IN THE FIRST-TIER TRIBUNAL (CHARITY) **CRR/2014/0005**
GENERAL REGULATORY CHAMBER

TAYO, BAILEY, HALLS, JONES, ROWARTH & FLANAGAN
(TRUSTEES OF MANCHESTER NEW MOSTON CONGREGATION OF JEHOVAH'S WITNESSES)

Applicants

- AND -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

DECISION
ON AN APPLICATION FOR PERMISSION TO APPEAL

Background

1. The Applicants' substantive application to the Tribunal is for a Review (pursuant to s. 321 of the Charities Act 2011) of the Charity Commission's decision to open a statutory inquiry into the charity of which they are trustees. The inquiry was opened following the holding of a "disfellowshipping hearing" at which victims of historical sexual abuse by a former charity trustee were required to attend a public meeting and to answer questions about the abuse they had suffered, including questions from the man concerned, who had recently been released from prison following his conviction for abusing them.

2. The Applicants abandoned a number of their grounds of challenge to the Respondent's decision at the final hearing of the Review application on 10 March 2015. At that hearing, the Applicants' case was (i) that the Respondent's decision to open a statutory inquiry was disproportionate, a breach of their human rights under Articles 9 and 11 ECHR and unlawful under s. 6 of the Human Rights Act 1998; (ii) that the Respondent had misdirected itself as to the duties of charity trustees in a safeguarding context; and (iii) that the Respondent had discriminated against the Applicants under Article 14 ECHR.

3. The Applicants did not deny that the "disfellowhipping hearing" described had taken place. They submitted that there were no reasonable grounds for inquiring into the charity because the disfellowhipping process had been carried out by the Elders of another Congregation and not by themselves, a fact that they did not inform the Respondent of until after it had opened its inquiry.

4. On 15 December 2014, following a case management hearing, I directed that :

> *3. The Appellants are to serve on the Respondent and the Tribunal by 15 January 2015 a statement indicating, with reference to the paragraph numbers in the witness statements of Mr Sladen and Ms White, which matters they seek to test in cross examination at the final hearing and explaining how such cross-examination would advance their pleaded case.*

5. The Applicants applied for permission to appeal in respect of that direction, which I refused. On 18 February 2015 Mr Justice Nugee, sitting in the Upper Tribunal (Tax and Chancery Chamber), refused the Applicants' renewed application for permission to appeal in respect of that paragraph of the directions. He commented at [5]:

> *I am not persuaded that there is any arguable error of law in paragraph 3 of the directions. The FTT has extensive case management powers, including powers to limit evidence under rule 15 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009/1976, and it does not seem to me that there is anything objectionable in principle in the FTT asking the Appellants to indicate which part of the Respondent's evidence they wish to cross-examine the Respondent's witnesses on, and for what purpose. This enables the FTT to make an informed decision as to whether to permit evidence by way of cross-examination on those issues to be adduced. I will therefore refuse permission to appeal paragraph 3 of the directions*.

6. In reliance upon paragraph 3 of the directions of 15 December 2014, the Applicants provided to the Tribunal a schedule of proposed cross-examination. The Respondents replied to it and I ruled on it on 4 February 2015. As a result of my ruling, I also directed that the time estimate for the final hearing should be reduced from two days to one day. The Tribunal's decision following the hearing on 10 March (which I heard, sitting with lay members) was reserved and has not yet been published.

7. The Applicants have made an application dated 4 March 2015 for permission to appeal in respect of the ruling which I issued on 4 February 2015.

Grounds of Appeal

8. The Applicants' application raises the following alleged errors of law: (i) that the ruling mischaracterised the appeal as a rationality challenge; (ii) that the ruling was erroneous in holding that the Applicants' references in the schedule of proposed cross-examination to "advancing their case" meant "putting their case" to a witness; and (iii) that the ruling erroneously characterised the Applicants' case as one raising "technical legal issues" which would not be advanced by cross-examination.

9. It is also submitted that the Human Rights Act challenge made by the Applicants requires an intense scrutiny of the facts, which justifies more extensive cross-examination that was permitted.

Decision

10. I have considered in accordance with rule 44 of the Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009 whether to review my ruling, but have decided not to undertake a review as I am not satisfied that there was an error of law in my ruling.

11. I accept the Appellants' submission that an interlocutory decision of the First-tier Tribunal is capable of appeal to the Upper Tribunal, following *LS v London Borough of Lambeth* [2010] UKUT 461 (AAC). However, I note that in its decision, the three Judge panel commented that [94] as follows:

> "*….it will be open to both the First-tier Tribunal and the Upper Tribunal to refuse permission to bring an interlocutory appeal on the ground that it is premature. The circumstances of the individual case must be considered. It is one thing to grant permission for an interlocutory appeal in a case where the final hearing may last for a fortnight. It is another to do so where the final hearing is likely to last about an hour, as is often the case in social security appeals. Moreover, as was suggested in Dorset Healthcare NHS Foundation Trust v MH [2009] UKUT 4 (AAC) at [19], where case-management decisions are being challenged, the First-tier Tribunal can treat an application for permission to appeal as an application for a new direction if it is satisfied that the challenged direction is not appropriate*".

12. I consider that the application now before me was premature and that it would have been more appropriate for the Applicants to have waited to raise these issues in an application for permission to appeal following the final disposal of their case, if they are unsuccessful at that stage.

13. I have considered the Appellants' grounds of appeal carefully but I am not satisfied that they raise arguable errors of law as alleged:

> (a) In respect of grounds (i) and (iii), cross-examination was permitted in respect of the only pleaded dispute as to fact, but the Applicants' counsel was not permitted to put to the Respondent's witnesses the issues of law otherwise pleaded in the grounds. The ruling was, in this respect, within the scope of my discretion under rule 15, taking into account the overriding objective in rule 2. In the event, at the hearing on 10 March the only issue of disputed fact which counsel put to the Respondent's witness Mr Sladen was pointed out by the Tribunal to be unsupported by the document counsel relied upon. Counsel accepted this, apologised to the Tribunal and withdrew the question.
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> (b) In respect of ground (ii), the Applicants submit that I had misunderstood their intention in using the phrase "put their case" in the schedule of proposed cross-examination. I am not satisfied that an error of law is properly raised where a party's submissions are opaque, the Judge takes a reasonable interpretation of them and the party subsequently

argues that the Judge had misunderstood them. The Applicants should have been clearer as to their intentions. The grounds of appeal now before me suggest that the schedule of proposed cross-examination was deliberately vague in order "to avoid telegraphing the particular questions that the Appellants would wish to ask".

(c) The examples of intended cross-examination in the grounds now before me overwhelmingly relate to the issue of Ms Sladen's ignorance of the fact that the disfellowshipping had been carried out by another Congregation. As this fact was not known to the Respondent at the time it opened its inquiry (the Applicants not having volunteered it) it is difficult to see how this could have advanced the Applicants' pleaded case that the Respondent's decision was irrational/disproportionate/unlawful at the time it was taken.

14. Accordingly I now refuse permission to appeal.

ALISON MCKENNA
PRINCIPAL JUDGE
2 April 2015