



**First-tier Tribunal
(General Regulatory Chamber)
Charity**

Appeal Reference: CA/2018/0004

**Decided without a hearing
On 6 July 2018**

Before

JUDGE J HOLBROOK

Between

ICRI LIMITED

Appellant

and

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

DECISION AND REASONS

© CROWN COPYRIGHT 2018

DECISION

The appeal has been made out of time and the Tribunal refuses to extend time for starting proceedings in this case.

REASONS

Background and preliminary issues

1. By a Notice of Appeal presented to the Tribunal on 16 May 2018, ICRI Limited seeks to appeal against an order of the Charity Commission dated 29 March 2018. That order was made under section 85(2) of the Charities Act 2011 to direct the application of the property of a charity known as Enfield Island Village Trust. The order was addressed to ICRI Limited and was posted to its registered office on the same day together with an explanatory letter and a statement of reasons.

2. The Notice of Appeal describes the desired outcome of the appeal in the following terms:

“We are seeking that the tribunal make a decision on a breach of contract, as well as verify that the Charity Commission have acted ultra vires and issue an order for the reinstatement of what is legal and rightful in the framework of the law. Disciplinary action against Charity Commission and employees who have engaged in what we consider to be illegal action and activities.”

3. Upon preliminary consideration of the Notice of Appeal, it was noted that the appeal appeared to have been made out of time. Consequently, directions were given for the parties to provide written submissions 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.

4. The Charity Commission argues that the appeal is out of time and that time should not be extended. It also submits that the appeal should be struck out in any event because the Tribunal cannot grant the relief which is sought and because the appeal is more akin to an application for judicial review than an appeal to the Tribunal by way of rehearing.

5. ICRI Limited has made submissions in reply, opposing the Charity Commission’s arguments.

Law

6. The procedure for making an appeal in the present circumstances is governed by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“the Tribunal Rules”). Rule 26(1) 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.*

7. The Tribunal has power (by virtue of Rule 5(3)(a)) to extend the time for complying with Rule 26(1). However, Rule 26(5) provides that a notice of appeal presented later than the time required by Rule 26(1) must include a request for an extension of time and the reason why the notice of appeal was not provided in time.

8. As with any case management decision, an application for an extension of time should be determined having regard to the overriding objective of dealing with cases fairly and justly. When the Tribunal is asked to extend a relevant time limit, it should usually ask 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 Tribunal should then make its decision in the light of the answers to those questions.

Discussion

9. The time limit for starting proceedings in the present case is governed by Rule 26(1)(a) of the Tribunal Rules and the last day for making the appeal was therefore 10 May 2018. Proceedings were not started until the Notice of Appeal was received by the Tribunal on 16 May 2018. It follows that the appeal was made out of time and the Tribunal must not admit the notice of appeal unless it extends time under Rule 5(3)(a).

10. I note ICRI Limited’s assertion that it did not receive the Charity Commission’s order until 6 April 2018, and that it therefore understood the 42-day time limit to expire on 18 May. This understanding is erroneous, however, because time begins to run for the purpose of Rule 26(1)(a) by reference to “the date on which notice of the decision was sent”.

11. The purpose of the time limits in Rule 26(1) is to ensure that appeals against relevant decisions of the Charity Commission are made reasonably promptly. They also provide a degree of certainty in the conduct of the Commission’s regulatory functions because, in most cases, those decisions cease to be amenable to challenge once the time limit has expired. Whilst a delay of six days is relatively modest, there would

still need to be a good explanation for that delay to justify the Tribunal extending time for making an appeal.

12. I note ICRI Limited's explanation that, having filled-in the Notice of Appeal (which is a standard form provided by the tribunal administration) on 1 May 2018, it posted the Notice to the Charity Commission on the same day, together with a brief covering letter. However, the Notice of Appeal was not sent to the Tribunal at that time. It was not until 16 May that ICRI Limited sent a copy of the Notice to the Tribunal by email, along with a copy of an email from its office administrator to the Commission stating:

"We posted the attached document for consideration over 2 weeks ago and are yet to receive a response from the GRC. However, it has come to my attention that I sent the documents to yourself and not to the General Regulatory Chamber."

13. It is thus clear that the explanation for the delay in making the appeal is that the Notice of Appeal was sent to the Charity Commission in error, rather than to the Tribunal, and that this error was not spotted until after the 42-day deadline had expired. The question for me, then, is whether this explanation is a good one.

14. ICRI Limited says that the error was caused by the fact that its offices had been broken into on 14 March 2018 and its IT equipment had been stolen. It was operating at limited capacity in the aftermath of the break-in and was struggling to recover its lost data, including data relevant to the appeal. It is for this reason, I am told, that the Notice of Appeal was posted to the Charity Commission alone on 1 May.

15. I am not persuaded that this is a good explanation for the error and thus for the resulting delay in making the appeal. The Charity Commission's order was not sent to ICRI Limited until a fortnight after its offices were broken into. The order was sent by post in any event and the accompanying letter clearly stated that there was a right to appeal to the Tribunal within 42 days of the date the order was sent. It included a link to online guidance about appealing to the Tribunal. ICRI Limited was evidently able to find (and complete) the tribunal application form within the 42-day period. The form clearly indicates that, once completed, it should be sent to the Tribunal and provides both email and postal addresses for this purpose. I can therefore see no reasonable explanation for ICRI Limited's error.

16. In the circumstances, it is unnecessary for me to consider the Charity Commission's request for the appeal to be struck out on other grounds. To the extent that the Commission's arguments in this regard are relevant to the question whether time for appealing should be extended, however, I note that the grounds for appeal are not readily apparent from the Notice of Appeal. Whilst it might be inferred that ICRI Limited wishes the Tribunal to quash the Charity Commission's order, ICRI Limited certainly could not expect to obtain the relief asked for in the Notice of Appeal. I am therefore doubtful that the appeal would stand a reasonable prospect of success in any event, although the parties would incur significant time and expense were I to extend time for making it.

17. For the above reasons, I refuse to extend time for starting proceedings in this case. It follows that the Tribunal must not admit the Notice of Appeal.

Signed J. W. Holbrook
Judge of the First-tier Tribunal
Date: 6 July 2018