



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

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

**KEITH COLMAN**

**Appellant**

**- and -**

**THE CHARITY COMMISSION FOR  
ENGLAND AND WALES**

**Respondents**

**TRIBUNAL: JUDGE ALISON MCKENNA**

**Sitting in Chambers on 17 April 2014**

**RULING ON PRELIMINARY ISSUE**

1. This is my ruling on the preliminary issue of whether not the Appellant is a person entitled to appeal to the Tribunal in respect of the Charity Commission's decision of 13 December 2013.

*The Appeals*

2. The Appellant has made two applications to the Tribunal. The first is CA/2014/0001, which concerns the Charity Commission's appointment of an Interim Manager under section 76(3)(g) of the Charities Act 2011 for a charity known as The Dove Trust. The second application is CA/2014/0002, which concerns the Charity Commission's order under section 76(3)(d) of the Charities Act 2011, preventing four banks from parting with any property held on behalf of the same charity. The Appellant has asked that his two applications to the Tribunal are considered independently of each other and are not consolidated. Accordingly, this ruling concerns CA/2014/0002 only and I have issued a separate ruling in respect of CA/2014/0001.

### *Background*

3. The order not to part with property was made in June 2013. At this time, the Appellant was a charity trustee of The Dove Trust. In September 2013 the Appellant applied for a review of the order on behalf of himself and his then co-trustees. The Charity Commission carried out a statutory review and made a decision not to discharge it on 13 December 2013. This is the decision which generated a right of appeal to the Tribunal under section 76(6) of the Charities Act 2011. As provided in the relevant entry at column 2 of schedule 6 to that Act, such an appeal may be brought by (a) the charity trustees of the charity to which the order relates, (b) the charity itself if it is incorporated, or (d) “any other person who is or may be affected by the order”. (The entry at (c) is not relevant here as it concerns a different type of order.)

4. The Appellant resigned from his position as charity trustee on 3 December 2013. In his application to the Tribunal, the Appellant described himself as falling under category (d) and said he was a person affected by the order because it could lead to financial loss for him and also because it represented a defamation of his character. In its Response to appeal CA/2014/0002, the Charity Commission took issue with the Appellant’s right to apply to the Tribunal and submitted that the Appellant is not a person entitled to appeal because he was not at the time of the relevant decision either a charity trustee or a person who is or may be affected by the relevant order.

5. In my directions dated 26 March 2014 I asked the Appellant to particularise further in his Reply how he was or may have been affected by the Respondent’s decision and explained that I would rule on his right to apply to the Tribunal as a preliminary issue before the appeal progressed any further. I am grateful to the Appellant for the further submissions he provided on this point.

### *The Law*

6. Although the phrase “any other person who is or may be affected by the order” appears frequently in column 2 of schedule 6 to the Charities Act 2011, there is no definition of that term within the Act.

7. There is a well-known rule of statutory interpretation arising from the case of *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, which provides that a Judge may have regard to certain extraneous materials in construing a statutory provision which is “ambiguous, obscure or led to absurdity”. However, even if I decided that the provision in column 2 of schedule 6 to the Charities Act 2011 did fall into that category, then the only material to which I could properly have regard would be a clear statement, directed to the ambiguity in question, made by or on behalf of the Minister promoting the Bill, and which discloses the otherwise ambiguous legislative intention. If I had been able to find such a statement in relation to the rights of appeal to the Tribunal then I would have asked the parties for their further submissions on it, but I have not in fact been able to find that any such statement was made. Neither, incidentally, have I been able to find any other material which explains the inclusion of this particular form of words in the Act, despite the many reports, responses, committee hearings and Parliamentary time devoted to the enactment of the Charities

Act 2006 which created the Tribunal. So, the legislative intention behind the particular words used in column 2 of schedule 6 remains something of a mystery.

8. The Charity Commission has referred me to the decision of Lord Carlile of Berriew QC (sitting as a Deputy High Court Judge) in *R (on the application of International Peace Project 2000) v Charity Commission for England and Wales* [2009] EWHC (Admin) 3446, in which the Charity Commission opposed an application for judicial review on the basis that the alternative remedy of an application to this Tribunal was available to the claimant. The Judge, in considering whether the claimant would be able to apply to the Tribunal in the circumstances of that case commented that “A person who is or may be affected, in my judgment, means someone who has an interest that is materially greater than, or different from, the interests of an ordinary member of the public”.

9. The only other judicial consideration of the question of whether a person has a right to appeal to this Tribunal as a “person who is or may be affected” by the decision is a First-tier Tribunal decision made by Judge Rose (now Mrs Justice Rose) in appeal number CA/2010/0006, in which she refused the Charity Commission’s application to strike out an appeal, an application which had been made on the basis that the Appellant had no standing to bring an appeal. The Judge refused the Charity Commission’s application for a strike out in that case but I derive little assistance from her decision as it was concerned with a markedly different set of circumstances to those of the Appellant and, in any event, as a First-tier tribunal decision it creates no legal precedent.

10. In seeking to interpret the rights of appeal to the Tribunal, I note that the Parliamentary draftsman did not see fit to create two distinct categories of “(d) a person who is affected and (e) a person who may be affected”. I conclude from that that there is one broad category of potential appellants, which encompasses those who are definitely affected and those who only “may be affected”. Although the Appellant has asserted that he falls into the former category only, it seems appropriate to consider also whether he falls into the latter.

### *The Submissions*

11. The Charity Commission’s submission is that the Appellant has not made out a case for saying that he is affected by its decision on the basis that he may suffer financial loss. It refers me to the trust deed governing The Dove Trust, which prohibits the trustees from receiving any benefit from the charity other than their out-of-pocket expenses. The Charity Commission also submits that there is no sustainable case against it for defamation.

12. The Charity Commission urges me to follow the approach of Lord Carlile in the *International Peace Project* case referred to at paragraph [8] above and to conclude that, in view of his resignation from the position of trustee, the Appellant has no greater interest in the administration of the charity than any other member of the public and so to hold that he has no right to bring this appeal.

13. In the Appellant’s submissions, he states that his financial interest arises because the Charity Commission is seeking to hold him personally responsible for losses to charity. He submits that a risk to his reputation arises because the charity which he built up and served for thirty years has been destroyed by the Charity

Commission. He adds that he has lost business clients as a result of the Charity Commission's defamatory statements. The Appellant also states that he has been caused distress and emotional harm by the Charity Commission's actions and that for all these reasons he is a person affected by the decision which he seeks to appeal.

14. The Appellant argues that his appeal is effectively against the order made in July 2013 when he was still a charity trustee and the fact that the Charity Commission took until December to review the decision and then issued it after he had resigned as a trustee should not prevent him from exercising his right of appeal.

### *Conclusion*

15. Firstly, I am satisfied that the right of appeal that is being invoked here is against the decision made by the Charity Commission on 13 December 2013. I do not accept the Appellant's contention that I should view his right of appeal as having been engaged by the decision in July 2013 when he was still a trustee. No such appeal was made to the Tribunal within the time limit and I must view the Appellant's case as it stood on 13 December 2013 when the decision which gives rise to the present right of appeal was made.

16. It does not seem to me that there is a one-size-fits-all way to decide who is and who is not a person who is affected or may be affected by decisions of the Charity Commission. It seems to me that the question of whether a person is or may be affected by any particular decision of the Charity Commission is necessarily highly fact-sensitive and will depend on the nature of the decision made and the individual's relationship to it. In any case where the issue falls to be decided, the Tribunal will have to look carefully at the nature of the decision that it is sought to appeal and at all the surrounding circumstances in order to decide whether to permit an appeal to proceed. For this reason I do not regard Lord Carlile's formula referred to at paragraph [8] above as determinative of all questions of standing, but rather as a good starting point for assessing the merits of each particular case. I have therefore considered carefully the nature of the order which is the subject of the Appellant's appeal and at the surrounding circumstances. I note that the order prevents the banks from disposing of money held on behalf of The Dove Trust without the prior approval of the Charity Commission. I note that the Charity Commission only has the power to make such an order where it has opened a statutory inquiry and where it is satisfied that there has been misconduct or mismanagement in the administration of a charity or that it is necessary to protect, or secure the proper application of, property due to a charity.

17. The Appellant's submissions relate to his perceived risks of financial loss and of damage to his reputation. These are, in principle, matters which could give him an interest in a decision of the Charity Commission which is greater than that of an ordinary member of the public. However, I am not satisfied that this is the case in relation to the specific situation of the order not to part with property. I cannot see how the order to the banks not to part with property has, of itself, any impact on the Appellant's concerns. To illustrate my point, if the Appellant were permitted to bring this appeal and if he were to win it and if the order were to be quashed, then the alleged risks to the Appellant's finances and reputation would surely remain in place because they relate to the wider issue of the potential outcome of the Charity Commission's inquiry rather than the specific effect of the order not to part with property.

18. In seeking to decide whether the Appellant is or may be affected by the order, I have considered the nature of his legal rights in relation to the charity and whether those rights have been adversely affected by the Charity Commission's decision. It seems to me that a wide and inclusive approach to the question of who is a person affected should be taken in circumstances where a person's legal rights are impacted. I note that the Appellant requested a statutory review of the variation order but then he resigned as a trustee before the Charity Commission issued the decision that he had requested. It follows, in my view, that the decision of 13 December had no impact upon the Appellant's legal rights at the time that it was made because he had ceased to be a trustee and so had no role in the administration of the charity capable of being affected by the order not to part with property. It seems to me that, in order for a person to be affected by a decision of the Charity Commission in the sense identified by Lord Carlile, there must be an identifiable impact upon that person's legal rights at the time the order is made so as to merit a right of redress in the Tribunal. In order to be a person who "may" be affected by a decision of the Charity Commission, it seems to me that there would have to be an identifiable impact on that person's legal rights which is sufficiently likely to occur to make it fair to allow them a right of appeal. In the particular circumstances of this case, I do not consider that the Appellant falls into either category.

19. In those circumstances, I conclude that the Appellant, as at 13 December 2013, had no interest in the Charity Commission's decision greater than that of an ordinary member of the public and accordingly I rule that he is not a "person who is or may be affected" by the decision made on that date. As I find that he is not a person falling within column 2 of schedule 6 to the Charities Act 2011, I must strike out this appeal under rule 8 (2) (a) of The Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009 for want of jurisdiction.

20. Before I do so, I would like to raise a concern about the position of the other charity trustees whose legal rights have been affected by the order not to part with property. The papers before me indicate that the request for a statutory review was made by the Appellant on behalf of himself and the other charity trustees. The application to the Tribunal was then made by the Appellant alone, but he states in his Reply that he has made the application to the Tribunal with the knowledge, consent and approval of the trustees who were in post at the time the decision was made. I am concerned that the remaining trustees should not now be shut out from their right of appeal to the Tribunal if they had intended the Appellant's application to be made on their behalf. There is in fact no provision in the Tribunal's rules analogous to CPR 19.6 (which appears in the civil procedure rules used by the Courts to allow representative proceedings to be brought by one person on behalf of others), so it is strictly necessary for each trustee to be listed as an Appellant rather than for one to lodge an appeal on behalf of all of them. The time for the other trustees to lodge an appeal has now expired, but I will delay striking out this appeal until 1 May 2014 in order to give the remaining charity trustees the opportunity to write to the Tribunal and apply to be substituted for the Appellant in this appeal before it is struck out. If they do make such an application then I will invite the Charity Commission's further submissions before ruling whether the application should be permitted.

**ALISON MCKENNA**

**PRINCIPAL JUDGE**

**DATE: 17 April 2014**

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