



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
(CHARITY)
GENERAL REGULATORY CHAMBER**

Appeal No: CA/2011/0006

BETWEEN:

UTURN UK CIC (formerly Uturn UK Ltd)

Appellant

and

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

**RULING ON AN APPLICATION FOR AN EXTENSION OF
TIME**

DECISION

- 1. The time for the Appellant to file the Notice of Appeal is hereby extended to 18 October 2011, pursuant to rule 5(3)(a) and rule 2 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“the Rules”).**

REASONS

- 2. The Tribunal’s procedure is governed by the Rules. Rule 5 provides the Tribunal with general case management powers, which must be exercised in a way that gives effect to the overriding objective in rule 2 and the need to deal with cases fairly and justly. Rule 5 (3) (a) permits the Tribunal “to extend...the time for complying with any rule...”**
- 3. The facts in this case are that on 17 October 2011 the Appellant contacted the Tribunal administration by telephone and on 18 October it sent in a formal Notice of Appeal. As required by rule 26 (3) of the Rules, the Notice of Appeal was accompanied by a copy of the Charity Commission**

decision which the Appellant wished to appeal against. That document was itself undated, although it was clear from the included copy correspondence that a decision had been sent by the Commission under cover of an e mail dated 9 August 2011. That e mail referred to the existence of the Tribunal but did not give any information about time limits for appealing. It suggested that the Appellant should look at the Tribunal's website but did not include a link to the website nor the address or telephone number of the Tribunal.

4. The Notice of Appeal and an accompanying e mail from the Appellant indicated that the Appellant thought it was then out of time for filing the Notice of Appeal and requested an extension of time. The reasons given for being out of time were that the Appellant had only recently gained experience of Street Associations; it had only recently been advised to appeal to the Tribunal; it had only become aware of the 42 day limit on phoning the Tribunal on 17 October; and that much of the 42 day period had coincided with holidays.
5. The Tribunal administration made further enquiries of the Appellant as to when the relevant decision had been made by the Respondent as this was unclear. The Appellant replied that it had re-calculated the time scale and was no longer of the view that the application was out of time. It stated that the Respondent's decision had been read by it on 10 August and so the 42 day limit imposed by rule 26(1)(a) of the Rules had not expired when the application was sent to the Tribunal. Unfortunately, the Appellant appears to have based this view on a misconception that weekends and bank holidays were to be entirely excluded from the calculation of the 42 day period. This method of calculation is inconsistent with rule 12 of the Rules.
6. The Respondent e mailed the Tribunal on receipt of the Appellant's application to comment that it believed the Appellant's application was out of time and asked for a formal ruling on the matter. The Respondent has also now filed its Response in accordance with rule 27 of the Rules so that I have all the relevant copy correspondence before me in making this ruling.
7. The Upper Tribunal (Administrative Appeal Chamber) has recently approved criteria for a Judge to take into account in extending a period of time for making an application under the Rules. These include:¹

- a. the lateness of the application;*
- b. the extent to which the applicant has complied with rule [26(5)(a)];*
- c. the date the applicant received the decision notice;*
- d. whether the reason for the delay was due to a holiday, ill health or other causes largely beyond the control of the appellant;*

¹ Information Commissioner v PS [2011] UKUT 94 (AAC) at paragraph 17.

- e. *the complexity of the decision being appealed;*
- f. *the fact an appellant is unrepresented and unfamiliar with the appeal process;*
- g. *the fact the appellant had made enquiries about appealing before the deadline....”*

7. **In granting the Appellant’s request for an extension of time, I take into account the fact that the application was made on my calculation some 28 days late (having been due on 20 September); the Appellant’s compliance with rule 26(5)(a) by initially requesting an extension; the fact that the Appellant was not informed by the Respondent in either the decision itself or the covering e mail of the deadline for appealing; the fact that these matters occurred during a holiday period; the fact that the Appellant is not represented and (without being referred to them directly) cannot be expected to have knowledge of the Tribunal’s procedural rules; and finally the fact that the Appellant filed its Notice of Application as soon as it learned of the deadline. I also note that, although the Respondent asked the Tribunal to rule on this matter, it did not advance any positive case for the Tribunal not allowing the appeal to proceed out of time. In all the circumstances I am satisfied that it is fair and just to extend the time for filing the Notice of Appeal so that this matter may proceed.**

Other Matters

8. **The Appellant has e mailed the Tribunal administration to request an oral hearing. It has asked for this to be arranged at the Tribunal’s earliest convenience. The Respondent has indicated that it is content for the matter to be dealt with on the papers. The provision governing the mode of hearings is rule 32 of the Rules, which provides that the Tribunal must hold a hearing (by which it is meant an oral hearing) unless each party has consented to the matter being determined without a hearing and the Tribunal is satisfied that it can properly determine the issues without a hearing. It follows that the Tribunal has no discretion to order a paper hearing of this appeal unless both the parties agree to it and, conversely, that if only one party requires an oral hearing the Tribunal has no option but to arrange one². It follows that I must direct an oral hearing of this matter unless the Appellant now agrees to a determination on the papers.**
9. **The Appellant may now file a Reply to the Commission’s Response in accordance with rule 28 of the Rules. This would need to be filed with the Tribunal within 28 days of the Respondent’s Response. It is, however, a discretionary step, and the Tribunal will proceed to issue directions for a**

² The Upper Tribunal recently confirmed this interpretation of the rules (in the context of the analogous Social Entitlement Chamber Rules) in AT v Secretary of State for Work and Pensions (ESA) [2010] UKUT 430 (AAC).

hearing forthwith if the Appellant confirms that it does not wish to file a Reply.

Signed:

**Alison McKenna
Principal Judge**

Dated:

18 November 2011