



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. GIA/253/2011

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Name: Mr Brian Thomas Fairclough
Tribunal: First-tier Tribunal (General Regulatory Chamber) (Information Rights)
Tribunal Case No: EA/2010/0149
Tribunal Venue: n/a
Hearing Date: 1 November 2010

**NOTICE OF DETERMINATION OF
APPLICATION FOR PERMISSION TO APPEAL**

The application to the Upper Tribunal for permission to appeal was made late. I extend the time for making the application under rule 5(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and admit the application for consideration. However, I refuse permission to appeal.

This determination is made under section 11 of the Tribunals, Courts and Enforcement Act 2007 and rules 5, 21 and 22 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

REASONS

1. This is an application relating to the decision of Tribunal Judge McKenna dated 1 November 2010. In her decision Tribunal Judge McKenna set aside two previous rulings by Judge Angel, for reasons she explained in full, but reached the same conclusion that the appeal to the First-tier Tribunal had to be struck out as being out of time. She also concluded that the application for permission to appeal to the Upper Tribunal was invalid, as it gave no grounds to challenge the tribunal's earlier rulings, and so she declined to admit that application. Tribunal Judge McKenna's decision was sent to the applicant by e-mail the same day.
2. The time limit for renewing such an application before the Upper Tribunal is one month (rule 21(3)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008). The Upper Tribunal office received a letter from the applicant seeking advice on how to proceed on 16 December 2010. That letter was dated 12 December 2010. It was therefore already out of time. The applicant's UT11 form was then received on 18 January 2011.
3. The Upper Tribunal office asked the applicant for an explanation for the delay and he has suggested it was due to seasonal problems with the post. This may explain the delay in the receipt of the UT11. I am prepared, perhaps generously, to take the date of the first letter as the effective date of the application in the circumstances. Given the applicant's description of himself as a person "of senior years", and the fact that that letter was only about a fortnight late, I am also willing exceptionally to extend time so that the application to

the Upper Tribunal can be considered on its merits, rather than simply be struck out as being late.

4. However, it is not appropriate to give permission to appeal. I can only give permission to appeal if there is a reasonable prospect of success. There is a right of appeal to the Upper Tribunal from a decision of the First-tier Tribunal, but only on a point of law and not on issues of fact. It follows that the right of appeal to the Upper Tribunal is not an opportunity simply to challenge the facts as found by the First-tier Tribunal. That is to misunderstand the purpose of the appeals system.

5. Putting all the procedural complications to one side, the real issue in this matter is whether the First-tier Tribunal should have extended time to admit the original appeal against the Information Commissioner's Decision Notice. Tribunal Judges Angel and McKenna both considered the arguments for admitting the late appeal and had decided not to do so. Those were ultimately all issues of fact. They clearly considered the relevant factors and reached a decision which was open to them in the exercise of their discretion. I can see no realistic argument that Tribunal Judge McKenna's decision on that issue is susceptible to legal challenge, not least as she was also clearly incorporating Judge Angel's reasons for concluding that it was not fair and just to admit the late appeal on the facts of this case.

6. I appreciate that the circumstances which led to the complaint to the Information Commissioner were distressing, and that the fact that this route of challenge to his decision Notice has been closed off will be a disappointment, but the time limits are there for a purpose and a case has to be made out for admitting a late appeal. That has not been done and there is no arguable case that Tribunal Judge McKenna's decision involves an error of law, so I must refuse this application.

7. It should be noted that rule 22(3) to (5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698, as amended) provide that the applicant may apply for this decision to be reconsidered at an oral hearing before the Upper Tribunal, but any such application must be made within 14 days.

(Signed on the original)

**Nicholas Wikeley
Judge of the Upper Tribunal**

(Dated)

10 March 2011