**THE CHARITY TRIBUNAL RULES (NI) 2010**

**IN THE CHARITY TRIBUNAL FOR NORTHERN IRELAND**

**APPLICATION NUMBER 21/14**

**IN THE MATTER OF AN APPLICATIONS FOR AN EXTENSION OF TIME TO APPEAL A REVIEW OF A DECISION OF THE CHARITY COMMISSION FOR NORTHERN IRELAND**

**BETWEEN:**

**TREVOR McKEE**

**Appellant**

**-and-**

**THE CHARITY COMMISSION FOR NORTHERN IRELAND**

**Respondent**

Background

1. This is a record of a decision of the Tribunal made in respect of an application brought by Mr Trevor McKee (“the Appellant”). The application is in the way of a request for a direction to extend time for the bringing of an appeal against a decision made by the Respondent pursuant to Section 96(2) of the Charities Act (Northern Ireland) 2008. By that decision, the Respondent consented to the making of a regulated alteration to the articles of association of Lough Neagh Rescue Limited (“the Charity”).
2. The Appellant’s appeal is dated 30 November 2014. It records that the Respondent’s decision was published on 3 September 2013. It asserts that the Appellant was notified of the decision on 10 November 2014 on foot of the fulfilment of a freedom of information request. The Appellant seeks to appeal as an affected person.
3. Rule 17(2)(b) of the Charities Tribunal Rules (Northern Ireland) 2010 (“the Rules”) provides that if an appellant is not the subject of the decision to which the proceedings relate, the appeal must be filed within 42 days of the date on which the decision was published. Having regard to the date set out in the Appellant’s appeal notice, the time limit for appealing expired on 15 October 2013.

Means of disposal of request for direction

1. There has been an exchange of submissions on the part of the Appellant and the Respondent on the question of whether the time limit for making an appeal should be extended. By his submission dated 2 January 2013, the Appellant expressly referred to Rule 17(8), and requested a direction under Rule 3 allowing his appeal to be made after the expiry of the time limit. That request for a direction ought to have been included within the appeal notice itself: Rule 17(8). However, insofar as that omission constitutes an irregularity in the Appellant’s appeal, the Tribunal considers that that irregularity can be cured by the Tribunal directing, pursuant to Rule 7(2), that the appeal notice and the submission are to be read together, so as to incorporate into the appeal notice that part of the submission which comprises the request for a direction in accordance with Rule 17(8).
2. Under Rule 25(b), the Tribunal may determine an appeal or any particular issue arising in appeal without an oral hearing if the issue concerns a request for directions. The Appellant has made a request for a direction under Rule 3 to allow the appeal to be made after the time limit has expired. The Tribunal considers that Rule 25(b) applies and that it is appropriate to determine that request without an oral hearing. In that regard, the Tribunal is mindful of its duty to ensure that appeals are determined in a just, expeditious and economical manner.

The law

1. Rule 4 provides as follows:

*Where an appellant has made a request under rule 17(8) to the Tribunal for a direction under rule 3 to allow an appeal or application to be made after the time limit for doing so has expired, the Tribunal must consider—*

*(a) what steps (if any) the Commission has taken to notify or publicise its final decision;*

*(b) when the appellant became aware of the Commission’s final decision; and*

*(c) when the appellant became aware of the right to make the appeal or application and of the time limit for making the appeal or application.*

1. However, the matters set out in Rule 4 are not exhaustive as to what the Tribunal is to consider when exercising its discretion under Rule 17(3). The Respondent drew the Tribunal’s attention to a number of authorities, all of which have been considered by the Tribunal, including the decisions of the Court of Appeal in Northern Ireland in Davis v Northern Ireland Carriers [1979] NI 19; Hegarty v EJO [2013] NICA 56; and Fontan v Teletech UK Limited [2012] NICA 44.
2. In Davis v Northern Ireland Carriers [1979] NI 19 Lowry LCJ set out the relevant applicable principles in relation to an application to extend time for an appeal. At 20A-D he stated:

*Where a time limit is imposed by statue it cannot be extended unless that or another statute contains a dispensing power. Where the time is imposed by rules of court which embody a dispensing power such as is that found in Order 64 r 7 the court must exercise its discretion in each case and for that purpose the relevant principles are:*

1. *whether the time is sped: a court will, where the reason is a good one, look more favourably on an application made before the time is up;*
2. *when the time-limit has expired, the extent to which the party applying is in default;*
3. *the effect on the opposite party of granting the application and, in particular, whether he can be compensated by costs;*
4. *whether a hearing on the merits has taken place or would be denied by refusing an extension*
5. *whether there is a point of substance (which in effect means a legal point of substance when dealing with cases stated) which could not otherwise be put forward; and*
6. *whether the point is of general and not merely particular, significance.*

*To these I add the important principle;*

1. *that the rules of court are there to be observed'.*
2. In the Hegarty judgment, Morgan LCJ, giving the judgment of the Court of Appeal, gave the following further guidance with respect to the Davis principles:

*[11] The temptation to analyse the application to extend time by reference to the evaluation of each of these issues should, however, be resisted. The broad nature of the exercise required in considering whether to accede to such an application was captured in the conclusion of the [Davis] judgment.*

*If we had left the case here my view would undoubtedly have been that the delay had not been satisfactorily explained and, that all the more so because there had been a hearing on the merits (which must, judged by the very exhaustive and obviously careful written decision, have been both full and painstaking), the application should be refused.*

*We decided, however, that in order to do justice it would be better to find out the strength of the appellant's case, so far as it was founded on points of law and therefore remained capable of being pursued by way of case stated. We therefore discussed the legal merits of the case in some detail …..It is not, however, necessary to expatiate on this branch of the case, if only because it may come before this court in another guise. I am content to say that nothing emerged to make me feel that justice demanded an extension of time in face of the principles to which I have already adverted.*

1. The Tribunal has also considered two decisions of the equivalent Tribunal in England, namely UTURN UK CIC v The Charity Commission for England & Wales (Appeal No CA/2011/006) and McKay v The Charity Commission for England & Wales (Appeal No CA/2013/0010).
2. In the UTURN case, the Tribunal referred to guidance given by the Upper Tribunal (Administrative Appeal Chamber) in the case of Information Commissioner v PS [2011] UKUT 94 (AAC) at paragraph 17, as to what should be taken into account in considering an application to extend the period for making an application under the Rules. This included:
   1. *The lateness of the application;*
   2. *The extent to which the application has complied with Article [26(5)(a)];*
   3. *The date the applicant received the decision notice;*
   4. *Whether the reason for the delay was due to holiday, ill-health or other causes largely beyond the control of the appellant;*
   5. *The complexity of the decision appealed;*
   6. *The fact that an appellant is unrepresented and unfamiliar with the appeal process;*
   7. *The fact that the appellant had made enquiries about appealing before the deadline.*
3. In the McKay case, reference was made to the decision of the Upper Tribunal (Tax and Chancery Tribunal) in the case of Data Select v HMRC [2012] UKUT 197 (TCC), in which Morgan J said as follows:

*Applications for extensions of time limits of various kinds are common place 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 must make its decision in the light of the answers to those questions.*

Discussion

1. The substance of the Appellant’s complaint relates to the decision of the Respondent to consent to the alteration of the Charity’s Articles of Association. Section 96(2) of the 2008 Act provides that such an alteration requires the prior written consent of the Respondent; and further that, without the consent of the Respondent any such alteration is ineffective.
2. It is clear from the submission of the Appellant, and the documents attached to it, that the Appellant was aware of the making of the alteration of the Articles on the very day the alteration was made i.e. on 3 September 2013 or at most within the next day or two: see the submission itself and Mr McKee’s email to the Respondent of 27 October 2013.
3. But the Appellant makes the point that he was not aware that the Respondent had made a formal decision consenting to the making of the alteration. He contends that he did not find out that the Respondent had made a decision to consent to the making of the alteration until 10 November 2014.
4. On 3 September 2013, the Respondent sent a letter to the Board of the Charity consenting to the change in the Articles. The Applicant denies seeing that letter, and he exhibits to his submission emails to the Respondent which show he had not been attending board meetings and had been denied access to communications between the Charity and the Respondent.
5. It may be that the Appellant was not aware of the Respondent’s formal decision to consent to the alteration at the time it was made. However, all the documents produced by the Appellant show that in August, September and October 2013, he was fully aware that the Respondent did actually consent to the making of the alteration to the Articles.
   1. The Appellant sent an email to the Respondent on 11 August 2013 which referred to the “LNR Final Draft Articles”; which said that the Respondent was “encouraging the formation of these articles”; and which complained that “there is no doubt in my mind at first interpretation, these articles will not benefit the good governance of Lough Neagh Rescue Limited. They are articles written to benefit ex and non members, and allow a disproportionate level of control to be removed from the Charity membership.”
   2. The Appellant sent an email to the Respondent on 27 October 2013 which referred to the 3 September 2013 meeting “held to adopt new Articles of Association.” This email noted that “The meeting was attended by two observers from the Charity Commission Northern Ireland…” and went on to say “The new Articles will have the consequence of delivering control of the Charity to one section of the membership, and to so extend that membership to a portion of ex members.” This email also recorded that the Appellant had taken senior counsel’s opinion about a decision made at the meeting to exclude a number of proxy votes.
6. The Tribunal has come to the following conclusions with respect to the various factors to be considered in the exercise of its discretion:
   1. The purpose of the time limit

If the Respondent decides to consent to an alteration to the Articles of an incorporated charity, a person affected by that alteration may challenge it under the 2008 Act. If no challenge is made, the charity may operate in accordance with the altered Articles, and get on with discharging its charitable functions.

If a challenge is made, by way of an appeal, within the statutory period, then the charity is aware that it should not purport to act in accordance with the altered Articles until the challenge has been resolved.

There is clearly a value in the field of operation of a charity being settled as soon as possible. It is undesirable from the point of view of the charity, donors and beneficiaries that there be ongoing uncertainty as to the status of the governing instruments of a charity.

There is therefore considerable value in having challenges to such decisions brought at an early opportunity. Hence the 42 day time limit, albeit that might be extended in an appropriate case.

* 1. The lateness of the appeal

The Appellant’s application to extend time has been made extremely late, indeed over a year from when the decision was made, and over a year from when the change to the Articles was known to the Appellant.

* 1. The reason for the delay in filing the appeal

The Appellant’s reason for his delay in filing the appeal is simple. He did not know that the Respondent had made a formal decision until this was discovered in November 2014.

Ordinarily, lack of knowledge as to the taking of a decision would weigh heavily in favour of acceding to a late application to challenge such a decision.

However there are a number of important facts, emerging from the Appellant’s own submission and documents, which take the instant matter out of the ordinary run of cases.

Although the Appellant may not have known about the formal decision until November 2014 – and the Tribunal is prepared to give him the benefit of the doubt in that regard – nonetheless:

1. In August, September and October 2013, the Appellant knew that the Respondent was actively involved in, agreed with and consented to the making of the alteration to the Articles;
2. In August, September and October 2013, the Appellant was opposed to the making of the alteration;
3. In that period, the Appellant had access to legal expertise on the question of challenging the decision of the Charity to alter the Articles.

The Appellant had full knowledge of all the substantive factual matters which he might have invoked to challenge the Respondent’s decision.

Further, the Appellant had access to the legal advice. That advice could have directed the Appellant to Section 96 of the 2008 Act and thereby have highlighted the fact that the Respondent must have made a formal decision for the purposes of Section 96(2). That same legal advice could also have drawn attention to the time limit for appeals in the Rules.

In short, the Tribunal considers that whilst there is a reason for the delay in launching the appeal, in all the circumstances, it is not a satisfactory reason.

* 1. Whether a hearing on the merits has taken place; the effect of extending time; the effect of not extending time

There has not been a hearing on the merits.

The Tribunal considers that if time were to be extended for the making of appeal, that would be disruptive to the Charity. The Tribunal notes that the Appellant has not contended in his submission that any of his fears about the effect of the alteration have been realized.

The Tribunal also notes that if there are concerns about the effect of the alteration, then complaint or concern may be expressed to the Respondent and it may invoke its powers under the 2008 Act as to the regulation of charities. Accordingly, any inability on the part of the Appellant to pursue an appeal at this stage does not in any way exclude the Charity, and the effect of the altered Articles, from future scrutiny.

* 1. The merits of the putative appeal

The basis of the Appellant’s putative appeal emerges from the documents that he submitted with his submission. He believes that the alteration to the Articles would be bad for the governance of the Charity and would benefit ex members and non members. However the Appellant has not substantiated that fear in his submission. In any event, as indicated above, if there is substance in that fear, a complaint can be expressed to the Respondent. Further, there is no general point of importance at stake.

The Tribunal also notes that in the Appellant’s appeal notice, he repeatedly refers to a decision on the part of the Charity to exclude some 31 proxy votes at the meeting of 3 September 2013. That appears to the Tribunal to be a point that the Appellant wishes to ventilate and investigate. However, the appeal process is not the vehicle by which that matter is to be taken forward.

Conclusion on application to extend time

1. For the foregoing reasons, the Appellant’s application to extend time to allow him to appeal against the decision to consent to the alteration of the Articles is dismissed.

Adrian Colmer

(Chairman)

NI Charity Tribunal

6th January 2015