



Appeal number: CA/2015/0008

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

MR STEPHEN HUNT

Appellant

- and -

**THE CHARITY COMMISSION FOR ENGLAND
AND WALES**

Respondent

TRIBUNAL: JUDGE JONATHAN HOLBROOK

DECISION ON PRELIMINARY ISSUE

Sitting in Chambers on 14 October 2015

Upon considering written representations made by the parties

IT IS DECIDED that:

1. The appeal was made in time.
2. The Charity Commission must send to the Tribunal a response to the notice of appeal so that it is received within 28 days after the date of this Decision.

REASONS

1. On 15 September 2015 the Tribunal received a notice of appeal submitted by Mr Stephen Hunt. This was initially accepted by the Tribunal's administration and notice to lodge a response was duly given to the Charity Commission as the named respondent to the appeal.

2. The Charity Commission subsequently raised the question of whether the notice of appeal had been received by the Tribunal within the period permitted by rule 26 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Tribunal Rules"). As a result, directions were given by the Chamber President on 21 September 2015 for the parties to provide written submissions in order for the Tribunal to rule on the preliminary issue of timeliness and (if relevant) whether to extend time. Written submissions have now been received from both parties in response to those directions.

3. The appeal relates to the Charity Commission's decision that an organisation known as "Annuity Helpline" is not a charity and may not be entered into the register of charities. That decision (which was made by way of a re-consideration of an earlier decision to like effect) was communicated to Mr Hunt by letter dated 31 July 2015. The letter was addressed to Mr Hunt personally at his home address.

4. On 4 August 2015, the decision was published on the Charity Commission's website.

5. Rule 26(1) of the Tribunal Rules provides:

An appellant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of appeal so that it is received—

(a) if the appellant was the subject of the decision to which the proceedings relate, within 42 days of the date on which notice of the decision was sent to the appellant; or

(b) if the appellant was not the subject of the decision to which the proceedings relate, within 42 days of the date on which the decision was published.

6. The appellant in these proceedings is Mr Hunt. But was Mr Hunt the subject of the decision to which the proceedings relate? The answer to this question is important because it determines which limb of rule 26(1) governs the time limit for making the appeal. If it is limb (a), then the appeal was made out of time. However, if it is limb (b), then the appeal was made in time (albeit on the last permissible day for doing so).

7. The Charity Commission asserts that Mr Hunt was the subject of the decision to which the proceedings relate; that limb (a) of rule 26(1) accordingly governs the time limit for appealing; and that the appeal was therefore made out of time. In support of this assertion the Charity Commission points out that Mr Hunt is a proposed trustee of Annuity Helpline; that the decision in question was addressed to him and sent to him by email; and that he was also the correspondent on behalf of the organisation both during the initial registration application and the decision review. The Charity Commission also notes that Mr Hunt "appears to agree" that the appeal was made out of time.

8. Insofar as Mr Hunt's apparent stance on the application of rule 26(1) is concerned, I note that, although his submission to the Tribunal posed the rhetorical question "So, why did we not appeal in time?", Mr Hunt does not address the application of rule 26(1) directly in that submission. Nor does he appear to have considered the application of the rule in any detail, or to have taken advice on the point. Mr Hunt's remark seems to me merely to reflect a tacit assumption on his part that the Charity Commission was correct when it asserted that the appeal was made out of time. For this reason Mr Hunt's submission was focused solely on the question of whether time for appealing should be extended. In these circumstances I do not consider that Mr Hunt can fairly be said to have conceded that his appeal was out of time in the first place. In any event, the question of whether the appeal was made in time is a jurisdictional one and is for the Tribunal to determine.

9. In my judgment, Mr Hunt was not the subject of the decision to which the proceedings relate. The subject of that decision was Annuity Helpline, the organisation to which the application for registration as a charity related. The sole focus of the decision was the question of whether that organisation satisfied the statutory criteria for registration as a charity. This is reflected (unsurprisingly) by the fact that the heading to the decision is "Annuity Helpline". There is nothing in the decision which relates to Mr Hunt personally.

10. Schedule 6 to the Charities Act 2011 identifies the persons who may appeal against the Charity Commission's refusal to register an organisation as a charity. Those persons include the organisation itself (if it is a body corporate) and the persons who are or claim to be the charity trustees for the organisation. I have not been told whether Annuity Helpline is a body corporate. However, if it is, then it would have a right of appeal against the Charity Commission's decision in its own right, subject to the time limit in rule 26(1)(a) of the Tribunal Rules. However, this is not an appeal by Annuity Helpline – it is an appeal by Mr Hunt as a person who is or claims to be a charity trustee. Mr Hunt's right of appeal is subject to the time limit in rule 26(1)(b). The appeal has therefore been made in time.

11. Given that the appeal has been made in time, the Charity Commission must now file a response.

SIGNED: J W HOLBROOK

DATED: 14 October 2015