



Appeal number: CA/2013/0010

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

RONALD MCKAY

Appellant

- and -

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 30 October 2013

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RULING ON AN APPLICATION TO APPEAL OUT OF TIME

1. Mr McKay seeks to appeal against a specific direction made under section 84 of the Charities Act 2011. The Charity Commission issued the direction on 2 September 2013, requiring Mr McKay to prepare accounts for the charity Viva Palestina (1129092) for the financial years ending 2010, 2011 and 2012 and provide them to the Commission.

2. A direction under section 84 of the Charities Act 2011 is capable of appeal to the Tribunal, and Mr McKay, as a person to whom the direction is addressed, is a person able to bring such an appeal. I am satisfied that the proposed appeal falls within the Tribunal's jurisdiction. However, the appeal was made to the Tribunal outside of the time limit for making such an application and I must therefore consider whether to extend the time for appealing so as to let this matter proceed.

3. Section 316(3) of the Charities Act 2011 provides for Tribunal Procedure Rules to regulate the exercise of the rights of appeal to the Tribunal. Rule 26(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended ("the Rules") provides that a Notice of Appeal must be sent to the Tribunal so that it is received (a) if the appellant was the subject of the decision, within 42 days of the date when notice of the decision was sent to him or her or (b) if the appellant is not the subject of the decision, within 42 days of the date on which the decision was published.

4. Rule 5 (3) (a) of the Rules gives the Tribunal discretion to extend the time limit for complying with any rule. In exercising its discretion the Tribunal must have regard to the overriding objective of dealing with cases fairly and justly, in rule 2 of the Rules.

5. In considering whether this application should be permitted to proceed out of time, I have had regard to Mr Justice Morgan's decision in *Data Select v HMRC* [2012] UKUT 187 (TCC), in which, sitting in the Upper Tribunal (Tax and Chancery Chamber) he held that the correct approach to an application to proceed out of time was for the Tribunal to consider the overriding objective of dealing with cases fairly and justly, and all the circumstances of the case, including the matters referred to at CPR rule 3.9, before balancing the various factors and reaching its conclusion.

6. Morgan J commented at [34] that

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"Applications for extensions of time limits of various kinds are commonplace and the approach to be adopted is well established. As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks 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

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court or tribunal then makes its decision in the light of the answers to those questions.”

7. CPR rule 3.9 provides as follows:

5 Relief from sanctions

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –

10 (a) for litigation to be conducted efficiently and at proportionate cost; and

(b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence.

8. The Charity Commission’s direction was sent to Mr McKay on 2 September with the effect that his 42 days expired on 14 October. I am told that Mr McKay made an unsuccessful attempt to send his application to the Tribunal by e mail on 17 October and then posted it so that it was received by the Tribunal on 21 October. So the application is just 7 days late.

9. I asked Mr McKay to explain why his application to the Tribunal was made late. He has informed me by e mail that he found it difficult to work out the time limits from the information available on the internet. Furthermore, he said he thought that his 42 days ran from the date of him asking for a Charity Commission’s internal review of the direction rather than the date on which the direction was sent to him. He said it did not make sense for his time for appeal to the Tribunal to be ticking down while the review was ongoing. He said he still does not know the outcome of the review. Finally he submitted that there would be a breach of natural justice if his appeal did not proceed. He apologised to the Tribunal for his error.

10. The purpose of time limits is to bring finality to proceedings and to enable the efficient organisation of the Tribunal system. Whilst there are sound policy reasons for the Tribunal to enforce compliance with its Rules, I must also take into account the fact that Mr McKay, as a lay person, had difficulty in interpreting the rules about time limits and the interaction between the Charity Commission’s internal review process and appeal to the Tribunal. I am satisfied that this difficulty provides an understandable explanation for the delay in commencing proceedings, but that conclusion alone is not determinative of the issue as I must consider other factors.

11. I must consider the consequences for the Charity Commission if I extend time to allow this appeal to proceed. It seems to me to that a short delay in commencing proceedings in relation to a matter which is in any event on-going would not be unduly onerous for the Charity Commission. The evidence it will require to respond to the proceedings will be readily to hand. It also does not seem to me that the overall length of the appeal or the cost to the Charity Commission need be increased by such a short delay. On the other hand, there would be a significant consequence for Mr McKay if a refusal to extend time resulted in the loss of his right of appeal to an

independent tribunal. Having taken all these circumstances into account, I am satisfied that in this case it would be fair and just to allow this matter to proceed. I therefore extend the time limit for making the application to the Tribunal by seven days so that this appeal is made in time.

5 12. The Charity Commission's time for filing its Response to Mr McKay's Notice
of Appeal is hereby directed to commence on the date when this ruling is sent to it, so
that it has the usual amount of time to prepare its Response. The Charity
Commission was told that it need not commence work on its Response until I had
10 ruled on this application, so as to prevent it undertaking work that may not have
proven necessary if the application were refused.

13. Once the Charity Commission has filed its Response I would propose to hold a
short directions hearing by telephone and to set this matter down for a hearing as soon
as possible. It would be helpful if both parties could notify the Tribunal
administration of their availability for a one hour telephone conference call at the end
15 of November.

ALISON MCKENNA

TRIBUNAL JUDGE

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