



**FIRST-TIER TRIBUNAL (CHARITY)  
GENERAL REGULATORY CHAMBER**

**Appeal No: CA/2015/0003**

**THE STEADFAST TRUST**

**Appellant**

**- and -**

**THE CHARITY COMMISSION  
FOR ENGLAND AND WALES**

**Respondent**

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**RULING ON PRELIMINARY ISSUE**

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**TRIBUNAL: JUDGE ALISON MCKENNA**

Sitting in Chambers on 26 May 2015

1. Further to my directions of 17 April, this is my written ruling on the Appellant's application for a ruling on the preliminary issues of (a) whether the application to the Tribunal was made out of time and (b) if so, whether permission to apply out of time should be granted.
2. I am grateful to both parties for their written submissions, which I have considered carefully.

*Background*

3. The Appellant's application to the Tribunal was made on 25 March 2015. This followed a decision by the Charity Commission that the Appellant was not a charity and should be removed from the Register of Charities. The date of that decision is disputed by the parties for the reasons set out below.

4. The Charity Commission made its decision to remove the Appellant from the Register on 19 January 2015, but informed the Appellant that the decision would take effect in three months' time. The Commission's decision letter was sent by e-mail on 19 January. The letter also informed the Appellant of its right to apply to the Tribunal in respect of the decision within 42 days. It was sent to the Appellant's usual e-mail address, although it transpires that a different e-mail address had been supplied to the Commission on the previous day and that the previous e-mail address (to which the letter had been sent) was no longer operative. A copy of the decision letter was sent to the Appellant's new e-mail address on 29 January 2015.
5. The Charity Commission was then contacted by a television company which had made a documentary featuring the Appellant. As a result of the film, the Commission decided to remove the Appellant from the Register of Charities with immediate effect, and notified the Appellant of this on 12 February, by e-mail to its new e-mail address. On 3 March, copies of all the correspondence were served on the solicitors who were by then acting for the Appellant.
6. The Appellant states that it did not see the e-mails of 29 January and 12 February until 9 March 2015, and that the first it knew of its removal from the Register was when this fact was broadcast in the television documentary on 18 February.

#### *Submissions*

7. The Charity Commission submits that the decision which engaged the right of appeal to the Tribunal was the one made, pursuant to s. 34 of the Charities Act 2011, on 19 January 2015. It argues that the 42 day time limit for applying to the Tribunal began to run on this date. It further argues that the date on which the decision was to take effect, whether in three months' time or with immediate effect, is irrelevant for the purposes of the Tribunal's time limits because these refer only to the date on which the appealable decision is made and not the date on which the decision will take effect.
8. The Charity Commission further submits that Rule 26 of the Tribunal's Rules requires an application to the Tribunal to be received within 42 days of the date on which notice of the relevant decision was "sent" to the Appellant. It further submits that there was no legal requirement for it to serve the decision formally or to send it by post, so that its communication by e-mail to the usual e-mail address was sufficient to satisfy rule 26.
9. Finally, the Charity Commission submits that the time limit for making an application to the Tribunal expired on 2 March 2015 so the Appellant is out of time. However, it has helpfully

made clear that, if the Appellant's application is found to have been made out of time, then it will not oppose an extension of time being granted by the Tribunal so as to allow the appeal to proceed.

10. The Appellant submits that the word "sent" in rule 26 of the Tribunal's Rules is "odd, legally speaking". It argues that it makes no sense for a time limit to start to run before the prospective appellant has received the relevant decision, so that the word "sent" should be interpreted by the Tribunal so as to include the concept of "receipt". The Appellant refers me to s. 7 of the Interpretation Act 1978, which defines "sent" in the context of a requirement for postal service.
11. The Appellant argues that the use of e-mail is not permitted under the Rules for the sending of a decision which is to be appealed, or alternatively that it is permitted only if express permission to the use of e-mail for the communication of such decisions is given.
12. The Appellant offered to agree with the Commission that the effective date of service of its decision was 12 March, being the date on which its solicitor received a copy of the 19 January letter. As the Commission rightly pointed out, the question of when the letter was sent is a matter formally for the Tribunal to decide, and not one which can be agreed between the parties.

#### *Ruling on Whether the Application to the Tribunal is Out of Time*

13. I am satisfied that the Charity Commission's letter of 19 January 2015 is the decision which engaged a right of appeal to the Tribunal under s. 34 and Schedule 6 to the Charities Act 2011. I have seen a copy of the letter sent on that date and it makes clear that it is a formal decision in respect of which there is a right of appeal to the Tribunal.
14. I have considered whether it is arguable that the letter of 12 February constituted a fresh decision under s. 34 of the 2011 Act. I note that it contained a materially different provision (the operative date), in respect of which there had apparently been no opportunity for the Appellant to make representations. However, on balance, I am persuaded that the operative date of removal from the Register should be viewed as an administrative measure rather than as an integral component of the decision which engages a right of appeal to the Tribunal, namely a decision that an institution should be removed from the Register. It follows that the decision was taken on 19 January 2015, notwithstanding the subsequent amendment to its administrative provisions.

15. With regard to rule 26, I note that the Rules are made by statutory instrument, having been presented to Parliament by the Tribunals Procedure Committee, a body established under s. 22 of the Tribunals, Courts and Enforcement Act 2007 (“TCEA”). The Rules are in a standard format which applies to all the Tribunal jurisdictions in the TCEA framework and this uniformly calculates time with reference to the date on which a decision is “sent” rather than the date on which it is “received”. I suggest that this is an expedient measure, as it is usually easier to prove the date on which a letter was sent than it is to prove the date on which it was received. Any prejudice to the recipient is of course capable of being remedied by the exercise of the Tribunal’s discretion to extend time to allow a late appeal to proceed. I am satisfied that it is appropriate to apply the Rules as they are written and that there is no requirement to import different concepts into them in order to achieve a fair and just result.
16. I am satisfied that there was no requirement for the Charity Commission to “serve” a decision made under s. 34 of the Charities Act 2011 in accordance with s. 339 of that Act and so, in the context of this decision, I give the word “sent” its ordinary meaning, which seems to me to include the sending of a decision letter by e-mail. I note that the Appellant had been corresponding with the Commission by e-mail prior to the 19 January letter and so I reject the Appellant’s argument that it had not consented to receive correspondence from the Charity Commission by e-mail.
17. It is unfortunate that the Appellant’s change of e-mail address was not picked up quickly by the Charity Commission, but I consider that to be a factor relevant to the exercise of my discretion to extend time, rather than a matter relevant to the validity of the means of communication.
18. The Appellants invite me to “refer” the matter of the correct interpretation of rule 26 to the Upper Tribunal for a definitive ruling on the matter. I am unsure what power I am invited to rely upon to do this, but in any event I decline to do so, as I am satisfied that I am able to make a ruling which is fair and just and allows me to progress this case without further delay.
19. I conclude that the relevant decision in this matter was “sent” to the Appellant for the purposes of rule 26 on 19 January 2015 and that the 42 day time limit began to run from that date. Consequently, I conclude the Appellant’s application to the Tribunal was made out of time. I also conclude that the facts of this case concerning the Commission’s delay in noting the change of e-mail address and the consequent re-sending of the decision to a different e-mail address are matters which are relevant to the exercise of my discretion to admit the appeal out of time and do not affect the validity of the Charity Commission’s decision or the

fact that it was validly “sent” (as I find) to the Appellant for the purposes of the Rules.

*Ruling on Extending Time for Out of Time Application to Proceed*

20. I must now consider whether to exercise my discretion to admit the Notice of Appeal out of time. This discretion is derived from rule 5 (3) (a) of the Tribunal’s rules, and must be exercised so as to give effect to the overriding objective in rule 2.

21. I have considered the Upper Tribunal’s decisions in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC) and *Leeds City Council v HMRC* [2014] UKUT 0350 (TCC) in respect of the criteria to be applied by the Tribunal when deciding whether to allow an appeal to proceed out of time.

22. In *Leeds City Council* Judge Bishopp commented at [19] that:

*In my judgment therefore the proper course in this tribunal, until changes to the rules are made, is to follow the practice which has applied hitherto, as it was described by Morgan J in Data Select.*

23. This was a reference to the following passage in Morgan J’s decision in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC):

*“[34] ... Applications for extensions of time limits of various kinds are commonplace and the approach to be adopted is well established. As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions: (1) what is the purpose of the time limit? (2) how long was the delay? (3) is there a good explanation for the delay? (4) what will be the consequences for the parties of an extension of time? and (5) what will be the consequences for the parties of a refusal to extend time. The court or tribunal then makes its decision in the light of the answers to those questions.*

24. I consider that (1) the purpose of the time limit in respect of appealing decisions under s. 34 of the Charities Act 2011 is to allow charities a reasonably generous time in which to decide whether to appeal to the Tribunal, whilst balancing against that the Charity Commission’s wish for finality in disputed matters so that it can devote its resources to other work if there is no appeal. I find that (2) the delay in this matter was a relatively short one, of 23 days. I am satisfied (3) that there was a good reason for the overall delay, which falls into two periods. The first period of delay is attributable to the Charity Commission’s failure to action quickly the Appellant’s notification of its change of e –mail address so that ten days passed before it sent the decision letter to the correct e-mail address. The Appellant did not then apply to the Tribunal within 42 days of the e-mail being re-sent to the correct address on 29 January, so this is the second period of delay. I accept there was a good reason for this

period also, as the Appellant did not have access to its e-mails until 9 March because the Appellant's trustees' computers were seized by the police and not returned to them until that date. After that period, I note that the Appellant instructed a firm of solicitors and took reasonably expeditious steps to prepare its application to the Tribunal, received on 25 March. The consequence to the Appellant (4) of my refusing an extension of time is that it would not be able to pursue its appeal in respect of its removal from the Register of Charities. That is a serious matter, especially in view of the potential tax consequences of the Charity Commission's decision. There are also obvious consequences for the Charity Commission resulting from a further period of delay in finalising this matter, but it has already indicated that it would not oppose an extension of time being granted on the facts of this case. In all these circumstances, I consider that it would be fair and just to extend time to allow the Appellant's application to the Tribunal to proceed and I now decide accordingly.

*Next Steps*

25. In my directions of 17 April, I provided that the Appellant may serve on the Respondent and file with the Tribunal grounds for appeal amended or otherwise within 42 days of the date upon which the Appellant's appeal is finally determined to have been filed in time, or within 42 days of the date upon which the Appellant is finally granted leave to appeal out of time, whichever the case may be. That time limit starts to run from the date below.
26. I also provided that the Respondent shall serve on the Appellant and file with the Tribunal its response to the Appellant's appeal within 28 days of the date upon which the Appellant files its grounds for appeal, whether amended or otherwise.
27. Once the parties have served on the Tribunal the relevant documents, I will issue further directions in order to bring the substantive appeal to a hearing as soon as practicable.

**ALISON MCKENNA**

**PRINCIPAL JUDGE**

**26 May 2015**

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