

The Editor  
Third Sector  
Haymarket Professional Publications  
174 Hammersmith Road  
London W6 7JP

25 June 2009

Sir,

### **Charity Tribunal**

I read the article 'Teething problems for the Charity Tribunal' (23 June) with some dismay, and I would like to make a few observations for the benefit of your readers.

As President of the new Tribunal I fully accept that there will be a great deal of interest in how it operates in practice, but I am a little perturbed how – just a few cases in – sweeping general conclusions appear to be being drawn.

The article identifies a number of teething problems:

1. That legal costs are too high for charities ;
2. That 'scant' rules lead to lengthy procedural arguments;
3. The adversarial atmosphere of proceedings; and
4. An uneven playing field for parties.

Let me deal briefly with each of these.

1. It is the parties who decide whether and how to take legal action to resolve disputes, and what costs they are prepared to incur – including whether they have legal representation. This is true of any tribunal or court process. There is no fee for bringing a case to the Tribunal, and we are relatively unusual amongst Tribunals in the degree of pro bono legal services that our charity litigants can call upon. Details of the pro bono scheme are available on our web site. Of the two cases we have heard so far, one charity chose to incur substantial legal costs and in the other case the Appellant is represented pro bono. It is clearly too early to draw conclusions about which will prove more typical. The Charity Tribunal is a relatively speedy process, with a target of 30 weeks to completion of a case as against over a year in the High Court. The process of Tribunal reform which we are experiencing will also allow us to "fast-track" certain cases to the new Upper Tribunal, enabling us to settle matters even more rapidly and hopefully cost-effectively;

2. This is a new Tribunal and it is inevitable that early cases will see procedural challenges from lawyers. All court and tribunal bodies constantly review their procedure and the hearing of legal submissions on procedural matters is entirely commonplace. Our rules are not "scant", they are very similar in nature and scope to those applying in other tribunals. We will be governed by new procedural rules from September this year as part of a national programme of Tribunal reform, and have consulted widely on the form and content of these;

3. I recognise that tribunal hearings can be a daunting prospect for those involved – and of course it is the most intractable and deep seated disputes that come to a full Tribunal hearing for determination. It is the job of the Tribunal members to ensure that questioning of witnesses is within acceptable bounds, but the Tribunal is there to establish facts (through the testing of evidence if necessary) and so to reach its decisions. Your article did not make clear that in the hearing your reporter briefly attended, it was in fact a Charity Commission Investigative Officer being questioned, forcefully but appropriately, about the decisions she had made in the case. The sector has long campaigned for such public accountability by its regulator and your report failed to acknowledge the importance of that process;

4. The Charity Tribunal recognises that there may be a sense of inequality between a charity and its regulator. Part of the role of the judiciary in any tribunal (or court) case is to ensure that a fair hearing takes place, and that all parties have an adequate opportunity to present their arguments and evidence.

Some of the concerns you report are common across all types of legal proceedings but the issues may be new to the charity sector. I have addressed many sector events in the past year in an attempt to demystify the Tribunal for the sector, and will continue to accept invitations to speak to you directly whenever I can.

You can find more information about the Charity Tribunal (including the unedited text of this letter) on our website [www.charity.tribunals.gov.uk](http://www.charity.tribunals.gov.uk)

Yours faithfully

ALISON MCKENNA,  
President,  
Charity Tribunal