[2016] UKUT 198 (TCC)

FTC/116/2014
(UT/2014/0062)

Section 34, Section 319(2)(b) and Column 2 of Schedule 6 Charities Act 2011. Standing of an 'addressee' to appeal against decision of Charity Commission.

IN THE UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

B E T W E E N:

JOHN NICHOLSON

Appellant

-and-

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

TRIBUNAL: MRS JUSTICE ASPLIN

Sitting in public at The Royal Courts of Justice, Rolls Building, Fetter Lane, London EC4 on 21 March 2016

DECISION

1. This is an appeal from the decision of Principal Judge McKenna dated 4 August 2014 as to whether the Appellant, Mr Nicholson has standing to bring an appeal to the First Tier Tribunal (Charity) in respect of the decision of the Charity Commission for England and Wales (the "Commission") pursuant to section 34 Charities Act 2011 and dated 31 January 2014, not to remove certain charities referred to together as the JNF Charities, from the Register of Charities (respectively the "First Tier Preliminary Issue Decision" and the "Commission's Registration Decision").

2. Permission to appeal in respect of the First Tier Preliminary Issue Decision was granted by Principal Judge McKenna on 2 September 2014 on only one of three grounds contained in the application. Permission was granted on the following terms and for the following reasons:

> "It is arguable that my ruling did not adequately address all the arguments made in support of the Appellants' case, and in particular that paragraph [27] of the ruling did not consider all of the arguments that Mr Nicholson had made in support of his submission that an addressee of a decision thereby becomes affected by it. There is no binding authority directly on the point of when persons are or may be affected by a decision of the Charity Commission, and it would be helpful to the Charity Commission and to the First-tier Tribunal to obtain a decision of the Upper Tribunal on the correct approach to the statutory test for standing to bring an appeal."

The Relevant Framework

3. It is not in dispute that an appeal against a decision of the Commission not to remove an institution from the Register pursuant to section 34 Charities Act 2011 (the "2011 Act") may be brought either by the Attorney General (section 319(2)(a)) or as a result of section 319(2)(b) by a person "specified in the corresponding entry in column 2 of Schedule 6". At the corresponding entry to section 34 in column 2 of Schedule 6 the persons set out are as follows:

> "(a) the persons who are or claim to be the charity trustees of the institution,
>
> (b) (if a body corporate) the institution itself, and
>
> (c) any other person who is or may be affected by the decision."

4. The question for the Upper Tribunal therefore, is whether the First Tier Preliminary Issue Decision was correct in law in determining that Mr Nicholson was not "any other person who is or may be affected by the decision" as a result of being an "addressee" of the Commission's Registration Decision either solely as such or in combination with his engagement with the Commission in relation to its consideration

of the exercise of its duty pursuant to section 34 of the 2011 Act in relation to the JNF Charities.

5. In oral submissions before the Upper Tribunal, Mr Nicholson, who represented himself, contended in addition, that he was an "applicant" to the Commission in relation to the registration of the JNF Charities, although he did not go on expressly to submit that as a result, he was a "person … affected by the decision" of the Commission for the purposes of an appeal to the First Tier Tribunal. As I understand it, this was the first time that such an argument had been raised. Such a contention is not contained in the Notice of Appeal or within the grounds of appeal in relation to which permission was granted. Further, it was not addressed in the Commission's written Response, in its skeleton argument or in any depth in oral submissions. As it does not form part of the appeal, it is not necessary for me formally to consider it. However, I will address it below for the sake of completeness.

6. The relevant parts of sections 34, 36, 37 and 319 are as follows:

> "**34 Removal of charities from register**
>
> (1) The Commission must remove from the register –
>
> (a) any institution which it no longer considers is a charity, and
>
> (b) any charity which has ceased to exist or does not operate.
>
> …
>
> **36 Claims and objections to registration**
>
> (1) A person who is or may be affected by the registration of an institution as a charity may, on the ground that it is not a charity –
>
> (a) object to its being entered by the Commission in the register, or
>
> (b) apply to the Commission for it to be removed from the register.
>
> (2) Provision may be made by regulations made by the Minister as to the manner in which any such objection or application is to be made, prosecuted or dealt with.
>
> (3) Subsection (4) applies if there is an appeal to the Tribunal against any decision of the Commission –
>
> (a) to enter an institution in the register, or
>
> (b) not to remove an institution from the register.

(4) Until the Commission is satisfied whether the decision of the Commission is or is not to stand, the entry in the register –

(a) is to be maintained, but

(b) is in suspense and must be marked to indicate that it is in suspense.

(5) Any question affecting the registration or removal from the register of an institution -

(a) may be considered afresh by the Commission, even though it has been determined by a decision on appeal under Chapter 2 of Part 17 (Appeals and applications to Tribunal), and

(b) is not concluded by that decision, if it appears to the Commission that –

(i) there has been a change of circumstances, or

(ii) the decision is inconsistent with a later judicial decision.

37 Effect of registration

(1) An institution is, for all purposes other than rectification of the register, conclusively presumed to be or to have been a charity at any time when it is or was on the register.

(2) For the purposes of subsection (1) an institution is to be treated as not being on the register during any period when the entry relating to it is in suspense under section 36(4).

…

319 Appeals: general

(1) Except in the case of a reviewable matter (see section 322) an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column I of Schedule 6.

(2) Such an appeal may be brought by -

(a) the Attorney General, or

(b) any person specified in the corresponding entry in column 2 of Schedule 6.

(3) The Commission is to be the respondent to such an appeal.

(4) In determining such an appeal the Tribunal -

(a) must consider afresh the decision, direction or order appealed against, and

(b) may take into account evidence which was not available to the Commission.

(5) The Tribunal may -

(a) dismiss the appeal, or

(b) if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of schedule 6."

Background

7. Mr Nicholson and a number of his friends and colleagues have been and remain concerned about the existence and operation of the JNF Charities which are working in Israel. He and five others appealed to the First Tier Tribunal in relation to the Commission's Registration Decision. The appeals were made on the basis that each of the Appellants were persons "who [are] or may be affected" by the Commission's Registration Decision. As Principal Judge McKenna sets out at paragraph 3 of the First Tier Tribunal Preliminary Issue Decision, they described themselves as: "(i) tax payers whose tax is affected by charitable relief for these 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".

8. Two further notices of appeal filed on 6 May 2014, were allowed to proceed out of time and were consolidated with Mr Nicholson's appeal. Mr Nicholson agreed to be the sole point of contact with the First Tier Tribunal for all the Appellants. The Appellants in relation to the two Notices of Appeal filed on 6 May 2014 described themselves respectively and in summary as: "a Jewish person who has unwittingly donated to the JNF through school and family without awareness of the atrocities that they have been carrying out on behalf of the Israeli state"; and "a Palestinian whose family has been displaced by the JNF, through demolition of our house and village."

9. In the Commission's Responses in relation to all three appeals it stated that the Appellants had not established that they were persons who are or may be affected by the Commission's Registration Decision. The First Tier Tribunal therefore directed that the question of standing should be determined as a preliminary issue. I should add that Mr Nicholson submitted that the point in relation to standing was not raised by

the First Tier Tribunal until a directions hearing which took place by telephone. During that hearing, Mr Nicholson says that Principal Judge McKenna raised the point, he explained that he was relying upon a decision of the First Tier Tribunal in *Lasper v Charity Commission* CA/2010/0006 and the Judge replied that the decision was not binding upon her. Having considered the matter on paper, Principal Judge McKenna gave the First Tier Tribunal Preliminary Issue Decision with which this appeal is concerned.

10. In fact, it is not in dispute that Mr Nicholson commenced correspondence with the Commission in relation to the JNF Charities seeking an investigation leading to their removal from the Register of Charities, as early as March 2013. In response on 9 April 2013, the Commission stated that it had received an application from the "Stop the JNF Campaign" seeking the removal of the JNF Charities from the Register, that it was considering the application and would be "responding to the Campaign in due course." Thereafter, Mr Nicholson sought a direct response to his correspondence to which the Commission responded on 18 April 2013 stating in summary that as already explained, it was considering an application from the "Stop the JNF Campaign" and that it would respond to the Campaign and not to individual complainants. Further, on 10 May 2013 the Commission responded to an email from Mr Nicholson complaining that its approach was inadequate, pointing out that in the light of having received more than 500 letters and emails it did not have the resources to provide individual responses but that all individual substantive points raised were being considered and noted by the Commission.

11. Thereafter on 13 May 2013, Mr Nicholson emailed the Commission to insist that he receive a specific assurance that the Commission would reply directly to him personally. After stating in an email of 31 May 2013 that the team in question had been notified of Mr Nicholson's request, and having been pressed further, on 20 June 2013, the Commission stated that it would consider how best to respond to all complainants in due course when there was an outcome to the matter. The same position was reiterated in an email of 14 August 2013. In a further email of the same date, the correspondent on behalf of the Commission stated that he would not be able to provide further information until discussions with the charities had been concluded but that when the Commission was in a position to provide further details it would do so and decide "how best to communicate that information to everyone who has contacted us ..."

12. Although there were further exchanges, the next relevant communication with Mr Nicholson was on 18 December 2013 when the Commission attached its response to the "Stop the JNF Campaign". In the attachments to the email of 18 December 2013, the Commission stated amongst other things, as follows:

> "We acknowledge that you have made an independent request to have the charity(s) removed from the Charity Register. We have reviewed and considered all of your communications to us with regard to that request. On the content of the emails you have sent to us, we have not been convinced that there is any further sufficient cause to alter the decision taken by the Commission in May 2013 …

> … If you consider that we have got our decision wrong you may request that the decision is reviewed through our Decision Review procedure. Our decision may also be challenged directly through the First-tier Tribunal (Charity)…
>
> … The Commission reserves its right to defend any application for an appeal, on the grounds that an individual or individuals are not persons affected by the decision for the purposes of S 34(1)(a) or affected by the registration for the purposes of S 36(1)(b)"

13. In a further letter from the Commission to Mr Nicholson dated 31 January 2014, in which it explained that its decision had been made under section 34 of the 2011 Act and that its reasons were set out in the letter of 18 December 2013, it went on:

> "… Only persons who are or may be affected by the decision may exercise this right of appeal and any application you submit to the Tribunal should explain on what basis you consider yourself to meet this requirement.
>
> **Persons who are not the subject of the decision may appeal by sending a notice of appeal to the Tribunal within 42 days of the date on which the decision was published. Weekends and bank holidays are included in the 42 days The decision was published today and I attach a copy of that decision.**
>
> If you wish to appeal against our decision you may find it helpful to visit the Tribunal's website for more information about time limits, form of notice of appeal and how to make an application: http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/charity/appeals.htm
>
> If you appeal to the Tribunal, you are also required to send a copy of your notice of appeal to the Commission. Please send this to the Litigation and Review Team.
>
> As the decision was made at a senior level, the Commission will not be offering an internal review of the decision in this case."

First Tier Preliminary Issue Decision

14. In the First Tier Preliminary Issue Decision, having set out the background to the matter and the submissions, in relation to the matters relevant to this appeal, Principal Judge McKenna concluded as follows:

> "[24] I recognise that there are some profoundly important and highly complex issues which form the back-drop to this case. I also acknowledge that the Appellants (and, indeed, others) hold very strong feelings about those issues. However, there is no public interest test in respect of standing in the Tribunal and I must decide this matter without regard to the wider issues and

only having regard to the question of whether the Appellants fall within the category of persons in column 2 of schedule 6 to the Act so as to allow their appeals to proceed.

[25] I am not persuaded that a taxpayer who disagrees with the views or actions of a charity is 'affected' by its continued registration so as to pass the threshold for having standing in the Tribunal. It seems to me that the nature of every taxpayer's relationship to every registered charity is essentially the same and that Parliament cannot have intended that every taxpayer should be able to bring an appeal to the Tribunal on the basis merely of his or her disagreement with the enjoyment of fiscal advantage by any particular registered charity.

…

[27] It does not seem to me that a person can become an 'affected person' solely as a result of the terms of their engagement with the Charity Commission, either before or subsequent to the decision which it is sought to appeal. The key issue in column 2 of Schedule 6 to the Act is [the proposed Appellant's] relationship to the decision itself. I am accordingly not persuaded that even if misleading information about appeal rights were given by the Charity Commission it could confer standing where it did not otherwise exist.

…

[29] However, for the reasons that follow, I do not think that findings of fact about historical events are necessary for the purposes of making this preliminary ruling. The question of whether a person is or may be affected by the decision under appeal is highly fact-specific. But the facts on which it turns are connected to the nature of the disputed decision and the effect it has on the would-be Appellants, not the wider factual background. In this case, both parties have addressed the issue of whether the Appellants have shown that they are affected by the continued registration of the Charities, but it seems to me that the question is in fact narrower than that. It is whether the Appellants are persons who are or may be affected by the specific decision of 3l January 2014 not to remove the Charities from the Register.

[30] Returning to the generic test adopted by Lord Carlile of Berriew QC (see paragraph 12 above) i.e. whether the Appellants are persons who have "an interest that is materially greater than, or different from, the interests of an ordinary member of the public" in the decision which it is sought to appeal, it does not seem to me that the Appellants have really addressed that point. They have directed themselves to the question of why they have an interest in opposing the continued registration of the Charities (as Mr Nicholson puts it, to end support for the toleration of the

> expropriation of Palestinians) but not specifically why the decision made on 31 January 2014 impacts upon them.
>
> [31] I entirely understand and respect the fact that the Appellants have a deeply-held and continuing objection to the views and activities of the Charities, but it does not seem to me that that holding a particular viewpoint about a charity can ever serve to create an interest in the Charity Commission's decision which is greater than that of an ordinary member of the public. The Appellants have not pointed to any particular disadvantage that they have experienced as a result of the making of the decision under appeal. They have not suggested that their rights were in any way infringed by the making of the decision under appeal. And they have not explained how the specific decision which they seek to appeal affects them more than anyone else.
>
> [32] Accordingly, and for all these reasons, my ruling is that the Appellants are not persons who are or may be affected by the Charity Commission's decision of 31 January 2014. For that reason I must now strike out the appeals for lack of jurisdiction."

Authorities and Submissions

15. Mr Nicholson submits that on the ordinary meaning of the words in Column 2 of Schedule 6 of the 2011 Act and on the basis of the three relevant authorities, it is clear that as an "addressee" with whom the Commission engaged, he is a "person who is . . . affected by the decision." He does not rely upon analogous phrases in other statutes and submits that even if it were relevant, there is nothing in Hansard which would assist in the interpretation of the phrase in question. He submits that on the ordinary meaning of the words themselves it must have been intended that someone should be able to challenge a decision of the Commission of this kind and that in reality, if he is not within the relevant category of persons, no one will be and decisions of this kind will go unchecked. He also points out that the history of this jurisdiction is not one which suggests that the floodgates would be breached were he to be included within the category of persons with standing to appeal.

16. Mr Nicholson took me first to R *(International Peace Project 2000) v Charity Commission* [2009] EWHC (Admin) 3446. In that case, the claimant, a registered charity sought permission to seek judicial review of a decision of the Commission. The Commission had determined that the claimant did not have standing to make a request to the Commission to remove another charity from the Register of Charities and that the charity in question should remain on the Register. The claimant contended that the decision was "Wednesbury" unreasonable and tainted by procedural bias. Permission to seek judicial review was refused both on paper by Holman J and at a hearing before Lord Carlile QC sitting as a deputy High Court Judge. At [16] Lord Carlile QC set out Holman J's reasoning when rejecting the application for permission, namely that there was:

> "… an alternative and preferable remedy, namely appeal to the specialist Charity Tribunal."

Holman J had gone on to hold that:

> "If, … the Charity Tribunal later declined to hear the appeal on the grounds that the claimant has no standing even to bring that appeal, the application for permission may be renewed…"

17. At [30] Lord Carlile himself rejected the application on the ground that the International Peace Project had an alternative remedy by which the matter could be determined by a "quasi judicial process of an entirely reasonable kind" being an internal review by the Commission which was underway. He went on as follows:

> "[31] The defendant contends further that a decision that the claimant does not have standing to make a request to remove the second interested party from the register of charities constitutes a decision not to remove an institution from the register. As such, says the defendant, the Tribunal would have jurisdiction to hear an appeal on the issue of standing. Like Holman J, I have some doubts about that assertion but I do not have to decide it in the light of my finding that there an alternative remedy which should be pursued before judicial review.
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> …
>
> [33] Were I [to] have to make a final determination on the issue of whether the claimant is a person who is or may be 'affected', I would hold that that has a particular meaning. My conclusion would concur with the interpretation [of the Commission]. 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 is 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."

18. Mr Nicholson made clear that there is no question of a review by the Commission in this case and emphasised that [33] of the decision is obiter. He submits that instead I should follow the decision of the First Tier Tribunal in the *Lasper v Charity Commission* case. This was a determination by Judge Rose as she then was. Mr Lasper had asked the Commission to remove a charity, Town Field, from the Register of Charities. He lodged a Notice of Appeal challenging the Commission's decision not to do so. Having lodged its response to the Notice of Appeal, the Commission applied to strike out Mr Lasper's challenge on the basis that the First Tier Tribunal did not have jurisdiction to hear the appeal. Although the legislation under consideration was the Charities Act 1993, a forerunner of Charities Act 2011, the wording with which the First Tier Tribunal was concerned and the structure of the legislation was for all relevant purposes the same as in this case.

19. Mr Lasper argued that he was a "*person … affected by the decision*" by virtue of: (i) his status as a regular donor to other charities who was therefore concerned that the tax concessions available to charities under the Gift Aid scheme might "cease to be politically acceptable" if the Commission were not vigilant in confining the register to those institutions entitled to remain there; and (ii) his status as a council tax payer to the local authority in whose area the land in question fell. The First Tier Tribunal rejected both grounds. However, of its own motion, it considered whether Mr Lasper was a "person … affected by the decision" by virtue of the fact that his request to have the charity removed from the register "had been considered substantively by the Commission and had been rejected". The Judge noted that the Commission's decision had recorded the arguments raised by Mr Lasper and rejected them on four occasions at different levels within the Commission: see [3.4]. At [3.5] the First Tier Tribunal held:

> "The Commission has thus adopted a decision dealing with the merits of an application or request by a person. In such a situation, provided that the decision is in respect of a matter listed in Column one of Schedule 1C, the person to whom the decision is addressed is, in my judgment, a person affected by that decision. To hold otherwise would risk creating a category of decisions in which the Commission can make important findings of fact and law but which are effectively not open to challenge before the Tribunal. I accept that, as the Commission has argued, the decision not to remove the Town Field from the register could have been challenged by a member of the public able to bring themselves within the relevant wording. But no such person has indicated any concern over the registration of the Town Field and the possibility of any such affected appellant coming forward is theoretical rather than real."

20. Thereafter, Judge Rose as she then was, went on to consider the *International Peace Project* decision and to reach her determination as follows:

> "3.9 The case [the *International Peace Project* decision] does not deal with the question whether, if the Commission raises no point about the requestor's standing throughout its internal procedure and considers and determines the requestor's standing throughout its internal procedure and considers and determines the requestor's arguments on the merits, it can nonetheless dispute the requestor's standing to challenge the decision before the Tribunal. It was not a point that arose in that case. On the contrary, the Commission argued on that occasion that if the Commission's internal review rejected IPP's request on the basis of their lack of standing, that rejection would in itself constitute a decision not to remove an institution from the register. As such, the Commission asserted, IPP would be entitled to come to the Tribunal to challenge that decision. The learned judge said that he had doubts about that assertion but did not have to decide it in light of his finding that the internal review process should be completed before judicial review was pursued.

> 3.10 Similarly, I do not have to decide whether if the Commission had rejected Mr Lasper's original request for lack of standing in February 2009, he could have challenged that as constituting a decision not to remove the Town Field from the register. It is sufficient for present purposes for me to hold that the addressee of a decision taken by the Commission after a full consideration of the merits is a person affected by that decision for the purposes of column two of Schedule 1C."

21. The Judge went on to consider the test for locus standing in judicial review proceedings and the term "interested in the charity" for the purposes of section 33 Charities Act 1993 (now section 115 2011 Act) in the following terms:

> "3.11 Mr Lasper in his letter of 28 October 2010 referred to the decision of the House of Lords in Lord Diplock in R v IRC ex parte National Federation of Self Employed and Small Businesses [1981] UKHL 2 concerning the breadth of the test for locus standi in judicial review proceedings. In my judgment the threshold for establishing sufficient standing to bring judicial review may well be a lower threshold than that required by the wording in column two of Schedule 1C. So it does not follow that any person who would have standing to bring judicial review proceedings would be a person "affected". But Mr Lasper is right to draw my attention to the importance of not ascribing too narrow a meaning to the wording in Schedule 1C in this instance.
>
> 3.12 The Commission, in contrast, refers to the case law concerning who is a person "interested in the charity" for the purpose of being able to bring charity proceedings under section 33 of the Charities Act 1993. I have considered the rationale for limiting that class of people as described by Lightman J in RSPCA v Attorney General [2001] EWHC 474 (Ch). In that case the judge held that people whose application for membership of the charity had been rejected did not, by that fact have an interest in securing the due administration of the charitable trusts. The learned judge described the test under section 33 "not a technical rule of law, but a practical rule of justice affording a degree of flexibility responding to the facts of each particular case" (see paragraph 21 of the judgment). I consider that the same applies to the test in column two of Schedule 1C. Lightman J also described the statutory threshold in section 33 as a "form of protection of charity trustees". I do not see that that rationale is applicable here. Mr Lasper is not challenging the trustees of the Town Field but rather the Commission. The Commission, having responded to and rejected Mr Lasper's request is not entitled to "protection" from his challenge."

22. Mr Nicholson also referred me to *Colman v Charity Commission* CA/2014/0001 and CA/2014/0002 which were parallel rulings on a preliminary issue by Principal Judge McKenna. The cases concerned two orders made by the Commission, the first not to

part with property under s.76(3)(d) of the 2011 Act and the second to appoint an interim manager under s.76(3)(g) of that Act. The Commission made a decision not to discharge those orders on 13 December 2013, ten days after the Appellant had resigned from his position as trustee of the charity in question. A right of appeal to the First Tier Tribunal was available to the trustees and "any other person who is or may be affected by the order" amongst others, in relation to section 76(6) 2011 Act as a result of the corresponding entry in column 2 of Schedule 6 2011 Act. It is not in dispute therefore, that the wording under consideration was materially similar to that with which this appeal is concerned. The First Tier Tribunal considered as a preliminary issue the question whether the Appellant as a former trustee was such a person. It concluded that he did not have standing notwithstanding that he had previously requested a statutory review of the Commission's decision. Principal Judge McKenna held in the CA/2014/0001 matter as follows:

> "16. It does not seem to me that there is a one-size-fits-all way to decide who is and who is not a person who is affected or may be affected by decisions of the Charity Commission. It seems to me that the question of whether a person is or may be affected by any particular decision of the Charity Commission is necessarily highly fact-sensitive and will depend on the nature of the decision made and the individual's relationship to it. In any case where the issue falls to be decided, the Tribunal will have to look carefully at the nature of the decision that it is sought to appeal and at all the surrounding circumstances in order to decide whether to permit an appeal to proceed. For this reason I do not regard Lord Carlile's formula referred to at paragraph [8] above as determinative of all questions of standing, but rather as a good starting point for assessing the merits of each particular case. I have therefore considered carefully the nature of the order which is the subject of the Appellant's appeal and at the surrounding circumstances. I note that, following the variation in July 2013, the Interim Manager order effectively "locked out" the trustees from the administration of the charity and replaced them with a professional Interim Manager. I note that the Charity Commission only has the power to make such an order where it has opened a statutory inquiry and where it is satisfied that there has been misconduct or mismanagement in the administration of a charity or that it is necessary to protect, or secure the proper application of, property due to a charity.
>
> 17. The Appellant's submissions relate to his perceived risks of financial loss and of damage to his reputation. These are, in principle, matters which could give him an interest in a decision of the Charity Commission which is greater than that of an ordinary member of the public. However, I am not satisfied that this is the case in relation to the specific situation of the appointment of an Interim Manager. I cannot see how the appointment of the Interim Manager has, of itself, any impact on the Appellant's concerns. To illustrate my point, if the Appellant were permitted to bring this appeal and if he were to win it and

> the Interim Manager order were to be quashed, then the alleged risks to the Appellant's finances and reputation would surely remain in place because they relate to the wider issue of the potential outcome of the Charity Commission's inquiry rather than the specific effect of the appointment of the Interim Manager.
>
> 18. In seeking to decide whether the Appellant is or may be affected by the order, I have considered the nature of his legal rights in relation to the charity and whether those rights have been adversely affected by the Charity Commission's decision. It seems to me that a wide and inclusive approach to the question of who is a person affected should be taken in circumstances where a person's legal rights are impacted. I note that the Appellant requested a statutory review of the variation order but then he resigned as a trustee before the Charity Commission issued the decision that he had requested. It follows, in my view, that the decision of 13 December had no impact upon the Appellant's legal rights at the time that it was made because he had ceased to be a trustee and so had no role in the administration of the charity capable of being affected by the order not to part with property. It seems to me that, in order for a person to be affected by a decision of the Charity Commission in the sense identified by Lord Carlile, there must be an identifiable impact upon that person's legal rights at the time the order is made so as to merit a right of redress in the Tribunal. In order to be a person who "may" be affected by a decision of the Charity Commission, it seems to me that there would have to be an identifiable impact on that person's legal rights which is sufficiently likely to occur to make it fair to allow them a right of appeal. In the particular circumstances of this case, I do not consider that the Appellant falls into either category."

23. Mr Nicholson submits therefore, that the correct approach is set out in the *Lasper* decision and on the facts of this case, he was an "addressee" in relation to the Commission's decision under section 34 of the 2011 Act. In fact, he says that he was not only an addressee but also responded to correspondence from the Commission, provided information to it in relation to the JNF Charities in order to assist its deliberations, engaged with the continuing process and had an application under section 36 accepted by the Commission. Furthermore, on the basis of the dicta in the *Colman* case, he says that the relevant surrounding circumstances when determining whether he is within the category of persons affected by the decision include: the fact that the issue of whether the JNF Charities are in fact charitable is an important issue of considerable public interest; the Commission has failed to address concerns effectively; and that in effect, he is representative of others. In addition, he says that although he is not affected financially by the Commission's Registration Decision, it affects him emotionally and socially because it affects his friends. Further, if he is not permitted to challenge the Commission's Registration Decision, he asks rhetorically "who can and who will?" He submits that it is necessary for someone with a genuine interest and sufficient knowledge acting in a quasi representative capacity to protect

the interests of those who cannot speak for themselves and that unless there is a right to appeal there is no redress.

24. Mr Maclean QC on the other hand submits on behalf of the Commission that the *Lasper* decision is wrong in principle. He says that an individual can provide information to the Commission and communicate with it without becoming a "person who is ... affected by the decision" and that that is consistent with section 36(5) 2011 Act which enables to the Commission to look at a matter afresh.

25. He also submits that there is nothing in Mr Nicholson's point and that of Judge Rose at [3.5] of the *Lasper* decision, to the effect that if an addressee is not able to challenge a decision of the Commission, it would be able to make important findings of fact and law which effectively would not be open to challenge. He points out that section 319(2)(a) provides that the Attorney General has standing to bring an appeal and therefore, the decisions of the Commission are not immune from challenge even if no one comes forward who is "affected by [its] decision." Mr Maclean also submits that Judge Rose adopted an impermissible approach to statutory construction because she worked backwards from what she perceived to be the effect of the alternative construction of the phrase in question. With regard to the potential for an appeal by the Attorney General I should mention that Mr Nicholson stated in reply that in practice such a remedy was illusory and that the point was mentioned for the first time by Mr Maclean in oral submissions.

26. In addition, Mr Maclean submits that the *Lasper* decision is distinguishable on the facts. He says that this is not a case where the Commission had failed to raise the issue of standing in the course of correspondence.

27. In any event, Mr Maclean says that jurisdiction cannot be conferred or extended by consent or acquiescence. He says that the effect of the *Lasper* decision is just that. He submits that it enables a person to become an "affected person" as a result of the terms of his or her engagement with the Commission which cannot be correct. He says that Principal Judge McKenna was right to hold to the contrary at [27], [29] and [30] of the First Tier Preliminary Issue Decision. In this regard, he submits that the statute sets out an objective test which is to be determined by the First Tier Tribunal and cannot be dependent upon the opinion of the Commission or its terms of engagement. If this were not the case, the Commission could confer standing where it did not otherwise exist and deny it by a refusal to engage with an individual complainant.

28. In this regard he referred me to *Aparau v Iceland Frozen Foods plc* [2000] ICR 341, a decision of the Court of Appeal per Moore Bick J at 351C and Peter Gibson LJ at 353F and to *Essex County Council v Essex Incorporated Congregational Church Union* [1964] AC 808, a decision of the House of Lords. In both decisions it was held that a limited statutory jurisdiction cannot be extended by means of consent, acquiescence or estoppel. In the *Essex County Council* case Lord Reid stated at [820]:

> "... in my judgment, it is a fundamental principle that no consent can confer on a court or tribunal with limited statutory jurisdiction any power to act beyond that jurisdiction or can estop the consenting party from subsequently maintaining that such court or tribunal has acted without jurisdiction."

29. Mr Maclean submits that the approach adopted in the *Colman* decision in which almost identical wording to that in this case was under consideration, is correct. In particular, he focussed on the approach in paragraphs [16] to [18] of that decision, namely that the issue is fact sensitive and depends upon the nature of the decision in question, the individual's relationship to it and all the surrounding circumstances. He says that that is exactly what Principal Judge McKenna did at [25] and [27] of the First Tier Preliminary Issue Decision and that she was correct to do so.

30. It was not Mr Maclean's primary position that the phrase in question falls within the well known rule of statutory interpretation considered in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 with the effect that recourse could be had to Parliamentary material as an aid to statutory construction. Such circumstances arise where: (a) the legislation in question is ambiguous, or obscure or leads to absurdity; (b) the material relied upon consists of statements by a Minister or other promoter of the Bill together with such other parliamentary material necessary to understand the statements; and (c) the statements relied upon are clear. Mr Maclean says that the meaning of the phrase is clear.

31. However, for the sake of completeness, he explained that there are no relevant Parliamentary materials in relation to the relevant sections of the 2011 Act or its predecessors, the Charities Act 1993 and the Charities Act 2006. The only Parliamentary material relates to what was clause 5 of the Charities Bill which became section 5(2) Charities Act 1960. Clauses 4 and 5 of the Bill provided for a central register of charities. Clause 5(2) (which was not subject to amendment during the passage of the Bill) provided as follows:

> "(2) Any person who is or may be affected by the registration of an institution as a charity may, on the ground that it is not a charity, object to its being entered by the Commissioners in the register, or apply to them for it to be removed from the register; and provision may be made by regulations as to the manner in which any such objection or application is to be made, prosecuted or dealt with."

In fact, regulations were never made under this provision or for that matter under section 36(2) 2011 Act or any of its predecessors. Hansard reveals that during the passage of the Bill, at the Committee Stage in the House of Lords, the Earl of Dundee, responding to an amendment moved by Lord Silkin which would have imposed a three year limitation period on an objection under clause 5(2), explained that clause in the following terms:

> "The reason for providing that people may apply for the removal of a charity from the register is not intended for the benefit of people, as the noble Lord, I think, suggested, who at one time paid a subscription of sixpence and have since decided that they do not like the charity. It is intended for the protection of people whose own interests may be affected by the question of whether or not the charity in question ought to be classified as a charity.

> For instance, if the relation of some interested person were to die leaving his money to a charity, and if his next of kin thought there was strong reason for claiming that this was no longer entitled to be regarded as a charity, no longer entitled to be registered as one, then it would obviously be wrong to deny him the opportunity of making an application to the Charity Commissioners…".

Similarly, during a discussion of clause 5(2) in the subsequent Committee stage in the House of Commons, the Solicitor-General responded to questions from Members of the Committee as follows:

> "My hon. Friend … asked about the ambit of subsection (2). I do not think that it can be said that any taxpayer would be a person affected. I will again look into the matter and I should like the opportunity of reading again what has been said this morning, but I think that 'a person affected' in the context in which my hon. Friend put his question would refer to the Commissioners of Inland Revenue, who would be directly affected on the question of taxability of a charity; rating authorities, including valuation authorities; and a residuary legatee …".

Mr Maclean says that this material is clearly consistent with a construction of "person affected" which requires more than general interest or even concern in relation to a topic and requires the person's rights to be affected in some way.

32. Lastly, by way of contrast, Mr Maclean also referred me to the authorities in relation to the phrase "person interested in" a charity for the purposes of s.115(1)(c) of the 2011 Act (and its statutory predecessors). Section 115 is concerned with the ability to bring "charity proceedings" as defined in s.115(8). Mr Maclean submits that "person interested" is a wider term than that which is under consideration here and that it is accepted that that phrase does not encompass those members of the public who merely have altruistic intentions. He also says that it should be borne in mind that in relation to an appeal against a registration decision there is no 'protective filter' requiring persons otherwise having standing to obtain approval from the Charity Commission or the Court in order to bring proceedings which is in contrast to the position in relation to charity proceedings: 2011 Act, s.115(2) and (5).

33. In relation to a predecessor to section 115, Mr Maclean took me to *In re Hampton Fuel Allotment Charity* [1989] 1 Ch 484 in which Nicholls LJ gave the judgment of the Court of Appeal. Having concluded at 493A that there were "insuperable difficulties in attempting a comprehensive definition" of the phrase "any person interested in the charity," he went on to hold that "a sentimental or altruistic interest" is insufficient as was the provision of "modest financial support": see 493G. The Court went on to conclude that the person had to have a "good reason" to bring the matter before the court and that the responsibilities of the Attorney General in seeing that a charity is properly administered:

> "suggests therefore, that to qualify as a plaintiff in his own right a person generally needs to have an interest materially greater than

> or different from that possessed by ordinary member of the public …
>
> If a person has an interest in securing the due administration of a trust materially greater than, or different from, that possessed by ordinary members of the public as described above, that interest may, depending on the circumstances, qualify him as a "person interested.""
>
> See 494F - G.

34. Mr Maclean also made reference to *Gunning & Ors v Buckfast Abbey Trustees* (The Times 9th June 1994), in which Arden J as she then was held that the parents of child beneficiaries of an educational trust, were "persons interested" in circumstances where they had entered into a contract with the trustees and to *Scott v National Trust* [1998] 2 All ER 706 at 715f-g at which it was held that tenant farmers who had for many years been partners with the National Trust in the management of its land in a particular area and in the successful preservation of the deer population, which preservation was one of the Trust's statutory purposes, were "persons interested".

35. Mr Maclean submits therefore, that the phrase under consideration in this case cannot be broader than the term 'person interested in a charity' in s.115 and that it is well established that the latter term does not include a person like Mr Nicholson who merely has an altruistic (or political) interest in the running of the charity's affairs. On the contrary, Mr Maclean submits that the term 'person … affected' applies in circumstances where there is an identifiable impact upon the putative appellant's legal rights or interests, including financial interests, at the time of the relevant decision such as to merit a right of redress in the Tribunal. He says therefore, that it is relevant to consider: (i) the legal rights (or interests) said to be possessed by the individual; (ii) the nature of the decision made and its impact (if any) upon those rights (or interests); and (iii) the jurisdiction of the Tribunal in relation to those matters because the redress which the Tribunal can award must impact on the rights in question.

36. He says that such an approach is consistent with amongst other things: the nature of a challenge to a charity's continued registration, which involves questions of charity law and may also impinge on the private and usually financial interests of a discrete number of identifiable third parties which is to be contrasted with the nature of the issues raised by a public law challenge to the Commission's exercise of its regulatory powers; the legislative history and context, which he says illustrate that a challenge to registration was intended to protect those whose financial interests were directly affected by the decision to register a charity; the statutory language used, which is also used in other contexts to indicate persons directly affected by a decision rather than those merely taking an interest in the subject matter; and the very serious potential consequences for a charity arising from suspension from the Register where an appeal against a relevant registration decision is brought before the Tribunal and the concomitant need to impose sensible limits upon the class of persons who may bring such an appeal. The suspension to which he refers takes effect as a result of section 37 of the 2011 Act.

37. Mr Maclean accepts that the test of "who is a person affected" is fact and context specific but he says it may include: persons such as the next-of-kin or residuary

legatee of a deceased person who would benefit under a will, trust instrument or resulting trust if the institution was held not to be charitable; HMRC, or any other public body directly affected as to the amount of tax or other levy payable by, or to be collected from, the institution if not charitable; and even a significant beneficiary of, or perhaps a significant donor to, a charitable trust.

38. Lastly, Mr Maclean emphasises that the factors additional to his being an addressee upon which Mr Nicholson relies are of no assistance to him. First, he says that public interest in the charitable status of the JNF charities cannot affect his position because there is a public interest element in the registration of every charity. Secondly, he says that the alleged level of public concern about the status of the JNF charities is equally irrelevant for these purposes. The statute refers to the person in question and whether he, she or it is affected by the decision. Thirdly, Mr Maclean submits that the length or volume of correspondence between Mr Nicholson and the Commission and/or Mr Nicholson's involvement in campaigning against the JNF Charities cannot affect standing particularly in the light of the authorities in relation to the more generous 'person interested' test, to the effect that this type of altruistic or political interest is insufficient to give rise to standing.

Conclusions

39. I agree with the conclusions reached in the First Tier Preliminary Issue Decision. In my judgment, Mr Nicholson cannot be "a person ... affected by the decision" for the purposes of the 2011 Act as a result of being an addressee of the Commission's Registration Decision or as a result of having been such an addressee coupled with the other matters upon which he relies.

40. I come to this conclusion having considered the relevant factual circumstances and having applied a purposive construction to the phrase in question. Such an approach requires one to have regard to the context and scheme of the legislation as a whole and to the purpose of a particular provision and to interpret its language, so far as possible, in order to give effect to that purpose.

41. Before turning to the phrase in question in its statutory context, I should mention that I consider the words in question to be unambiguous and therefore, this is not a case in which it is either necessary or appropriate to have regard to Parliamentary materials as an aid to construction within the principle enunciated in *Pepper (Inspector of Taxes) v Hart.* In any event, had there been an ambiguity, I consider that the materials to which I was taken would only have been of limited assistance given that they do not relate to the 2011 Act, albeit to similar provisions in the 1960 Charities Act.

42. I also consider that it is quite clear that just as Nicholls LJ stated in the *Hampton Fuel* case in relation to the phrase relevant to the forerunner of section 115 and equally as Principal Judge McKenna acknowledged in the *Colman* decision in relation to the phrase a "person ... affected by the decision", the category of persons in question in each case is not prone to a definitive definition. It is fact sensitive and must be considered in each case in the light of all the relevant circumstances. Nevertheless, the first stage in the process is to construe the words of the statute in order to determine the statutory framework intended to apply.

43. As Mr Maclean suggested in his submissions, the purpose of section 319 and the relevant corresponding entry in column 2 of Schedule 6 of the 2011 Act can be found

in the words of the statute itself when read as a whole. First, in this regard it is important to note the relevant statutory background. The type of appeal with which the corresponding entry is concerned and to which the standing in question applies, relates to decisions under section 34 of the 2011 Act as to the continued registration of a charity. Such a decision and therefore, such an appeal involves issues of charity law which whilst having a public aspect also impinge upon private and financial interests. This is to be distinguished from any public law challenge to the Commission's exercise of its regulatory functions. Furthermore, such an appeal has serious consequences for the charity itself, many of which will be fiscal. As Mr Maclean pointed out, the effect of the combination of section 36(4)(b) and section 37(2) of the 2011 Act is that the charity is treated as not being on the Register until the appeal is determined. Secondly, the immediate context of the phrase in question is the corresponding entry to section 34 in column 2 of Schedule 6 of the 2011 Act itself to which one is directed by section 319(2)(b). The phrase with which this appeal is concerned is one of three. The other persons with standing are: (a) those who are or claim to be the charity trustees of the institution; and (b) the institution itself, if a corporate body. Thirdly, it seems to me that the phrase must be construed in the light of section 319(2) as a whole. In this regard, it is relevant to note that section 319(2)(a) provides that the Attorney General has standing to bring such an appeal. Such a matter is relevant to the exercise of statutory construction whether or not the Attorney General makes use of his standing in practice.

44. In my judgment when read in context and having taken account of the fact that the purpose of the statutory provision must be found in the words of the statute itself, the ordinary and natural meaning of the phrase is that a person with standing is one who is or may be "*affected by the decision*." It is necessary therefore, to focus solely upon the particular decision and to determine whether in all the circumstances it has had an effect upon the particular person in question. It seems to me that in order to be affected by the decision, first the decision itself must relate to the person in some way. Secondly, the person's legal rights must have been impinged or affected by the decision and to be a person who "may" be affected, there must be an identifiable impact on the person's legal rights which is likely to occur, a matter to which I shall return.

45. The relevant question therefore, is a narrow one. Is the person affected by the particular decision? In order to determine that question it is necessary to consider the nature of the decision and all the surrounding circumstances. Like Principal Judge McKenna, I consider Lord Carlile's formula in the *IPP* case to be good starting point but not to be determinative. The question is highly fact sensitive and should not be approached on a prescriptively narrow basis.

46. As to the status of "addressee" taken alone, it seems to me that having been an addressee is not necessarily synonymous with being "*affected* by *the decision*" in question at all. Such a person may or may not be affected by the decision as a result of factors other than his or her status as an addressee. A decision of the Commission may be sent to a variety of individuals and institutions each of whom has had a different level of connection with the decision process or none and is affected by the decision or is not. Accordingly, it seems to me that being an addressee cannot of itself bring one within the category of persons with standing. An administrative step taken by the Commission as a result of which a person becomes an addressee can hardly have the

effect of bringing a recipient of a decision within the relevant category of persons with the status to appeal.

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*.

48. This construction is consistent with the Attorney General's role as a result of section 319(2)(a) in relation to decisions pursuant to section 34. As the Court of Appeal noted in the *Hampton Fuel* case which was concerned with the forerunner of section 115, the standing of the Attorney General in relation to an appeal and therefore, his ability to proceed in the public interest militates against a wide construction. Although in that case the Court was concerned with persons "*interested*", in my judgment, the same is true in this case in relation to persons "*affected by the decision.*"

49. It is also consistent with the provision read in context. If section 319(2) together with the corresponding entry in Column 2 of Schedule 6 is read as a whole, it is clear that the purpose of the statute was to enable those "affected" by "the decision" to appeal. The other categories of persons in the corresponding entry, being the charity itself or its trustees, have a very direct and immediate connection with the decision and otherwise, the Attorney General has standing and is in a position to bring an appeal in the public interest. In context therefore, it seems to me that "*affected by the decision*" should be construed to connote circumstances in which the decision in question has a direct, or the potential for a direct, effect upon a person's legal rights.

50. Such a construction is also consistent with the fact that serious issues of charity law are relevant to a decision under section 34 and that there are serious consequences for a charity whilst an appeal is pursued. Both those matters militate against a construction which would include all addressees of the decision who are also concerned taxpayers.

51. Secondly, I agree with Mr Maclean that the effect of concluding that an addressee (without more) falls within the category of persons with standing to bring an appeal to the First Tier Tribunal in a case of this kind is to enable the Commission itself to increase or for that matter, restrict the statutory jurisdiction of the First Tier Tribunal. Such a conclusion cannot be correct. If that were the case, the breadth of the category would be controlled by the administrative whim of the Commission. My conclusion in this regard is consistent with the decisions in *Aparau v Iceland Frozen Foods plc* and the *Essex County Council* case to which I have referred.

52. In my judgment, therefore, the *Lasper* decision in so far as it relates to the standing as a result of having been an addressee is wrong and should not be followed. It seems to me as Mr Maclean submitted that Judge Rose as she then was sought to construe the

phrase by reference to the perceived objection to it. Furthermore, it seems to me that when considering the perceived objection that decisions of the Commission might not otherwise be challenged she failed to take into consideration the power of the Attorney General to do so: section 319(2)(a) 2011 Act. In any event, in my judgment, the fact that an individual within the definition has not come forward is not a legitimate aid to construction of the phrase, justifying a wider construction.

53. What of the status of "addressee" coupled with the other matters which Mr Nicholson says should be taken into consideration as relevant surrounding circumstances? In my judgment, these matters do not enhance Mr Nicholson's position so as to enable him to fall within the category of persons with standing to appeal the Commission's decision. To the extent that they were also considered in the *Lasper* decision I also consider it to be wrong.

54. First, and generally Mr Nicholson relied upon the extent of his engagement with the Commission's decision making process. He pointed out that he provided information to it in relation to the JNF Charities in order assist its deliberations, engaged with the continuing process and he says, had a separate application under section 36 accepted by the Commission. In my judgment, for the reasons I have already explained, the extent of the engagement with the Commission is not relevant to the narrow question posed by the phrase "*affected by the decision*". Further, were the extent of engagement a factor to be taken into consideration when determining whether a person was "affected" by the decision, the Commission itself would have control over the breadth of the category of those who may appeal its decisions which cannot be correct and would be contrary to the principles enunciated in the decisions in the *Aparau* and *Essex County Council* cases. I also note that if engagement were a relevant factor, it might dissuade the Commission from accepting from members of the public information useful in its deliberations.

55. Secondly, Mr Nicholson relies upon the fact that the issue of whether the JNF Charities are in fact charitable is an important issue of considerable public interest; that he considers that the Commission has failed to address concerns effectively; and that in effect, he is representative of others. It seems to me that these factors whether taken together or separately amount to a further assertion that Mr Nicholson is a member of society with a particular concern which is shared by others and may be described by Mr Nicholson, at its highest as a matter of public interest. I have already held as did Principal Judge McKenna, in my judgment, quite rightly, that there is no public interest test which can be encompassed within the statutory phrase in question. I do not doubt Mr Nicholson's sincerity or concern or that of others with whom he is associated. However, such concerns do not whether alone or when coupled with having been an addressee of the decision in question, amount to being "a person affected by the decision." As I have already stated, it is not the case that the decision of the Commission will inevitably go without challenge if those interested are not within the category because the Attorney General can always bring an appeal if he thinks fit. Furthermore, the fact that no one "affected" in the sense which I have already explained has come forward as yet, does not lead to the inevitable conclusion that Mr Nicholson and those with similar concerns are within the category of persons intended by the legislature to have the standing to appeal a decision of the Commission. As to the perceived failures in the way in which the Commission has addressed concerns about the JNF Charities, I cannot see that that whether alone or in combination with the other factors and Mr Nicholson's status as an addressee, takes

the matter any further forward. It does not elevate Mr Nicholson to a person affected by the decision. He is merely an interested taxpayer who criticises the Commission and may or may not have redress in a different way.

56. Further, I do not consider that what Mr Nicholson describes as his representative status can affect his standing. The way in which these appeals have been dealt with under the relevant Rules is merely for administrative ease and to enable them to be considered in a proportionate manner. In my judgment, it cannot result in a change of standing, especially as status has been in issue, at least since the directions hearing. It seems to me that reliance on this issue is just another way of presenting the public interest argument which has already been rejected.

57. What of Mr Nicholson's additional submission that he was an applicant to the Commission? I have to say that it is not clear to me from the agreed chronology of the correspondence that Mr Nicholson was treated as an applicant under section 36(1)(b) 2011 Act at all. He demanded an assurance that he would receive a direct reply from the Commission. The assurance was not given directly but the relevant team was notified of his request. Although the Commission acknowledged in its response to the "Stop the JNF Campaign" that the Campaign had made an independent request to have the charities removed from the Register, no such acknowledgment appears to have been made in relation to Mr Nicholson himself. Furthermore, in my judgment the rubric in relation to appeals contained in the letter from the Commission of 31 January 2014 takes the matter no further and cannot connote the standing of an applicant. In the previous paragraph it was explained expressly that only those affected by a decision can appeal and that in any application to the Tribunal it would be necessary to explain the basis upon which it was considered the requirement was met.

58. In any event, it seems to me that this point adds very little to Mr Nicholson's argument that in addition to being an addressee of the Commission's Registration Decision, he also engaged in correspondence, provided information relevant to the registration of the JNF Charities and received a letter containing the highlighted rubric in relation to the appeal mechanism which I have set out above. To contend that as a result, he was an "applicant" does no more than to seek to elevate that conduct and to transpose it in order to seek to create sufficient standing for the purposes of section 319 and an appeal to the First Tier Tribunal. It raises the same issue as to whether treatment of a correspondent by the Commission can create or widen the jurisdiction of First Tier Tribunal, an argument which I have already rejected.

59. For the reasons I have set out, I dismiss the appeal.

MRS JUSTICE ASPLIN

RELEASED 20 April 2016