

Tayo, Bailey, Halls, Jones, Rowarth, Flanagan (Trustees of Manchester New Moston Congregation of Jehovah's Witnesses) v The Charity Commission for England and Wales [2017] UKUT 0134

(Upper Tribunal Tax and Chancery, Asplin, J, 4 April 2017)

This was an appeal from the First Tier Tribunal (Charity) by the trustees of the Manchester New Moston Congregation of Jehovah's Witnesses (the Charity), an unincorporated association. On 30 May 2014, the Charity Commission for England and Wales (the Commission) opened a statutory inquiry into the Charity pursuant to its power under section 46 of the Charities Act 2011. The Charity applied to the First-tier Tribunal (FTT) for a review of that decision pursuant to section 321 of the 2011 Act. In April 2015, the FTT dismissed the application for a review. The Charity appealed to the Upper Tribunal.

The decision to initiate a statutory inquiry arose from the Charity's handling of a former trustee of the Charity, a convicted sex offender. After his release from prison in 2014, the offender had been accepted back into the Charity, and there had been a dis-fellowshipping hearing at which the offender's victims (now adults) had been required to attend and to answer questions, including from the offender, about the offences for which he had been convicted. The purpose of the hearing was to decide whether the offender could remain a member of the congregation. The Charity claimed that the dis-fellowshipping hearing had been conducted by elders of a different congregation, and that the Charity had therefore not been directly involved.

The application to the FTT seeking to avoid the statutory inquiry contained claims that there had been direct discrimination by the Commission on the basis that the Charity had been 'targeted' for an inquiry because of the religious beliefs of its members as Jehovah's Witnesses. Moreover, the source of the intelligence to the Commission concerning the Charity had come from members of the congregation whose names were redacted in the Commission's documents to protect their identities. The Charity, and its umbrella body, the Watchtower Bible and Tract Society of Britain (Watchtower) insisted on having the names exposed. The Commission refused. This was one of the bases of this appeal. The Upper Tribunal concluded (at [48]):

...it was open to the FTT having properly directed itself in the circumstances of this case, to decide that the withheld material was not relevant to the pleaded case for the purposes of the review under section 321 of the 2011 Act. In my judgment, the FTT was entitled to come to that conclusion and did not err in law in the light of: the fact that non-confidential summaries of the information... had been provided; Counsel had been provided with the un-redacted materials under an agreed procedure which had not been appealed; no complaint was made of the summaries; the Charity did not specify how the redacted information was relevant to the issues before the FTT in accordance with the agreed and unappealed procedure; and the Commission had stated that it was not relying upon the redacted or withheld information for the purposes of defending its decision to commence the inquiry. It seems to me that the FTT took into account the relevant factors, excluded irrelevant factors and came to a decision within the proper ambit of its case management powers.

The Upper Tribunal also dismissed an appeal on another technicality. On the substantive matter of the appeal, it was alleged by the Charity that there had been a breach of its human rights in that it had been treated differently compared to other charities which had also experienced sex abuse cases, often much more serious than the allegations in this case, and that no explanation has been given for 'targeting' the Jehovah's Witnesses by initiating an inquiry. The Charity said that the Commission's decision to do so was not proportionate

to the situation. The two grounds of appeal on this issue were that the FTT erred in law in holding that Article 14 (non-discrimination) of the European Convention on Human Rights was not engaged because it was not satisfied that the Charity's rights under Articles 9 (religious rights) and 11 (rights of association) were infringed, and in failing to find that the treatment of the Charity could not be justified.

The Upper Tribunal held that there were no errors of law (except for a technical error of only 'academic' interest) (at [98]):

[The FTT] was entitled to decide that there was no direct discrimination on the grounds of religion, the inquiry having been opened on the basis of unusual and distinctive factual reasons... and that there were no other comparable cases from which to infer discrimination on the grounds of religious beliefs.

Therefore, the appeal to the Upper Tribunal was dismissed. This means that the Commission's statutory inquiry will proceed to its conclusion.