

IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(CHARITY)

Between:-

MERMAIDS

Appellant

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

THE TRUSTEES OF LGB ALLIANCE

Applicant

APPLICATION GROUNDS

Introduction

1. This is an Application made by the trustees of LGB Alliance pursuant to the The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended) rule 33(2)(a) and (b) (the Applicant) (“the Tribunal Rules”).
2. This application arises from the appeal, dated 1 June 2021, initiated by Mermaids, a charitable incorporated organisation (registered charity number 1160575) (“the Appeal”).
3. Mermaids, the Appellant, challenges the decision of the Charity Commission for England and Wales (“the Commission”) to add LGB Alliance to the register of charities under section 30 of the Charities Act 2011. The Commission’s decision is dated 20 April 2021 (“the Decision”).
4. In its Appeal, the Appellant seeks an order under Schedule 6 to the Charities Act 2011 (a) quashing the Commission’s Decision and (b) directing the Commission to rectify the register of charities to remove LGB Alliance.
5. In the circumstances, the Applicant seeks a Tribunal direction permitting it to attend and take part in the hearing to such extent as the Tribunal considers proper; and/or to make written submissions in relation to a particular issue.

Relevant procedural framework

6. Under the Tribunal Rules the Tribunal can give a direction permitting or requesting any person to attend and take part in a hearing, or to make written submissions in relation to a particular issue:

Entitlement to attend and take part in a hearing

33.—(1) Subject to rule 35(4) (exclusion of a person from a hearing) each party is entitled to—

- (a) attend any hearing that is held; and
 - (b) send written representations to the Tribunal and each other party prior to the hearing.
- (2) The Tribunal may give a direction permitting or requesting any person to—
- (a) attend and take part in a hearing to such extent as the Tribunal considers proper; or
 - (b) make written submissions in relation to a particular issue.

7. The Applicant also notes that any person who is not a party may apply to the Tribunal to be added or substituted as a party:

Addition, substitution and removal of parties

9.—(1) The Tribunal may give a direction adding, substituting or removing a party as an appellant or a respondent.

(2) If the Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) Any person who is not a party may apply to the Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to proceedings by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

8. The overriding objective is set out in the Tribunal Rules as follows:

2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must—

- (a) help the Tribunal to further the overriding objective; and
- (b) co-operate with the Tribunal generally.

9. The Tribunal has the power to allow the Applicant to participate in these proceedings without becoming a party. This discretionary power is conferred by rule 33(2). Rule 33(2) extends to “any person”.

The Applicant

10. The Applicant comprises the trustees of LGB Alliance. LGB Alliance is a charitable incorporated organisation with registered charity number 1194148 and company number 12338881. LGB Alliance seeks to promote the rights of lesbians, bisexuals, and gay men, as recognised by biological sex.
11. LGB Alliance’s trustees are Eileen Gallagher OBE (Chair), Professor Robert Wintemute, Katharine Harris, Lord Tony Young, Beverley Jackson, Conrad Roeber, Professor Kathleen Stock OBE and Malcolm Clark (together “the Trustees”).
12. The Applicant would have automatic standing to appeal a decision of the Commission to enter it, or not to enter it, on the register of charities, or to appeal a decision to remove, or not to remove it, from the register (per column 2 of Schedule 6, Charities Act 2011; s 319(2)(b)).

Basis of the Application

13. The Appellant’s challenge is to the Commission’s Decision to register the Applicant. The Appellant seeks the Applicant’s removal from the register. The Applicant, as the subject of these proceedings, is directly affected by these proceedings.
14. The principles of open justice and procedural fairness are basic tenets of the English justice system. Exclusion from participation in the proceedings, as the *subject* of the proceedings, has the potential to mean that judicial decisions are improperly made.
15. The Applicant only became fully aware of the proceedings because the Appellant chose to publish its pleadings in the public domain, and because its crowdfunding page provides updates about the stage of proceedings. The Applicant understands from this information available online that a Case Management Hearing has been listed for early September.
16. The Applicant seeks, therefore, to participate in the upcoming Hearings to the following extent. This is as permitted by the Tribunal Rules. It is also fair and just, in accordance with the overriding objective:
 - a. To attend the upcoming case management hearing;
 - b. If applicable, to attend any further case management hearings and the final hearing;
 - c. To participate and be heard in these hearings, so far as is necessary, as the subject of the appeal;
 - d. To, if so directed, provide written submissions to the Tribunal on any matters it sees fit.
17. The Applicant submits that such participation is reasonable. It enables the proceedings to be conducted with the requisite degree of openness and transparency.

18. The Applicant does not consider it necessary to be added as a Party to the proceedings, under Rule 9.
19. The Applicant's participation in proceedings that directly affect them would not prejudice the Appellant or the Respondent. It would, on the contrary, assist the Tribunal in its decision-making. The Applicant would not seek to overstep its position in these proceedings and would be guided by the Tribunal as to its role in these unusual circumstances.
20. Formalising the Applicant's role in this case would also not delay or interrupt the proceedings, this application having been made over a month in advance of the upcoming case management hearing.

Mermaids' standing

21. The Applicant is confident that the Commission's decision was reasonable, justifiable and in line with the Public Sector Equality Duty. The Commission carefully considered objections to the LGB Alliance as a charity before making its Decision. The Applicant does not, therefore, attempt to replicate or impede on the Commission's submissions (nor is it likely to be appropriate or necessary for the Applicant to do so).
22. Should, nonetheless, the Applicant be permitted to participate in the proceedings the Applicant would make the following points. These points relate to the appropriateness of the Appellant directly challenging the Applicant's charitable status with the standing it purports to have. These points are raised to assist the Tribunal.
23. Appeals of Charity Commission decisions can only be brought by the Attorney General, or any person specified in the column 2 of Schedule 6 Charities Act 2011 per s 319(2)(b).
24. The Appellant claims to be a "person affected" by the Commission's Decision. Instructive guidance on the meaning of the term "person affected" is provided by Lord Carlile of Berriew, sitting as a Deputy Judge of the High Court in R (International Peace Project) v Charity Commission for England and Wales [2009] EWHC (Admin) 3446:

"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. This a question of fact rather than a question of law. My conclusion would be that the claimant is not a person who is or may be affected because there is no relationship between the claimant and the registration of the defendant, other than that of just another charity. The claimant happens to be interested in the subject area and objects of the other charity and does not agree with the conclusion of the Charity Commission, but in my judgment that is insufficient to bring the claimant within the relevant category." [33]
25. Guidance was also provided in the case of Nicholson v the Charity Commission for England and Wales [2016] UKUT 198 (TCC). Mrs Justice Asplin dismissed the appeal against Principal Judge McKenna's decision not to grant the appellants standing.
26. In Nicholson, the appellants objected to the Commission's registration of the JFN Charities. The appellants considered they were or may be affected by the Commission's registration decision. They contended that they were:

“[T]ax payers whose tax is affected by charitable relief for those racist organisations; (ii) Jewish people whose contributions to the JNF “charities” were made unwittingly without knowledge that they had no entitlement to call themselves charitable; (iii) personal supporters (including financially) of Palestinians whose families have been displaced by JNF demolitions and replacement of their lands by “parks” for Israeli recreation”.

27. In dismissing their appeal, Asplin J stated:

“47. I come to this conclusion for two main reasons. First, as I have already mentioned, I agree with Principal Judge McKenna both in the First Tier Preliminary Issue Decision and in the Colman decision that in order to be affected a person’s rights need to have been altered or impinged by the decision itself in some way and in order to be someone who “may” be affected there must be an identifiable impact upon that person’s legal rights which is likely to occur. It is insufficient that he disagrees with the decision emotionally, politically or intellectually and as a result is affected emotionally and/or socially, however sincere his concerns. It seems to me that had the legislature intended all interested and concerned taxpayers who receive a copy of the Commission’s decision from it, to be able to appeal that decision, it would have chosen different language entirely. There would have been no need to have referred to being affected by the decision.”

28. In light of the above, the Applicant respectfully submits that the Appellant has insufficient standing to make this appeal. They disagree with LBG Alliance’s aims and beliefs for emotional, political and intellectual reasons. They are entitled to hold such views. Their views do not, however, confer on the Appellant the ability to apply to strike the LBG Alliance from the Charities Register.

29. As a matter of principle, religious and secular charities and human rights charities often have conflicting and competing beliefs and objects. Charities habitually compete for funds within the same sphere of activity. Charities are also entitled to limit their aims to advancing the rights of particular groups of people at the exclusion of other groups. For example, charities aimed at advancing the rights of black women would *prima facie* not be expected to focus on advancing the rights of white men.

30. By way of illustration, the below charities all exist simultaneously on the Charities Register:¹

- a. *Life 2009* (trading as Life Matters) (Charity number: 1128355) is a pro-life organisation. *The British Pregnancy Advisory Service* (Charity number: 289145) is a pro-choice organisation.
- b. *The Roman Catholic Diocese of Westminster* (Charity number: 233699) seeks to establish schools with religious character as schools for Roman Catholics under s69(3) of the School Standards and Framework Act 1998. *The British Humanist Association* (Charity number: 285987) seeks to end religious discrimination in school admissions and campaigns against the establishment of schools with religious character.
- c. *The Dogs Trust* (Charity number: 227523) is a dog welfare charity. So too are the *RSPCA* (Charity number: 219099), *Battersea Dogs and Cats Home* (Charity number: 206394) and *All Dogs Matter* (Charity Number 1132883), among others.

¹ Evidence of which is in the public domain and on the Charity Register.

31. The Tribunal will also be aware that the Commission is also obliged, as a public authority, to have regard to its duties under the Equality Act 2010, including the Public Sector Equality Duty, and under the Human Rights Act 1998 and the European Convention on Human Rights.
32. The Decision of the Commission included consideration of the Employment Tribunal decision in Forstater v CGD Europe and others², which was subject to appeal at the time. The Commission described the decision as “informative” and that it “provides a helpful analysis of the Tribunal’s approach to consideration of [gender-critical] views” [Decision, para 31].
33. This Employment Tribunal case was relevant to the Commission, because in support of its application for registration, LGB Alliance stated that “in educating the public about human rights and equality issues relating to the LGB community, LGB Alliance’s position will be that there are only two sexes and gender is a social construct, and that this perspective should form part of the discussion about these issues.” [Decision, para 30]
34. Since the Commission’s Decision in April 2021, the Employment Appeal Tribunal (“EAT”) has concluded that gender critical beliefs (which includes the belief that biological sex is real, important, immutable, and not to be conflated with gender identity) are protected under the Equality Act 2010 and Article 9 of the European Convention on Human Rights. Holding gender critical beliefs is a protected characteristic under the Equality Act 2010. ³
35. The EAT substituted a finding that the claimant's gender critical beliefs are protected in law. The EAT found these to be beliefs that are widely shared, including amongst respected academics, and beliefs that are also consistent with the law on sex and gender.
36. The EAT’s decision, which at first instance the Commission itself relies on, is highlighted herein to assist the Tribunal in the present appeal.
37. This case, alongside the cases of Nicholson and International Peace Project are attached to this submission.

Conclusion

38. The Tribunal is accordingly invited to permit the Applicant to participate in this appeal. The Applicant is the subject of the appeal. It is entitled, as matter of open justice and of fairness, to participate in hearings which directly discuss its ongoing charitable status and its activities.
39. This Application is notwithstanding the position highlighted above, and in the case law attached, that the Appellant does not have the requisite standing to bring this appeal in the first instance.
40. These are the submissions of the Applicant in furtherance of their Application.

ALICE de COVERLEY
3PB
4.8.21

² [2019] 12 WLUK 516

³ Forstater v CGD Europe & others UKEAT/0105/20/JOJ, 10 June 2021

We believe that the facts stated in these grounds in support of this application are true. We understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

K.Harris
B.R.Jackson
Signed:  

Katharine Harris & Beverley Jackson

On behalf of the Trustees of LGB Alliance

Dated 4 August 2021