

The Charity Tribunal

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CATEGORY:

ARTICLE

The new Charity Tribunal opened for business on Tuesday 18th March 2008 pursuant to the provisions of Schedule 3 of the Charities Act 2006.

The Tribunal will provide an effective means of challenging a wide range of decisions by the Commission which affect charities. It represents a great improvement on the previous appeals provisions contained in the Charities Act 1993. These required someone adversely affected by decision of the Commission to appeal to the High Court after obtaining a certificate from the Commission that the case was an appropriate one for an appeal. Such an appeal operated by way of a re-hearing before a High Court judge which could inevitably be an expensive and protracted exercise. By way of example, Arthur Scargill's appeal against his removal as a charity trustee in 1998 occupied the High Court for four weeks and cost many of thousands of pounds in legal costs. There have also been doubts expressed about whether the former appeals system complied with the Human Rights Act.

The 2006 Act provides that the Tribunal shall consist of a legally qualified President assisted by a number of both legally qualified and lay members. It is anticipated that the Tribunal will sit in panels each consisting of either the President or a legally qualified member sitting alone or assisted by one or two lay members.

An intending appellant must file an appropriate notice with the Tribunal not later than 42 days after receipt of the Charity Commission's decision which he wishes to challenge. Apart from basic details such as the name and address of the appellant, the notice must set out the grounds on which the appellant relies to challenge the Commission's decision. The Commission then has 28 days in which to file a response. The Appellant may thereafter file a reply to the Commission's response within 28 days.

The suspension or removal of a charity trustee, the appointment of a receiver and manager for a charity, and a refusal to register a charity were all appealable under the previous regime, and still are. But appeals to the Tribunal now lie, in addition, in respect of a much wider range of Commission decisions.

These include matters such as orders by the Commission requiring

§ the production of information or documents^[1];

§ a charity or charity trustee or an officer or an employee of the charity to apply charity property in a particular way ^[2]

The full list of decisions which the Tribunal may examine is set out in Schedule 4 to the 2006 Act. By way of example, the Tribunal:

- (a) may quash the refusal of the Commission to register a charity and direct that the Commission do register it;
- (b) may direct the Commission to terminate an inquiry commenced under Section 9 of the 1993 Act;
- © may reverse the removal of a charity trustee.

Several matters which may be brought before the Tribunal are 'reviewable' only. These include the failure to make an order under Section 26 or 36 of the Act. Such a review has to be conducted on the same basis as a judicial review in the High Court. In other words, an appeal in respect of a reviewable matter is only likely to succeed if the decision under challenge is seriously flawed.

In most matters, however, the Charity Tribunal will be able to substitute its own decision for that of the Commission.

The Attorney General may also refer matters to the Tribunal. This will be a useful device where no aggrieved person is prepared to launch an appeal against a decision which may be causing difficulty within the sector.

Lastly, the Tribunal may, in appropriate circumstances, award costs against the Commission or any other party. However under section 2(B) this power may only be exercised against an appellant who has behaved vexatiously, frivolously or unreasonably.

Anyone considering bringing an appeal before the Tribunal will need to bear in mind:

(a) The 42 day time limit for appealing the Commission's decision.

(b) Before the expiry of that time limit the Appellant must file an Appeal Notice with the Tribunal specifying (inter alia) the grounds on which it is said the Commission's decision was wrong.

© Although not required for inclusion in the appeal notice, an appellant should gather together all relevant documents and consider which witnesses if any, he will need to call to support his case.

Withers charity litigation team has considerable experience of challenging various decisions relating to charities and will be happy to advise on appeals to the new Tribunal.

[1] under section 9 of the 1993 Act

[2] under the new section 19A(2) of the 1993 Act

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