



Appeal number: CA/2018/0002

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

VANESSA HILL **Appellant**
(trustee of unregistered charity Leeds Cat Rescue)

- and -

THE CHARITY COMMISSION FOR **Respondent**
ENGLAND AND WALES

RULING

- 1. I extend time to admit this appeal;**
- 2. I refuse to strike out this appeal;**
- 3. The parties are invited to agree directions, based on the Tribunal's Directions of 31 January 2018, to prepare this matter for determination on the papers as soon as practicable.**

REASONS

(i) Background

1. This appeal is against the Charity Commission's Direction of 17 November 2017, made under s. 42 (1) of the Charities Act 2011. The Appellant appeals as a "person affected" by the Commission's Direction, as a trustee of an unregistered charity with a similar name to the registered charity which is the subject of the Commission's Direction to change its name. The Appellant's standing to bring the appeal is not in dispute.
2. By her Notice of Appeal dated 23 January 2018, the Appellant has asked the Tribunal to amend the Charity Commission's Direction, so as to specify that a different name must be adopted by the registered charity.
3. In its Response, the Charity Commission submitted that the specific remedy sought by the Appellant is not available from the Tribunal, so that the Notice of Appeal should be struck out, either under rule 8 (2) (a) because the Tribunal lacks jurisdiction, or rule 8 (3) (c) because the appeal has no prospect of success. It also submits that the appeal was made out of time and ought not to be permitted to proceed.
4. The Appellant was given the opportunity to make submissions on the proposed strike out pursuant to rule 8(4) of the Tribunal's Rules. Her submissions are reflected where relevant below.
5. The Commission suggested that the Tribunal should first consider whether the appeal should be struck out, as it may not then need to determine the out of time issue. I have taken the issues in the opposite order, because logically it is only if the appeal is admitted out of time that my power to strike it out arises.

(ii) The Out of Time Issue

6. The time limit for lodging an appeal under rule 26 (1) is 42 days from (a) the date on which the notice of decision was sent to the subject of that decision or (b) otherwise, from the date on which the decision was published. As the Appellant is not the subject of the Commission's Direction, she falls under limb (b) of rule 26. However, it is not disputed that she was sent a copy of the Direction on the day that it was made and, following the Upper Tribunal's Decision in *Charity Commission v Hunt* [2016] UKUT 0210 (TCC), I am satisfied that the Appellant received "express notice" of the Decision on 17 November 2017 so the "publication" requirement was met on that date.
7. My conclusion is therefore that the time limit started to run from 17 November 2017, which was the date on which the Appellant received notice of the s. 42 Direction being made. It follows that her Notice of Appeal was due by 29 December and was lodged 25 days out of time. Nevertheless, I have discretion under rule 5 (3)(a), considered together with the overriding objective, to extend time and allow the appeal to proceed.

8. I note that the Direction of 17 November 2017 permitted the registered charity to choose a new name but that as a matter of law, no such Direction may prescribe what the new name should be, as that is a matter for the charity trustees to determine, with the approval of the Commission. The registered charity duly chose a new name (“Linda Ferguson’s Leeds Cat Rescue”) and the Commission approved it on 30 November 2017. The Commission updated the Register of Charities to show the new name on 18 December 2017 and wrote to the Appellant to inform her of its approval of the new name on 28 December 2017. On 7 January 2018, the Appellant wrote to the Commission to object to the new name and on 23 January lodged her application to the Tribunal.
9. The Appellant has explained in her submissions that she did not know she would want to appeal to the Tribunal until she found out what the new name was and objected to it. Thus, it was only on 28 December that she realised she wished to make an appeal and she made her application as soon as possible thereafter. She maintains that the new name chosen is still “too like” the name of her own charity.

10. In *Data Select Limited v HMRC* [2012] UKUT 187 (TCC), Morgan J held that:

[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.

11. Applying those principles, I have had regard to the following factors: (1) The time limit set in the Tribunal’s Rules provides a framework for the progress of the case, but the Tribunal has discretion to vary it in appropriate instances; (2) In this case, the deadline for lodging the Notice of Appeal was missed by 25 days. This is not a significant delay and will have negligible impact on the overall timetable for determining the appeal, especially as it will be determined on the papers; (3) The Appellant has explained that she could have no idea she wished to appeal until the other charity’s new name became known to her. I regard this as a good explanation for her delay; (4) The Respondent has objected to an extension of time being granted, but has not pointed to any particular difficulty this would cause it or identified any potential detriment to its case. The Appellant would be deprived of the opportunity to have an independent decision taken by the Tribunal if her appeal were not permitted to proceed. Having weighed all the relevant considerations into the balance, I now conclude that it is fair and just to grant the Appellant an extension of time of 25 days and allow the appeal to proceed.

(iii) The Strike Out application

12. On determining an appeal against a Direction under s. 42 (1) of the 2011 Act, the Tribunal may, if it allows the appeal, exercise any of the powers set out at the relevant entry in column 3 of Schedule 6 to the Act. These are: “(a) *quash the direction and*

(if appropriate) remit the matter to the Commission; or (b) substitute for the direction any other directions which could have been given by the Commission”.

13. Although the Appellant has here requested a specific remedy in her Notice of Appeal, no such request can limit the powers of the Tribunal, which remain available to it as a matter of law if it allows the appeal. The expression of a preferred outcome by a party to proceedings is outside the statutory scheme and merely precatory. The Appellant should be clear that I agree with the Commission that the Tribunal has no power to direct the registered charity to adopt a specific name. However, the question of whether the Appellant would wish to pursue an appeal that is unlikely to give her the exact result she seeks is a matter for her.
14. As matters stand, it seems to me that the Appellant remains entitled to challenge the Commission’s Direction and to ask the Tribunal to make a fresh decision under s. 319 (4) of the 2011 Act, although if this is so she may wish to clarify the basis of her challenge. She appears to have raised some new grounds of appeal in her rule 8 (4) submissions.
15. The Tribunal could, if it allows this appeal, direct an outcome which is different from that requested by the Appellant but which is nevertheless available to it as a matter of law. In those circumstances, I am not persuaded by the Commission’s argument that the Appellant’s expression of a preferred outcome serves either to deprive the Tribunal of jurisdiction or to rob her appeal of reasonable prospects of success. Accordingly, I refuse to strike it out.

(iv) Conclusion

16. I conclude that this appeal is justiciable and should proceed to a determination. Both parties have requested a determination on the papers and I agree that this is appropriate under rule 32 (1)(b) of the Tribunal’s Rules. I leave it to the parties to agree directions on case progression and submit these to the Tribunal as soon as possible.
17. Finally, the Commission has already pointed out that it could treat the application to the Tribunal as effectively an application for it to make a fresh Direction. A new Direction could possibly provide the Appellant with a remedy which the Tribunal could not, and would carry with it a further right of appeal to the Tribunal. Mediation between the two charities has been suggested. In these circumstances the parties could still consider applying for a stay of proceedings, in order to allow further discussions to take place.

Signed

**Alison McKenna
Principal Judge**

Dated: 28 March 2018