by a grant from Keswick Town Council. I agree with the Commission that whether or not Mr

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<sup>1</sup> The table is available on the Tribunal’s website [www.charity.tribunals.gov.uk](http://www.charity.tribunals.gov.uk) under Rules and Legislation.

Lasper is correct in asserting that the decision of the district council to support the field may be affected by the Town Field's charitable status, this is theoretical given that there is no evidence that the district council has ever provided or considered providing funds. I do not therefore consider that this concern gives Mr Lasper standing to challenge the decision.

- 3.4 In a letter to the Commission dated 8 October 2010, the Tribunal raised a further point, namely whether Mr Lasper fell within the class of persons listed in column two because his request that the Town Field be removed from the register had been considered substantively by the Commission and been rejected. Indeed, the decision records that the arguments raised by Mr Lasper were rejected by the Commission first by a letter dated 1 April 2009, then again following a review by a caseworker in the Commission's Specialist Case Work division (in June 2009), then again by the Commission's Outcome Review Panel (in September 2009) and finally by the Head of Legal Compliance after the internal review procedure. The decision taken by the Head of Legal Compliance sets out the Commission's conclusions on points of law which may well affect other village greens and open spaces.
- 3.5 The Commission has thus adopted a decision dealing with the merits of an application or request by a person. In such a situation, provided that the decision is in respect of a matter listed in Column one of Schedule 1C, the person to whom the decision is addressed is, in my judgment, a person affected by that decision. To hold otherwise would risk creating a category of decisions in which the Commission can make important findings of fact and law but which are effectively not open to challenge before the Tribunal. I accept that, as the Commission has argued, the decision not to remove the Town Field from the register could have been challenged by a member of the public able to bring themselves within the relevant wording. But no such person has indicated any concern over the registration of the Town Field and the possibility of any such affected appellant coming forward is theoretical rather than real.
- 3.6 The Commission has drawn to my attention the decision of the Administrative Court in *R (oao International Peace Project 2000) v Charity Commission* [2009] EWHC (Admin) 3446. In that case International Peace Project 2000 ("IPP") wrote to the Commission asking them to remove from the register a charity called The Atlantic Council of the United Kingdom. The Commission decided that IPP did not have standing to make that request. IPP applied for judicial review of the Commission's decision not to consider the request. The Commission opposed the grant of permission for judicial review on the grounds that there was an alternative remedy available to IPP. That alternative remedy was the Commission's internal review and thereafter a statutory appeal to this Tribunal. Although the Commission consistently maintained that IPP lacked standing to request the removal of the charity, the Commission invited IPP to invoke the internal review procedure, which IPP did. The Commission told IPP that it would determine the question of standing first and would only consider the registration of the charity if it determined that IPP had standing. The application for judicial review was brought by IPP before that internal review was completed.

- 3.7 IPP's application for permission was rejected both by Holman J on the papers and when renewed at a hearing before Lord Carlile of Berriew QC (sitting as a Deputy High Court Judge). At both stages, the ground for rejecting the application was that IPP had an alternative remedy, namely the internal review by the Commission and then appeal to the Tribunal.
- 3.8 In relation to Mr Lasper's appeal, the Commission relies on a later passage in Lord Carlile's decision where, in case he is wrong about the alternative remedy point, he deals with the question whether IPP is a person who was or might be "affected". He concluded that IPP was not because their interest in the registration of the charity did not go beyond that of an ordinary member of the public. The fact that the claimant was interested in the subject area and objects of the charity and did not agree with the conclusions of the Commission was not sufficient, in his judgment, to bring IPP within the relevant category.
- 3.9 The case does not deal with the question whether, if the Commission raises no point about the requestor's standing throughout its internal procedure and considers and determines the requestor's arguments on the merits, it can nonetheless dispute the requestor's standing to challenge the decision before the Tribunal. It was not a point that arose in that case. On the contrary, the Commission argued on that occasion that if the Commission's internal review rejected IPP's request on the basis of their lack of standing, that rejection would in itself constitute a decision not to remove an institution from the register. As such, the Commission asserted, IPP would be entitled to come to Tribunal to challenge that decision. The learned judge said that he had doubts about that assertion but did not have to decide it in light of his finding that the internal review process should be completed before judicial review was pursued.
- 3.10 Similarly, I do not have to decide whether if the Commission had rejected Mr Lasper's original request for lack of standing in February 2009, he could have challenged that as constituting a decision not to remove the Town Field from the register. It is sufficient for present purposes for me to hold that the addressee of a decision taken by the Commission after a full consideration of the merits is a person affected by that decision for the purposes of column two of Schedule 1C.
- 3.11 Mr Lasper in his letter of 28 October 2010 referred to the decision of the House of Lords in Lord Diplock in *R v IRC ex parte National Federation of Self Employed and Small Businesses* [1981] UKHL 2 concerning the breadth of the test for *locus standi* in judicial review proceedings. In my judgment the threshold for establishing sufficient standing to bring judicial review may well be a lower threshold than that required by the wording in column two of Schedule 1C. So it does not follow that any person who would have standing to bring judicial review proceedings would be a person "affected". But Mr Lasper is right to draw my attention to the importance of not ascribing too narrow a meaning to the wording in Schedule 1C in this instance.

3.12 The Commission, in contrast, refers to the case law concerning who is a person “interested in the charity” for the purpose of being able to bring charity proceedings under section 33 of the Charities Act 1993. I have considered the rationale for limiting that class of people as described by Lightman J in *RSPCA v Attorney General* [2001] EWHC 474 (Ch). In that case the judge held that people whose application for membership of the charity had been rejected did not, by that fact, have an interest in securing the due administration of the charitable trusts. The learned judge described the test under section 33 “not a technical rule of law, but a practical rule of justice affording a degree of flexibility responding to the facts of each particular case” (see paragraph 21 of the judgment). I consider that the same applies to the test in column two of Schedule 1C. Lightman J also described the statutory threshold in section 33 as a “form of protection of charity trustees”. I do not see that that rationale is applicable here. Mr Lasper is not challenging the trustees of the Town Field but rather the Commission. The Commission, having responded to and rejected Mr Lasper’s request is not entitled to “protection” from his challenge.

#### **4. Next steps**

4.1 The Commission served its Response on 17 September 2010. Mr Lasper served his reply in the form of his letter dated 11 October 2010. According to the Tribunal’s rules (Rule 29 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (2009 SI 1976)) the next step is for secondary disclosure. This is not a case where there are likely to be relevant internal documents generated by the Commission since the case concerns primarily issues of statutory interpretation. The Commission should lodge a bundle of statutory and other materials covering both the documents which they list in their Response as the documents they rely on and the documents on which Mr Lasper wishes to rely.

4.2 Both parties have indicated that they are content for this matter to be determined without an oral hearing (see Mr Lasper’s letter of 28 August 2010 and paragraph 5 of the Commission’s Response dated 17 September 2010). The parties should notify the Tribunal as soon as possible whether they wish to lodge further written submissions before the Tribunal considers the substantive issues raised. The Tribunal will then notify the parties of the date when the panel will meet to consider the case.

Signed:

Dated:

**Vivien Rose**  
**Tribunal Judge**