



Appeal number: CA/2016/0002

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

HOSPICE AID UK

Applicant

- and -

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 4 May 2016

RULING ON APPLICATION FOR PERMISSION TO APPEAL

The Applicant's application for permission to appeal dated 27 April 2016 is refused.

REASONS

1. The Notice of Appeal in this case was submitted to the Tribunal on 21 March 2016. The decision of the Charity Commission which the Applicant sought to challenge was made on 18 December 2016, so the application to the Tribunal was made out of time. There was no application for the Tribunal to exercise its discretion to extend the deadline for submitting the Notice of Appeal.

2. As I noted in my ruling of 13 April, in ordinary circumstances I would have asked the parties to send me their further submissions in relation to the *Data Select* criteria before deciding whether to extend time. However, in this case the Respondent raised a more fundamental objection to the appeal proceeding, which was to submit that the decision it had made did not fall within the list of appealable decisions in column 1 of Schedule 6 to the Charities Act 2011. This was because the Respondent had refused to issue a Direction under s. 42 of the Charities Act 2011, whereas the right of appeal in column 1 of Schedule 6 to that Act is against the issuing of a Direction under s. 42. The Respondent submitted that the appeal should be struck out for want of jurisdiction.

3. On receipt of the Charity Commission's submission, the Tribunal gave the Applicant the opportunity to make representations on the proposed strike out in accordance with rule 8 (4) of the Tribunal's Rules. I was not persuaded by the Applicant's solicitor's submissions and struck out the Notice of Appeal on 13 April 2016, on the basis that the Tribunal had no jurisdiction to determine the appeal under s. 319 (1) of the Charities Act 2011 because it did not arise from a decision direction or order listed in column 1 of schedule 6 to that Act.

4. On 27 April 2016, the Applicant's solicitor, Mr Meakin of Stone King, submitted an application for permission to appeal to the Upper Tribunal (Tax and Chancery Chamber). He argues that this case raises a matter of general importance, but that is not a relevant consideration for me in determining an application for permission to bring a first stage appeal. The grounds of appeal are threefold:

(i) That (despite the fact that no application for an extension of time had been made) the Tribunal erred in law in failing to invite the Applicant's representations in respect of the *Data Select* criteria before striking out the appeal;

(ii) That, "logically" where column 1 of schedule 6 provides for a right of appeal against the making of a decision direction or order, the Tribunal should regard itself as having jurisdiction to hear an appeal against any concomitant refusal so to act;

And (iii), that the Tribunal acted in contravention of the Applicant's rights under Article 6 of the European Convention on Human Rights in taking a contrary view because it left the Appellant without a remedy in respect of the Respondent's decision to refuse to make a s. 42 direction.

5. I have considered Mr Meakin's submissions carefully. In relation to ground (i), it does not seem to me to be arguable that there was an error of law in failing to invite submissions from him in respect of a procedural application which he had not made and which concerned a substantive application which the Tribunal had no jurisdiction to determine in any event. It was clearly proportionate and in accordance with the overriding objective for the Tribunal to consider the issue of lack of jurisdiction as a priority before deciding whether to exercise the discretionary power which would be available to it only if it ruled that the appeal was within its jurisdiction; In relation to ground (ii), it is quite clear on the face of schedule 6 that the right of appeal created by Parliament is against the making of a positive direction under s. 42 of the 2011 Act only. Mr Meakin submits that the Tribunal should have inferred the existence of an appeal right over and above those expressly conferred by Parliament in the schedule, but he cites no authority or legal principle in support of his argument. Under s. 319 of the 2011 Act the Tribunal has jurisdiction only in relation to those decisions listed in column 1 of schedule 6 and this particular decision is not so listed. As Mr Meakin has not provided me with any legal basis on which the Tribunal could have taken a contrary view I see no arguable error of law in the Tribunal having ruled that there is no right of appeal available to the unsuccessful applicant for a s.42 direction. In relation to ground (iii), as I pointed out in my ruling of 13 April, the Parliamentary scheme does not leave the Applicant without a remedy because its Article 6 rights are protected by the right to make an application to the Administrative Court for judicial review in respect of those decisions directions or orders not listed in schedule 6 to the 2011 Act. Mr Meakin has repeated his original submission on this point as a ground of appeal. However, while he states that he does not agree with my view, he has not

explained why he considers that it involved an alleged error of law. In the circumstances I also do not consider this ground to be arguable.

6. In accordance with rule 43, I have considered whether to review the decision of 13 April under rule 44 of the Tribunal's Rules. I have decided not to undertake a review because I am not satisfied that the decision of 13 April contained an error of law.

7. I am also not persuaded that the Applicant's grounds of appeal are arguable and so I must refuse permission to appeal. The Applicant has a right to renew its application to the Upper Tribunal within 28 days of the date appearing below. See <https://www.gov.uk/tax-upper-tribunal/how-to-appeal>

PRINCIPAL JUDGE

4 May 2016

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