



**Appeal number: CA/2014/0023
CRR/2015/0001**

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

**WATCHTOWER BIBLE AND TRACT
SOCIETY OF BRITAIN**

Appellant

and

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 3 March 2015

RULING ON EXTENSION OF TIME APPLICATION

Background

1. The Appellant (the “Charity”) is a company limited by guarantee and a registered charity, number 1077961.
2. The Respondent opened an inquiry into the Charity, pursuant to s. 46 Charities Act 2011, on 27 May 2014 and notified the Charity of that decision by letter dated 5 June 2014. The Respondent described its concerns as relating to recent criminal trials, the Charity’s safeguarding policy and public interest in how the Charity and congregations of Jehovah’s Witnesses deal with safeguarding matters. The inquiry remains open.

3. The Respondent also served on the Charity an order made pursuant to s.52 (1) of the 2011 Act (a “Production Order”) on 20 June 2014, directing it to provide the Respondent with various documents relating to safeguarding issues and created on or after 1 June 2011.

4. The Respondent notified the Charity of its right to apply to the Tribunal within 42 days at the same time that it notified the Charity of its decisions. The Charity has not yet complied with the Production Order and the Respondent has taken no action to enforce compliance with it, pending the conclusion of legal proceedings in respect of it.

5. The Charity wishes to appeal against the Production Order and to apply for a review of the decision to open the inquiry. Persons falling under column 2 of schedule 6 to the 2011 Act can apply to the Tribunal. There is an issue between the parties as to whether the individual charity trustees are “persons affected” and so entitled to appeal the Production Order, given that it was directed to the Charity as a corporate entity rather than to its directors/charity trustees. However, there is no dispute that the Charity itself can apply to the Tribunal in respect of the Production Order and I do not need to decide the point about the trustees’ standing in the context of the present application.

6. The Charity sent its Notice of Appeal to the Tribunal on 22 December 2014. This was beyond the 42 day time limit for applications to the Tribunal but it included an application for an extension of time, as required by rule 26 (5). This explained that the Charity had delayed making its application to the Tribunal pending the determination of its application for judicial review of the decision to open the inquiry and to serve the Production Order. In the event, the Administrative Court refused the Charity permission to apply for judicial review. Mr Justice Dove’s judgment is reported at [2014] EWHC 4136 (Admin). The Charity applied to the Tribunal only after the Administrative Court’s decision. I understand that the Charity has also applied for permission to appeal Dove J’s decision to the Court of Appeal.

7. The Charity asked for permission to make oral submissions in support of its application. I heard Mr Clayton QC on behalf of the Charity and Mr Steele of counsel on behalf of the Respondent at a short oral hearing on 17 February 2015. I am grateful to them both for their helpful submissions, summarised below.

Submissions

8. It was common ground that the Tribunal must now consider whether to exercise its discretion to allow the Notice of Appeal to proceed out of time. This discretion 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. Counsel 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.

9. 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*.

10. 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.

11. Counsel 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 also applied.

12. Mr Clayton submitted that the *Data Select* principles should lead the Tribunal to allow the Charity's application for the following reasons. He accepted that the purpose of the time limit was to provide a framework for appeals. He submitted that, in the context of this case, the delay in making an application to the Tribunal should not be viewed as a serious one because the Respondent was only concerned with historical abuse allegations about persons who are now adults. As I explained to Mr Clayton at the oral hearing, I did not accept that this was necessarily the case because the Respondent had asked for records created since 2011 and it seemed to me that these could include details of on-going concerns in respect of persons who were still minors.

13. Turning to the explanation for the delay, Mr Clayton submitted that the Charity should be seen as having acted reasonably in making its application to the Administrative Court and that the explanation for the delay was therefore a good one. He explained that the Charity had taken the view that the Tribunal's powers were insufficient to provide it with the remedy it required, for example, the Tribunal could only quash the inquiry, whereas the Administrative Court could narrow the scope of the inquiry. He submitted that the Charity had raised important points before the Administrative Court and the fact that Mr Justice Dove's judgment had been certified as suitable for citation reflected the importance of the points the Charity had made. I asked Mr Clayton why the Charity had not made an application to the Tribunal in time but then asked for the Tribunal proceedings to be stayed pending determination of its application by the Administrative Court. He replied, frankly “*we could have but we didn't*”.

14. As to the consequences for the Charity of refusing its application, Mr Clayton submitted that the Tribunal should view seriously the fact that Parliament has provided charities with a right of appeal against decisions of the Respondent in cases such as this. He pointed out that, if the Charity's application were refused, it would be denied that remedy. He asked the Tribunal to find that the Charity's grounds of appeal were strong and that it would be fair for them to be heard by the Tribunal.

15. Mr Steele submitted that the *Data Select* principles should lead the Tribunal to refuse the charity's application for the following reasons. The Charity's delay should be viewed as a long one, of over six months, and in the context that the Respondent had informed the Charity repeatedly that judicial review would not be available to it

because Parliament had created the alternative remedy of an appeal to the Tribunal. Mr Steele also pointed out that the Charity's legal team, comprising the same in-house lawyer, junior and leading counsel, was currently representing another charity in a similar case before the Tribunal (CRR/2014/0005) which had been on-foot when the decision to apply for judicial review in this case was taken. He suggested that the Charity's delay in this case should therefore be viewed in the context of (a) its having adopted a litigation strategy which differed from the route already taken by the same legal team in another case, (b) which it had been repeatedly advised against by the Respondent, and (c) which had proven unsuccessful. He also submitted that the Charity's grounds of appeal had no reasonable prospects of success.

16. Mr Steele submitted that the Respondent's inquiry, already delayed by the Charity's application to the High Court, would be prejudiced further by the delay which would inevitably follow if the Charity's application were granted. On the other hand, the requirements which the Respondent had made of the Charity were not onerous or unusual and it could comply with them without difficulty if its application were refused by the Tribunal.

Ruling

17. Applying the *Data Select* principles and considering all the circumstances of the case, I find 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 statutory framework provided by Parliament takes account of the fact that charities may wish to challenge the Respondent's decisions and that the Respondent may be delayed whilst the charity's application to the Tribunal is heard. However, the statutory framework does not envisage that a charity would bring proceedings in the Administrative Court and then in the Tribunal, in successive challenges to the same decision of the Respondent. It seems to me that the Charity's litigation strategy in this case risks undermining the balance struck by Parliament's carefully considered scheme by elongating unreasonably the period of time in which the Respondent will be delayed from carrying out its inquiry pending determination of a challenge to its decision. It is therefore appropriate for the Tribunal to give due weight to the Tribunal's time limits in the present circumstances.

19. The period of delay in making the application to the Tribunal is one of over six months. I consider that this to be a significant and serious period of delay, especially in the context of the nature of the Respondent's concerns in this case. I give weight to the fact that the Respondent's inquiry and Production Order relate to safeguarding matters which could, as I have noted above, logically concern on-going risks to people who are still children.

20. In terms of explanation for the delay, I find I cannot, as Mr Clayton urges, attribute to Dove J's decision to certify his judgment a significance in terms of the strength of the Charity's application to the Administrative Court. I am not prepared to second-guess the Judge's reasons for taking this course. I also note that the Charity's application for permission to bring judicial review proceedings was unsuccessful on the basis that the Respondent had clearly predicted in the pre-action correspondence,

namely that judicial review did not lie where Parliament had provided an alternative remedy. It seems to me that the Charity adopted a litigation strategy, on advice, which was unsuccessful and that this is the reason for the delay in initiating proceedings in the Tribunal. I do not consider it to provide a good explanation for the delay up until 12 December 2014 when the Administrative Court's decision was known.

21. There was a further short period of delay between 12 December and 22 December when the application to the Tribunal was made. I accept Mr Clayton's submission that the Charity needed some time to consider its position and take advice and for him to draft the grounds for the Tribunal (which extend to 86 pages). Mr Steele described the grounds as a "cut and paste job" and closely resembling the judicial review grounds. He submitted that the Charity should have acted with expedition in applying to the Tribunal once its application to the Administrative Court had failed. It seems to me that this further period of delay is, in reality, a continuing consequence of the Charity's decision to pursue a particular litigation strategy and that it would not be fruitful to examine it as a separate period of delay in relation to the *Data Select* principles. I note that the Charity found time to apply for permission to appeal Dove J's judgment on 18 December, before applying to the Tribunal on 22nd December, and so it seems to me that the continuation of the Court proceedings was its main priority at that time. Given that the additional ten day period is a continuation of the earlier strategy, I also conclude that there was not a good explanation for it.

22. I am in some difficulty in evaluating the strength of the Charity's grounds of appeal, as they are substantially similar to the grounds advanced in the other case with the same legal team in which there is to be a final hearing next week. I accept, for the purposes of this Ruling, that the Charity's grounds are arguable and I reject Mr Steele's submission that they have no reasonable prospects of success.

23. It seems to me that the Charity should have made its application to the Tribunal in time then applied for a stay of proceedings pending the decision of the Administrative Court. However, it seems likely that the Respondent would have opposed such an application and so the matter would have involved an exercise of the Tribunal's discretion, albeit at a different stage of the case. The key difference is that an application for a stay would have involved the Tribunal in making a prospective assessment of the strength of the Charity's application for judicial review, whereas now the Tribunal has the benefit of Dove J's judgment and is aware that the application was unsuccessful.

24. I note that the Charity will not be able to challenge the decisions that the Respondent has made if its application to proceed out of time is not allowed. I accept that that is a serious matter. However, it seems to me that the Charity, in adopting the litigation strategy it did, must have factored that risk into account. I also note that the Respondent has already delayed its inquiry and the enforcement of compliance with the Production Order for over six months while the Charity mounted a challenge to its decisions, in the forum of its choice. It does not seem to me that it would be fair and just to allow the Charity to start new proceedings in the Tribunal now and thus and delay matters further, having taken the course that it did.

25. 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 Charity'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: 3 March 2015

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