



Neutral Citation: [2024] UKFTT 530 (GRC)

Case Reference: CA/2023/0013

**First-tier Tribunal
(General Regulatory Chamber)
Charities**

Heard by: CVP Remote Hearing

Heard on: 21 June 2024

Decision given on: 24 June 2024

Before

**TRIBUNAL JUDGE D. MCMAHON
TRIBUNAL MEMBER O. CONWAY
TRIBUNAL MEMBER S. REYNOLDS**

Between

IMRAN HAIDAR

Appellant

and

CHARITY COMMISSION FOR ENGLAND & WALES

Respondent

Representation:

For the Appellant: Mr. Y. Rab, Trustee of the Charity

For the Respondent: Mr. F. Rechtman, Solicitor, Charity Commission.

Decision: The appeal is Dismissed.

REASONS

Background, Introduction and Preliminary Matters

1. The Appellant, Mr. Imran Haidar, a trustee of Asia Pacific Children's Fund ('the Charity'), an unincorporated entity, registered as a charity on 23 September 2008, appealed, on behalf of the Charity, against the decision of the Respondent on 3 April 2023 to open a Statutory Inquiry into the Charity, pursuant to section 46 of the Charities Act 2011 ('the Act').
2. The Appellant did not appear and confirmed, on the day of the hearing that he would not be appearing, but purported to decide that another trustee of the Charity, Mr. Y. Rab, would be appearing on behalf of the Charity.
3. The Tribunal, as a preliminary issue, that Mr. Rab did not appear as a co-Appellant, no application having been made to join him as a co-Appellant, nor was he present as an observer. He could not attend as a witness and give witness evidence of facts as he had not made a Witness Statement. The Tribunal decided, there being no objection from the Respondent, that Mr. Rab could appear as the Appellant's representative, the Tribunal being prepared to waive the requirements of Rule 11 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ('the Rules'), governing the process of appointing a representative, despite the Appellant's lack of compliance with that Rule, having regard to the overriding objective set out in Rule 2 of the Rules.
4. It was apparent to the Tribunal that Mr. Rab had not properly understood the nature of the instant proceedings.
5. It was emphasised to Mr. Rab that he could not give evidence of facts on behalf of the Appellant and that, in the circumstances of this appeal, his role was confined to making submissions, if any, on behalf of the Appellant but that, in the discharge of the Tribunal's enabling role, particularly since the Appellant was not legally represented, the Tribunal would invite the Respondent to make its oral submissions first. Mr. Rab, in those circumstances, now that he understood the nature of the proceedings, advised that he would have no oral submissions to make on behalf of the Appellant but still wished the Tribunal to proceed to determine the appeal.
6. Neither party had served Witness Statements.
7. The Appellant had not asked that any additional documentation or authorities be included in the hearing bundles.
8. The Appellant had declined to submit a written skeleton argument.

The Legal Issues

9. The decision under appeal, that is, the decision of the Respondent to open a Statutory Inquiry into the Charity due to certain regulatory concerns, is a 'reviewable' matter, pursuant to section 322 of the Act. This requires the appeal to be determined in accordance with the principles that would be applied by the High Court on a judicial review application. This, however, is qualified to some extent by the authority, the only binding authority that exists, and which must, therefore, be applied by the Tribunal in this appeal, namely, that of the Upper Tribunal in *Regentford Limited v. The Charity Commission for England and Wales and Her Majesty's Attorney General* [2014] UKUT 0364 (TCC).
10. Essentially, the *Regentford* decision held that the role of the Tribunal, in determining a reviewable matter, is to decide whether the decision under appeal was one that no reasonable decision-maker could have made at the time the decision was made. Subject to that test being satisfied, a wide discretion to, as in this case, open a Statutory Inquiry, is vested, by statute, in the Respondent.
11. An appeal in a reviewable matter is not a re-hearing that would allow the appeal to be determined having regard to information or evidence, if any, not before the Respondent when the decision under appeal was made, nor are there any pre-conditions that must be satisfied by the Respondent in advance of making such decision.
12. The burden of proof to satisfy the Tribunal that the test in *Regentford* was *not* met, on the balance of probabilities, lies on the Appellant – not on the Respondent to prove that the test *was* satisfied.
13. The remedies available under Schedule 6 of the Act, should the appeal be allowed, are that the Tribunal could either direct that the Statutory Inquiry be ended or direct that the Respondent should not consider a particular institution. However, neither remedy was sought by the Appellant in his Notice of Appeal; instead, he stated merely that he wanted 'a fair and just outcome in consideration of the sincere intentions of the trustees'. This was indicative of a lack of understanding on his part as to the nature of the proceedings and, further, a misapprehension that, in determining this appeal, it was the role of the Tribunal to determine whether there had been any wrongdoing on the part of the trustees.
14. An appeal against a reviewable matter is not concerned with determining whether there has been any wrongdoing on the part of the trustees of the Charity; indeed, the opening of a Statutory Inquiry is *not* a finding by the Respondent of *any* wrongdoing on the part of the trustees.

Findings of Fact

15. The Respondent, in opening a Statutory Inquiry into the Charity, in a decision made on 3 April 2023, advised the four then trustees, two of whom were the Appellant and, Mr. Rab, present as the Appellant's representative with the consent of the Tribunal, respectively, that it had done so due to having five regulatory concerns, namely –
- breaches of the Charity's Governing Document;
 - failure to file statutory returns on time;
 - accuracy of the statutory returns;
 - connected party transactions and failure to manage conflicts of interest where payments were made to trustees from funds of the Charity;
 - financial discrepancies regarding overseas expenditure and travel expenses.
16. The Statutory Inquiry is still ongoing.
17. There has been no finding of wrongdoing on the part of any of the trustees of the Charity.
18. The decision of the Respondent under appeal is a reviewable matter, pursuant to sections 321; 322 and Schedule 6 to the Act.
19. The burden of proof, on the balance of probabilities, lies on the Appellant to show that a Statutory Inquiry should not have been opened as at the date when that decision was taken.
20. The Appellant did not advance any written or oral submissions.
21. Connected Party Transactions

There existed, at the date of the decision under appeal, connected party transactions, as evidenced by an analysis of the Charity's bank statements for the periods 1 March 2019 to 29 February 2020 and 1 March 2022 to 1 August 2022, contained in the hearing bundle. However, there was no reference to these transactions in the Charity's relevant Annual Reports, a fact that potentially compounded regulatory concerns, nor any Minutes of meetings of the trustees of the Charity showing how such transactions were approved, nor whether any consideration had been given to the need to approach such transactions with caution. While some explanations were offered by the trustees, there was a certain inconsistency in this regard. There may well have been some confusion on the part of the trustees. However, it is not the role of the Tribunal to determine such questions in this appeal. The Appellant himself, indeed, despite being a trustee, stated in discussion with the Respondent that he was not even aware of such

transactions, in which case even greater regulatory concerns arise. Nevertheless, as acknowledged by the Respondent, this, in itself, may not, ultimately, amount to wrongdoing on the part of the trustees.

22. Overseas Expenditure and Travel Expenses

Again, the absence of Minutes of meetings of the trustees of the Charity authorising these matters were a cause for concern, not least when, travel expenses of some £134,928.65 for flights were incurred in respect of only six identified people in the period February 2020 to February 2022. Explanations offered by the trustees were distinctly lacking and limited in meetings with the Respondent. Further, Mr. Rab, in such a meeting, agreed that this concern had never been considered by the trustees – an admission that was commendably frank and forthright. Further, while the nature of the Charity involves overseas expenditure, in Bangladesh, on flood relief and supporting an orphanage, the trustees did not have regard to their obligations to ensure value for money in the expenditure of Charity funds: for example, funds for the said orphanage were stated by the trustees to be distributed by a management company appointed by the trustees. Details of the reasons and rationale for such arrangements are unclear and there is a lack of detailed documentation held by, or produced by, the trustees in that regard. There is, therefore, a question of whether, and to what extent, this overseas expenditure was in furtherance of the Charity's objects.

23. Breaches of Charity's Governing Document

Two of the trustees named in the Charity's Governing Document, a Declaration of Trust, one of whom was Mr. Rab, the Appellant's representative at this hearing, served as trustees for periods longer than permitted by the Governing Document. This, when considered alongside the other regulatory concerns identified by the Respondent, and other Governing Document breaches, on a cumulative basis, showed a certain cavalier approach by the trustees to their responsibilities as trustees of a registered charity, itself a matter for concern. Again, no Minutes of meetings of the trustees were produced, despite the keeping of Minutes being required by the Governing document; indeed, in meetings with the Respondent, the trustees admitted that no Minutes were held. Accordingly, there was no evidence to support authorisation of the connected party transactions, nor evidence to show how conflicts of interest, if any, were managed. Further the absence of Minutes meant that matters required in the Governing Document such as quora at meetings of the trustees; voting and any conflicts of interest records were absent. Of greater significance, the absence of Minutes meant there was no record of authorisations by the Charity of the practice of couriering cash abroad (to Bangladesh in this case). There was nothing inherently wrong in such practice but it was a valid regulatory concern that there were no Minutes of meetings of the

trustees to authorise and set out a rationale for same, or that any potential conflict of interest was considered and addressed. In his Notice of Appeal, the Appellant accepted shortcomings in compliance with the Charity's Governing Document. This admission potentially acknowledged a serious issue of concern. However, in itself, and in isolation, this concern may have been unlikely to have justified the opening of a Statutory Inquiry. However, this concern had a cumulative effect when considered alongside the other issues of regulatory concern. The Tribunal found that if breaches of the Governing Document had not occurred, some or all of the other matters giving rise to concern might well have been avoided.

24. Failure to File Timely Statutory Returns

The decision to open a Statutory Inquiry in respect of this regulatory concern was based on the deadline for the reporting year ended 28 February 2021 being 26 days late, despite the trustees being advised by the Respondent on 28 September 2021 of the importance of filing timely statutory returns – thus raising to a higher level, the seriousness of this concern. In his Notice of Appeal, the Appellant accepted this regulatory concern. The Tribunal found that this was another example of a certain cavalier approach being adopted by the trustees and that this concern added to the cumulative impact of the total concerns taken together.

25. Accuracy of Statutory Returns

This concern arises from the discrepancy between the fact that there were 'connected party transactions' in the year ended 29 February 2020 and the absence of those transactions being recorded in the Charity's accounts for that year. Further a substantial financial discrepancy emerged from the Annual Return for that year which declared showed that the Charity had expended £425,926 of its income overseas outside the regulated banking sector. The Charity stated that this was cash sums couriered into Bangladesh. However, on 28 September 2021, the Appellant's representative, in a meeting with the Respondent, stated that, due to clerical error, the actual sum was £74,000, but later, in another meeting, on 22 September 2022, stated the amount was, in fact, £35,000. The Tribunal found well-grounded concerns, in those circumstances, of a lack of financial controls by the trustees.

26. The Appellant did not discharge the burden of proof that lay upon him on the balance of probabilities.

27. The notes of the meetings between the trustees and the Respondent did not reveal any 'plausible reasoning' that could explain away the regulatory concerns, despite the Appellant averring otherwise.

28. The Appellant did not answer, or challenge, in any substantive fashion, the evidence contained in the accounting reports contained in the hearing bundle.

Conclusion

29. For the reasons stated in its Findings of Fact, the Tribunal dismisses this appeal. While there is no finding of any wrongdoing on the part of the Appellant or the trustees of the Charity generally, there sufficient grounds of regulatory concern, having regard to the authority of *Regentford*, that permitted the Respondent, in the exercise of its wide statutory discretion, to open a Statutory Inquiry into the Charity.

**Signed: Damien McMahon.
Tribunal Judge.**

Date: 24 June 2024