



**Appeal number: CA/2014/0021
CRR/2014/0008**

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

LEGAL ACTION

Appellant

And

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 16 March 2015

**RULING ON APPLICATIONS FOR PERMISSION TO APPEAL AND SET
ASIDE OF RULING OF 16 FEBRUARY 2015**

Background

1. The Respondent opened an inquiry pursuant to s. 46 Charities Act 2011 into “Legal Action” (charity number 110078), which has the working name “Charles Henry”, on 28 August 2014. It also served on the charity an order pursuant to s.84 of the 2011 Act, directing it to take specified action, including the re-submission of accounts which meet minimum legal and SORP requirements, the submission of a schedule of its activities and a review of its trading activities.

2. The Respondent sent the charity notice of the opening of the inquiry and the section 84 order on 30 September 2014, by letter and e mail of the same date. The e-mail was delivered. The letter and enclosures were not, but were re-sent on 10 October. The letter was signed for on 13 October but the charity states that it did not receive the Respondent’s letter until 17 October.

3. The charity made a valid application to the Tribunal on 5 December 2014. On 22 December 2014 the Respondent applied for a strike out of the charity's appeal. The Respondent's submissions were, firstly, that the Tribunal had no jurisdiction to consider the charity's appeal because Legal Action is currently subject to a General Civil Restraint Order made by Mr Justice Collins on 9 October 2014, by which it is prohibited from commencing legal proceedings without the consent of a High Court Judge for a period of two years from the date of the order. Secondly, it was submitted by the Respondent that the charity's Notice of Application was filed out of time and that the Tribunal ought not to allow the charity to proceed out of time in the circumstances of this case.

4. The charity was invited to make representations on the Respondent's strike out application before the Tribunal ruled on it, in accordance with rule 8 (4). It made extensive submissions on 28 January 2015. On 16 February 2015 I ruled against the Respondent in relation to its first submission and in favour of the Respondent in favour of its second submission. I concluded that the charity's application to the Tribunal was made out of time and that I should not, in the circumstances of this case, exercise my discretion to allow it to proceed.

5. The charity has applied for permission to appeal against my ruling, by application dated 10 March. It has also applied for a set aside of my ruling by application dated 12 March.

6. The charity's grounds for applying for permission to appeal are (i) that the Tribunal made an error of law in calculating the date on which the charity received notice of the Respondent's documents and (ii) in the alternative, that the Tribunal made an error of law in refusing to exercise its discretion to allow the charity's application to proceed out of time.

7. I have considered in accordance with rule 44 of the Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009 whether to review my ruling, but have decided not to undertake a review, as I am not satisfied that there was an error of law in my ruling of 16 February.

8. There was documentary evidence before me on 16 February that the Respondent had sent the documents by recorded delivery on 10 October. There was documentary evidence before me that the Respondent's documents were signed for on behalf of the charity on 13 October. Although the test under the Rules is not one of actual notice, I considered it fair and just in the circumstances of this case to take the date of actual receipt (as shown in the documentary evidence) as the start date for compliance with the Rules. The charity has submitted that it did not receive actual notice of the documents until 17 October, but it filed no evidence to that effect. Accordingly, I was entitled, in reaching my decision, to prefer the documentary evidence which had been filed to a bare assertion made in the charity's unsigned submissions. I concluded that the 5 December application to the Tribunal was made out of time.

9. I went on to consider all the circumstances of the case and the *Data Select* criteria, but the charity had made no case for extending time because it refused to accept that the application was made out of time. In the circumstances, I was entitled to exercise my discretion so as to refuse to allow the charity's application to proceed and, as there is no arguable error of law, I now refuse permission to appeal.

10. The charity has applied for a set aside under rule 41 of the Rules, on the basis that there was a procedural error by the Tribunal in not admitting its original application to the Tribunal in November 2014. As is explained in the 16 February ruling, the Tribunal administration did not accept the charity's earlier application because it was defective in several respects. The charity appeared to accept this, as it voluntarily submitted a fresh application (signed by a different person) in December. It did not raise any objection at the relevant time.

11. I am not satisfied that the Tribunal's refusal to accept a defective application amounts to a procedural error which requires the ruling of 16 February to be set aside in the interests of justice. I refuse the charity's application.

12. The Respondent sent the Tribunal comments on the charity's application on 13 March with the inevitable result that the charity challenged its right to do so and filed a reply. I remind the parties that the Rules do not provide for the Respondent to comment on applications for permission to appeal or for set aside and, should it be thought appropriate to do so, the Tribunal's permission should be sought. This is in the interests of compliance with the overriding objective. In the circumstances I agreed to read the e-mails sent on 13 March, but I found they did not assist me with the decision I have now made.

ALISON MCKENNA

PRINCIPAL JUDGE

DATE: 16 March 2015

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