



Appeal number: CA/2015/0013

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

MR LENNOX PATRICK RYAN

Appellant

- and -

**THE CHARITY COMMISSION FOR ENGLAND
AND WALES**

Respondent

TRIBUNAL: JUDGE JONATHAN HOLBROOK

DECISION ON PRELIMINARY ISSUE

Sitting in Chambers on 4 January 2016

Upon considering written representations made by the parties

The appeal is struck out.

REASONS

Introduction

1. On 16 November 2015 the Tribunal received a notice of appeal submitted by Mr Ryan. The notice of appeal stated that it related to a decision taken by the Charity Commission on 5 October 2015 and it made reference to an email of that date sent to Mr Ryan by Mr Steven Joshua, a case manager in the Commission's Operations Division. Mr Ryan sent a copy of the email with his notice of appeal and, in a separate email to the Tribunal on the same day, he stated that:

“The relevant Order/Decision in Schedule 6 of the Charities Act 2011 is an Order made by the Commission under section 69(1) and as a resident of Dartford I am a person who is or may be affected by the Order.”

2. The notice of appeal was served on the Charity Commission which subsequently raised the question of whether the notice actually related to a decision which is listed in Schedule 6 to the Charities Act 2011 (“the Act”) and, if it did, 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 on 24 November 2015 for the parties to provide written submissions in order for the Tribunal to rule on the preliminary issues of whether the notice of appeal related to an appealable decision and (if relevant) the questions of timeliness and whether to extend time. Written submissions have now been received from both parties in response to those directions.

Background

3. In exercise of its powers under section 69 of the Act, the Charity Commission has made a scheme in relation to land known as Hesketh Park in Dartford, being land held on charitable trusts by Dartford Borough Council. The Commission made this scheme (“the Scheme”) on 9 November 2011.

4. It appears that at some point during 2014-15, the council decided to grant a lease of part of Hesketh Park for use as a cricket club. Mr Ryan objected to this proposal and raised various issues concerning the Scheme and the proposed lease with the Charity Commission. On 8 September 2014 the Commission wrote to Mr Ryan to inform him that the issues he had raised did not give rise to regulatory concerns. At Mr Ryan's request, the decision recorded in that letter became the subject of an internal decision review process. Mr Ryan was notified of the outcome of this process on 1 October 2015. In the main, the review confirmed the original decision that there were no grounds for intervention by the Charity Commission. However, in relation to one issue raised by Mr Ryan – that the land identified in the Scheme was not the land which the council proposed to lease to the cricket club – the reviewer concluded that this was a valid concern which should be followed up with the council in order to consider whether a further scheme may be required.

5. On 5 October 2015, Mr Joshua sent the email referred to above. In it, he informed Mr Ryan that he had written to the council to request further information to enable the Charity Commission to ascertain whether the proposed lease would require

the Commission's authority. He also stated that he would not be giving further consideration to the other issues previously raised by Mr Ryan. The reason for this was that those issues had been addressed as part of the earlier decision review process.

The Tribunal's jurisdiction

6. Section 319 of the Act provides that an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column 1 of Schedule 6 to the Act. No other decisions are appealable to the Tribunal.

7. In relation to an appealable decision, rule 26 of the Tribunal Rules provides that proceedings must be started by sending a notice of appeal so that it is received by the Tribunal within 42 days of the date on which notice of the decision in question was either sent to the appellant or published (depending on the circumstances). The Tribunal has power (pursuant to rule 5(3)(a)) to extend the period for making an appeal. However, in deciding whether to do so, the Tribunal should as a general rule 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? (see the decision of the Upper Tribunal in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC)).

8. Unless the Tribunal agrees to extend time, then it must not admit a notice of appeal which is received late. Moreover, under rule 8(2), the Tribunal must strike out proceedings if it does not have jurisdiction in relation to them.

Conclusion

9. The grounds of appeal set out in Mr Ryan's notice of appeal refer to Mr Joshua's refusal to reconsider the issues in relation to which the Charity Commission had previously refused to intervene. Those issues (a number of which are restated in the grounds of appeal) appear to concern alleged defects in the Scheme and it seems to me that the reality of these proceedings is that Mr Ryan is now seeking to appeal against the order by which the Scheme was originally made. This appears to be confirmed by Mr Ryan's email to the Tribunal mentioned at paragraph 1 above. Although, in his recent submission to the Tribunal, Mr Ryan argues that his appeal relates not to the Scheme itself, but rather to its "re-use" for the proposed lease to the cricket club, it is apparent that his underlying concern relates to the terms in which the Scheme was drafted.

10. An order under section 69(1) of the Act is, of course, one which is mentioned in column 1 of Schedule 6 to the Act and is thus a matter which may be the subject of an appeal to the Tribunal. However, it is self-evident that the notice of appeal received by the Tribunal on 16 November 2015 was not received within the period permitted by rule 26 of the Tribunal Rules. Indeed, the appeal appears to have been made almost four years out of time. Mr Ryan has not offered any particular reason why time should be extended in this case but, having regard to the five questions posed by the Upper Tribunal in the *Data Select* case, it seems plain to me that time for appealing against the Scheme should not be extended in the present circumstances and therefore that the Tribunal must not admit the notice of appeal. The purpose of the time limit in rule 26 is to ensure that any appeal against a decision of the Charity Commission is brought

without undue delay. The delay in this case is extreme and there appears to be no reasonable explanation for it. The potential adverse consequences of the Tribunal revisiting the validity of the Scheme after such a long delay are considerable for the Commission (and perhaps for the council and others) and would seem to outweigh any prejudice to Mr Ryan of a refusal to admit his appeal out of time.

11. To the extent (if any) that Mr Ryan is seeking to appeal against other decisions of the Charity Commission – such as its refusal to initiate regulatory action in response to the issues he has raised, or its refusal to further reconsider those issues – I am satisfied that none of those decisions are of a kind mentioned in Schedule 6 to the Act. Although Mr Ryan is plainly dissatisfied with the Commission’s response, he has no right of appeal to the Tribunal in this regard. The appeal must therefore be struck out.

SIGNED: J W HOLBROOK

DATED: 4 January 2016

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