



Appeal number: CA/2015/0004

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

Rev. GEOFFREY MUHORO

Appellant

- and -

**THE CHARITY COMMISSION
FOR ENGLAND AND WALES**

Respondents

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 23 April 2015

RULING ON EXTENSION OF TIME APPLICATION

Background

1. The Appellant was formerly Chairman of the Trustees of The Old Barn Youth and Community Association (East Finchley), an unincorporated association and registered charity number 283258 (“the Charity”). The Charity’s objects are the provision of facilities for recreation and other leisure time occupation for children and residents of East Finchley.

2. There is a dispute between the parties as to whether the Charity was lawfully dissolved by a resolution of its members on 19 September 2013. The Respondent made an Order dated 31 October 2014 appointing a sole corporate trustee to the Charity. It did so in reliance upon sections 80 (2) (b), 105 (1) and (4) of the Charities Act 2011.

3. The Respondent notified the Appellant on 17 November 2014, through his solicitor, of his right to apply to the Tribunal in respect of the s. 80 decision only, within 42 days of the Order. The letter also stated that “alternatively” the Appellant could apply for an internal Decision Review.

4. The Appellant then applied, through his solicitor, for an internal Decision Review of the Respondent’s decision to make the Order. That decision, dated 26

January 2015, was to uphold the Order. The Respondent sent the decision to the Appellant with a covering letter which referred to the fact that the Review Decision cannot itself be appealed to the Tribunal and that as he was now out of time for applying to the Tribunal an application for an extension of time would have to be made.

5. The Appellant sent his Notice of Appeal to the Tribunal on 12 March 2015. The Charity itself is described as the Appellant but as it is an unincorporated association it has no capacity to litigate so I have treated Reverend Muhoro as the Appellant for the purposes of this ruling. The Notice of Appeal form included, in the section for putting reasons for making an out of time application, a statement from the Appellant's solicitor to the effect that the application was not in fact made out of time because it was made within 42 days of the date of the Decision Review and that he had been subject to an obligation to exhaust all other remedies before applying to the Tribunal.

6. I am quite satisfied that the Appellant's solicitor is wrong in law and that the application to the Tribunal was made out of time. The time limit under rule 26 of the Tribunal's Rules runs from the date that the Respondent makes a decision which is listed in column one of Schedule 6 to the Charities Act 2011. As the Respondent did not make a fresh decision on 26 January 2015 I am satisfied that 26 January was not the relevant date for the commencement of the time limit and that the decision which gave rise to a right of appeal to the Tribunal was on 31 October 2014. I also disagree that there was any obligation on the Appellant to exhaust other remedies before applying to the Tribunal.

7. It follows that the Tribunal must now consider whether to exercise its discretion to allow the Notice of Appeal to proceed out of time. The Respondent has not been required to submit a Response to the Notice of Appeal pending my ruling on this issue. I have considered representations from both parties before reaching my decision.

The Law

8. Section 319 (1) of the Charities Act 2011 provides for the making of an appeal to the Tribunal against a decision, direction or order mentioned in column 1 of schedule 6 to that Act. Section 316 of the Charities Act 2011 provides for the making of Tribunal Procedure Rules. Rule 26 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 provides that an appeal must be made within 42 days of the relevant decision.

9. The Tribunal's discretion to extend time for complying with rule 26 is derived from rule 5 (3) (a) of the Tribunal's Rules, and must be exercised so as to give effect to the overriding objective in rule 2. The Respondent has referred me to the Upper Tribunal's decisions in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC) and *Leeds City Council v HMRC* [2014] UKUT 0350 (TCC) in respect of the criteria to be applied by the Tribunal when deciding whether to allow an appeal to proceed out of time.

10. In *Leeds City Council* Judge Bishopp commented at [19] that:

In my judgment therefore the proper course in this tribunal, until changes to the rules are made, is to follow the practice which has applied hitherto, as it was described by Morgan J in *Data Select*.

11. This is a reference to the following passage in Morgan J's decision in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC):

“[34] ... 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 court or tribunal then makes its decision in the light of the answers to those questions.

12. The Respondent has also referred me to the Upper Tribunal's decision in *BPP University College of Professional Studies v HMRC* [2014] UKUT 496 (TCC) in which the *Data Select* principles were applied.

Submissions

13. The Respondent opposes the application proceeding out of time. In a letter dated 10 April 2015 it explained that it had been engaged with the Charity since early 2012, during which period it has attempted to regularise the Charity's governance arrangements. The Respondent does not accept that the Charity was lawfully dissolved in 2013.

14. The Respondent submits that its work to regularise the Charity's governance arrangements would be prejudiced by the appeal proceeding out of time. It further submits that numerous third parties would be affected by the further delay which would be occasioned by the Tribunal allowing the application to proceed, including the new trustee, the Charity itself and the members of the community who use the Charity's community centre.

15. The Respondent calculates that the application to the Tribunal was made 90 days after the expiry of the relevant time limit and that, in circumstances where the Appellant had the benefit of legal advice and the Respondent had informed the Appellant's solicitor of the relevant time limit, there can be no “good explanation” for the delay. It further submits that no explanation has been given for the further period of delay between the notification of the Decision Review and the eventual application to the Tribunal.

16. The Appellant made further submissions through his solicitor on 16 April, in which he (a) challenged the legality of the advice given to him on my behalf by the Tribunal's administrative staff; (b) submitted (if I have understood him correctly) that there is no valid legal distinction to be made between the original decision and the Review decision because they are to the same effect so that the appeal is against the Order which was incorporated into the Review Decision and thus the appeal was made in time; (c) submitted that the Appellant did not forfeit his right of appeal to the Tribunal by agreeing to an internal Decision Review; (d) submitted that the Charity Commission cannot lawfully impose a restriction on the Appellant's statutory right of appeal to the Tribunal; (e) contended that the *Data Select* criteria support the

Appellant's case for a late appeal because his application was made to the Tribunal promptly after the Decision Review and there was no intention on the part of the Appellant to delay the appeal; (f) submitted that this matter is one of public importance because it concerns an organisation dealing with "the welfare of ethnic minority immigrants"; and (g) (if I have understood correctly) submitted that case law is not the "absolute law" because no two circumstances are the same and a reliance on case law may not therefore lead to "absolute justice".

Ruling

17. I am satisfied that it is appropriate for me to apply the *Data Select* principles to the facts of this case. The First-tier Tribunal is bound by decisions of the Upper Tribunal. In so doing, and considering all the circumstances of the case, I rule as follows.

18. The purpose of the time limit for initiating proceedings in charity cases is to allow charities a reasonably generous amount of time in which to decide whether to make an application to the Tribunal whilst balancing against that consideration the Respondent's wish to carry out its statutory duties as swiftly as possible. The Respondent may offer an internal Decision Review, but this offer has no relationship to the statutory scheme for appealing to the Tribunal and there is no obligation to accept the offer. If a Decision Review offer is accepted, the time limit for applying to the Tribunal may have expired by the time it is completed. The acceptance of a Decision Review does not impose any restriction on applying to the Tribunal and there is no forfeiture of statutory rights involved. A protective application to the Tribunal may be made or, if a putative Appellant chooses to wait until the Decision review is completed and is therefore out of time, he or she can apply to the Tribunal for an extension of time under rule 5 (3) (a). I do appreciate that this system can be confusing for a litigant in person and in appropriate cases the Tribunal will exercise its discretion to extend time. However, in this case I take into account that the Respondent explained the time limits in its letter of 17 November and the Appellant has had the benefit of legal representation throughout, so confusion or ignorance of the law cannot be prayed in aid in this case.

19. As noted above, I am satisfied that the statutory right of appeal arose upon the making of the Order on 31 October 2014. I am satisfied that the Decision Review constituted a different decision and is not one which engaged a statutory right of appeal. The period of delay in making the application to the Tribunal is one of some 90 days from the date of the Order. I consider this to be a significant and serious period of delay, especially in the context of the Respondent's long-running efforts to regularise the Charity's governance arrangements. I am satisfied that the Respondent's attempts to regularise the situation in the Charity would be prejudiced by a further period of delay.

20. In terms of whether there is a good explanation for the delay, I am somewhat restricted in my ability to evaluate the Appellant's case because his solicitor has concentrated his efforts on arguing that the appeal is not made out of time. For the reasons I have already given, I reject those submissions. Reading between the lines, my understanding is that the only reason for the initial period of delay was because the Appellant was awaiting the Decision Review. I do not know why the Appellant waited so long after the Decision Review to make his application to the Tribunal as this has not been explained. I am satisfied that the Tribunal staff gave appropriate

advice to the Appellant's solicitor to the effect that he should explain the reason for the delay and ask for an extension of time, but he did not heed this advice. I disagree with the Appellant's solicitor's assertion that the application was made promptly after the outcome of the Decision review was known, as he waited six weeks before he contacted the Tribunal.

21. I do not find the explanation given for the delay in applying to the Tribunal (such as it is) to be a good one. As I have found above, it was clearly explained to the Appellant's solicitor that the time limit for applying to the Tribunal ran from the date of the Order, but he chose not to heed this advice. He could have made a protective application to the Tribunal within time then applied for a stay of proceedings pending the outcome of the Decision review. This is not uncommon and it seems unlikely in the circumstances of this case that the Respondent would have opposed or the Tribunal would have refused such an application.

22. I note that the Appellant will not be able to challenge the Order that the Respondent has made if this application to proceed out of time is refused. I accept that that is a serious matter. I do not accept that the objects of the Charity are as the solicitor describes them in paragraph 16 above (they are correctly described in paragraph 1 above) or in any event I do not accept that the nature of a charity's beneficiary class would ordinarily provide a reason to exercise my discretion to extend time.

23. In all these circumstances, I do not consider that it would be appropriate to exercise my discretion to extend time to allow this application to proceed out of time and I now refuse the Appellant's application. Rule 26 (5) provides that unless the Tribunal extends time for a late application it "must not admit the Notice of Appeal". My decision therefore brings these proceedings to a close.

ALISON MCKENNA

PRINCIPAL JUDGE

DATE: 23 April 2015

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