



Appeal number: CA/2016/002

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

HOSPICE AID UK

Appellant

- and -

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondents

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 13 April 2016

Upon the Appellant submitting a Notice of Appeal dated 21 March 2016, which was filed outside of the time limits because the relevant decision was made by the Charity Commission on 18 December 2015

And Upon the Respondent having submitted that the Tribunal should strike out this appeal on the basis that it falls outside of the Tribunal's jurisdiction

And Upon the Tribunal having invited the Appellant on 5 April 2016 to make representations as to why this appeal should not be struck out under rule 8(2) (a) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

And having considered the Appellant's representations dated 8 April 2016

IT IS DIRECTED that this appeal is now struck out on the basis that the Tribunal has no jurisdiction to determine it.

REASONS

1. The Notice of Appeal in this case was submitted to the Tribunal out of time and the Appellant's solicitor submitted that the decision made by the Charity Commission following an internal Decision Review should be regarded by the Tribunal as the decision which gave rise to the right of appeal to the Tribunal. I must reject this submission and regard the application as one made out of time because, unless the Charity Commission changes its original decision on Review (thereby making a fresh

decision), the time limits for the Decision Review and for lodging an appeal to the Tribunal run concurrently, so that if an Appellant waits for the outcome of the Decision Review before making an application to the Tribunal, he or she runs the risk that they will have exceeded the Tribunal's time limits in relation to the decision listed in Schedule 6 to the Charities Act 2011, which is the decision which gives the Tribunal jurisdiction to hear an appeal.

2. The Tribunal's approach to this issue is a well-trodden path and a matter of public record – see, for a recent example, the decision in *Muhoro v Charity Commission* published on <http://www.charity.tribunals.gov.uk/documents/decisions>. The risk for the Appellant of awaiting a Decision Review before applying to the Tribunal is also clearly flagged by the Charity Commission in its Guidance on requesting a Review – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/394719/our_guidance_on_requesting_a_review.pdf. It would have been open to the Appellant to make a protective application to the Tribunal within the time limit and asked for its case to be stayed pending the outcome of the internal Decision Review, but no such application was made in this case.

3. Where an appeal is made to the Tribunal out of time, an application may of course be made for the Judge to exercise his or her discretion to extend the deadline where it is fair and just to do so. Such discretion is exercised in accordance with the principles established in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC) and *Leeds City Council v HMRC* [2014] UKUT 0350 (TCC). In this case, no application for a discretionary extension of time was submitted with the Notice of Appeal. In ordinary circumstances I would have asked the parties to send in 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 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.

4. On receipt of the Charity Commission's submission, the Tribunal gave the Appellant the opportunity to make representations on the proposed strike out in accordance with rule 8 (4) of the Tribunal's Rules. The Appellant's solicitor submitted that, where Column 1 of Schedule 6 provides for a right of appeal against the making of a decision, direction or order, the Tribunal should infer that it included a power to determine an appeal against any refusal so to act. He submits that the Tribunal would be acting in contravention of the Appellant's rights under Article 6 of the European Convention on Human Rights if it were to take a contrary view because it would leave the Appellant without a remedy. He submitted that Parliament had intended to give the Appellant a remedy.

5. I am not persuaded by the Appellant's solicitor's representations. He cites no authority in support of them. It is quite clear on the face of Schedule 6 to the 2011 Act that the right of appeal created by Parliament is against the making of a positive Direction only and there is no ambiguity which would allow me to look behind the black letter law. The intention of Parliament in creating a limited right of appeal is emphasised by the fact that the principal persons who have a right of appeal under column 2 of Schedule 6 are those who are the subject of a positive Direction. It is also emphasised by the remedies available to the Tribunal in column 3 of the

Schedule, which do not include power for the Tribunal to make a Direction where one has been refused. It follows that there is no provision in Schedule 6 which is capable of being viewed as conferring a right of appeal on the unsuccessful applicant for such a Direction and I have no power to create appeal rights over and above those conferred by Parliament.

6. The Court of Appeal has recently considered the statutory scheme for charities to challenge decisions of the Charity Commission and concluded that, where there is a lacuna in that scheme, a charity may bring judicial review proceedings in the Administrative Court¹. The Master of the Rolls specifically ruled out the “reading in” of provisions not conferred by Parliament in the context of that appeal. Whilst the context here is different, it still follows in my view that there can be no breach of Article 6 rights where Schedule 6 does not provide a right of appeal because there is a separate remedy available to charities through the courts. However, I note that in this case an application for judicial review would appear to be out of time.

7. In conclusion, I am not satisfied that a decision which gives rise to a right of appeal to the Tribunal has been made. I conclude that the Tribunal has no jurisdiction in this matter and so this appeal must now be struck out. I have directed accordingly.

Alison McKenna

PRINCIPAL JUDGE

13 April 2016

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¹ <http://www.bailii.org/ew/cases/EWCA/Civ/2016/154.html>