



Appeal number: CA/2014/0017

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

DAVID JENNINGS

Appellant

- and -

**THE CHARITY COMMISSION
FOR ENGLAND AND WALES**

Respondents

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 16 December 2014

RULING ON OUT OF TIME APPEAL

1. Mr Jennings applied to the Tribunal in October 2014. His initial application related to his recent correspondence with the Charity Commission with regard to the draft Statement of Results of an Inquiry (“SORI”), in respect of which he had been asked to comment on the passages referring to himself. In subsequent correspondence he has explained that he wishes to appeal against the Charity Commission’s decision to open a statutory inquiry into a charity known as the Greenfinch Charitable Trust in January 2013.

2. As the Notice of Appeal in relation to that decision is out of time under the Tribunal’s Rules, the Tribunal must decide whether to extend the time for appealing so as to allow the appeal to proceed.

3. I initially asked the parties for their submissions as to whether the appeal should be allowed to proceed out of time. I also suspended the Charity Commission’s obligation to file a Response to the Notice of Appeal until I had decided that issue, so as not to put it to unnecessary work.

4. In directions dated 21 November I asked the parties to provide me with further information about the history of this matter. Following both parties' helpful replies, my understanding of Mr Jennings' situation is as follows. The Charity Commission, in recent High Court proceedings, relied on an argument that Mr Jennings was a *de facto* trustee of the Greenfinch Charitable Trust between May 2007 and January 2009. It appears that those proceedings have now been settled without a judicial ruling on whether that argument was correct. I appreciate that Mr Jennings strongly disagrees with the Charity Commission's view.

5. When the Charity Commission decided to open its statutory inquiry into the Greenfinch Charitable Trust in January 2013, it no longer regarded Mr Jennings as a *de facto* trustee. The charity was by then in liquidation. As the Charity Commission did not consider that he had standing to bring an appeal to the Tribunal, it did not inform Mr Jennings that there is a right of appeal to the Tribunal when it opens an inquiry. Mr Jennings eventually found out about the Tribunal and so made his application, albeit out of time.

6. The Charity Commission's submission is that Mr Jennings' appeal may not be allowed to proceed because he is not a person who had standing to appeal to the Tribunal. This is because he does not fall under column two of Schedule 6 to the Charities Act 2011, as it applies to a decision to open an inquiry under s. 46 of that Act. The Charity Commission submits that the only persons who can appeal to the Tribunal about a decision to open an inquiry are "the persons who have control or management of the institution" which is the subject of the inquiry, at the time the inquiry is opened.

7. Mr Jennings does not suggest that, as at January 2013, he did have control or management of the Greenfinch Charitable Trust. He rather asserts that he should be allowed to appeal to the Tribunal because the Charity Commission has acted unfairly towards him by treating him as a trustee in one set of legal proceedings whilst excluding him from the right to challenge its actions in another, by failing to inform him about the Tribunal. He argues that the inquiry looked back over a time at which the Charity Commission did regard him as a *de facto* trustee, so that he ought to have been given the opportunity to challenge its findings and influence what is said about him in the SORI.

8. I have considered Mr Jennings' arguments carefully. I am sympathetic to any lay person who applies to the Tribunal out of time in circumstances where they have not been informed of the existence of the Tribunal by the Charity Commission. I remind the Charity Commission that the question of who has standing to apply to the Tribunal is properly one for the Tribunal itself.

9. It seems to me that, if there were a right to appeal to the Tribunal as a "person affected" by the Charity Commission's decision to open the inquiry, as there is in relation to many of the other decisions in column one of Schedule 6 to the 2011 Act, then it would be arguable that Mr Jennings' appeal should be allowed to proceed out of time in these circumstances. However, the categories of person who can apply to the Tribunal were more narrowly drawn by Parliament in relation to a decision to open an inquiry, and so I conclude that I have no discretion to extend the right of appeal to Mr Jennings because he was not, at the time the inquiry was opened, a person with control or management of the relevant institution. Whilst I accept that the inquiry may have looked back over a time when Mr Jennings was more closely

involved with the charity, I conclude that, as it is the decision to open the inquiry which generates the right of appeal to the Tribunal, the question of standing is linked to Mr Jennings' position in relation to the charity as of that date. In the circumstances, I agree with the Charity Commission that Mr Jennings does not have a right of appeal to the Tribunal.

10. Accordingly, I now refuse to extend time to allow Mr Jennings' application to proceed so that this appeal will proceed no further.

**ALISON MCKENNA
PRINCIPAL JUDGE
16 December 2014**

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