



**IN THE FIRST TIER TRIBUNAL  
(INFORMATION RIGHTS)  
GENERAL REGULATORY CHAMBER**

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**RULING on APPLICATIONS for PERMISSION to APPEAL  
By  
ISMAIL BHAMJEE AND SAHERA BHAMJEE**

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1. This is a ruling concerning a number of applications for permission to appeal to the Upper Tribunal against decisions of the First Tier Tribunal (Information Rights).

*Background*

2. On 22 December 2010, The Principal Judge (Information Rights) issued a ruling under rule 8 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“the Rules”), striking out three Notices of Application in respect of Decision Notices dated 12 and 24 August 2009 and 18 November 2010.
3. In respect of the Decision Notice dated 18 November 2010, the Principal Judge found that the Appellants were not the original complainants and therefore had no standing to bring the appeal.
4. In respect of the Decision Notices dated 12 and 24 August 2009, the Principal Judge found that the applications were out of time and that no persuasive arguments had been advanced for allowing the appeals to proceed out of time. These are cases numbered EA/2010/0196 and 0197.
5. The Principal Judge also found that Mr Bhamjee was likely to require consent to initiate proceedings in the Tribunal because he is subject to a Vexatious Litigants Order made pursuant to s.42 of the Senior Courts Act 1981.
6. Following the Principal Judge’s ruling of 22 December, Mr Bhamjee lodged Notices of Appeal in respect of Decision Notices dated 24 October 2005 and 25 March 2009. These are cases numbered EA/2011/0013 and 0014. The Principal Judge struck out these appeals under rule 8 of the Rules on 2 February 2011 because they were out of time and/or the Tribunal could not hear them because the Vexatious Litigants Order had not been lifted.

7. By a Notice dated 2 February 2011, Mr and Mrs Bhamjee applied for permission to appeal to the Upper Tribunal against the Principal Judge's rulings of 22 December 2010 and 2 February 2011. The grounds of appeal recited a list of statutory and case law authorities but did not advance any discernible argument and did not clearly identify an alleged error of law on the part of the Principal Judge in making his rulings.
8. Mr and Mrs Bhamjee have subsequently written to the Tribunal asking it to grant permission to appeal against a number of its decisions in respect of which they were not parties. These applications have not been created as separate cases, but have merely been acknowledged.

#### *Vexatious Litigants Orders*

9. Section 42 of the Senior Courts Act 1981 (as amended) provides that the Attorney General may (if certain conditions are satisfied) make an application in the High Court for an order that "*no civil proceedings shall without the leave of the High Court be instituted in any court by the person against whom the order is made*". I have not seen the order made against Mr Bhamjee but I have checked that he is indeed listed as a person subject to a Vexatious Litigants Order on the HMCS website. The website states that the order was made against him on 8 December 2003 and it appears to be of indefinite duration. I understand it to be an order preventing him from instituting civil proceedings without the permission of the High Court.
10. I have considered whether these applications to the Tribunal fall within the meaning of "*civil proceedings...in any court*". In Re Ewing, December 12, 2002 (unreported), Mr Justice Davis held that section 42 of the 1981 Act extended to all bodies which were constituted as bodies having judicial characteristics and exercising judicial functions by means of judicial procedures, such that they could properly be categorised as courts. In that case, the Information Tribunal (as it then was) was held to be a court for the purposes of s.42 of the 1981 Act and I conclude that the First-tier Tribunal (Information Rights) is also a court for the purposes of s.42 SCA 1981, on the basis that it is the judicial body into which the Information Tribunal's functions transferred.
11. The effect of my conclusion is that Mr Bhamjee may not institute any proceedings in the First-tier Tribunal (Information Rights), so long as the Vexatious Litigants Order remains in place, unless he has the permission of the High Court. This raises the question of whether the Tribunal is required to accept Mr Bhamjee's applications and then proceed to strike them out under rule 8 of the Rules, or whether it may refuse to accept them at all, on the basis that Mr Bhamjee has no capacity to institute proceedings. I note that the relevant Practice Note to the Civil Procedure Rules applicable in the High Court states that proceedings instituted by a person subject to a Civil Proceedings Order will be automatically struck out without the need for a further order by the Judge, whereas the rule 8 (2)(a) procedure requires the Tribunal to notify the Appellant of the proposed strike out and consider his representations under rule 8(4).

12. Having regard to the overriding objective in rule 2 of the Rules and the requirement for the Tribunal to deal with cases fairly and justly, which includes dealing with cases in a manner that is proportionate to the issues raised, it seems to me that the Tribunal is entitled to take the view that a person subject to a s.42 order is unable to “start proceedings” for the purposes of rule 22(1) of the Rules. This means that there is no power for the Tribunal to accept the case and then after further consideration strike it out under rule 8 as the Principal Judge did, because there is no valid application for the Tribunal to determine.
13. In the circumstances, I have agreed with the Tribunal administration that in future any correspondence from Mr Bhamjee will merely be acknowledged and not opened as a case or referred to a Tribunal Judge. If the Vexatious Litigants Order is lifted, or if the High Court were to give Mr Bhamjee permission to commence proceedings before the Tribunal, then the Tribunal would be able to consider fresh applications on their merits.

*Mrs Bhamjee*

14. Mrs Bhamjee is joined to the applications for permission to appeal and is a co-signatory to some of the correspondence. If Mrs Bhamjee wishes to commence any proceedings in her own right, she is of course able to make the relevant application by herself. However, I find that she has no standing to apply for permission to appeal in respect of these decisions, as she was not a party to the first-instance decision.

*Review of Original Decision*

15. Under rule 44 of the Rules, the First-tier Tribunal may undertake a review of its own decision if (a) it has received an application for permission to appeal and (b) it is satisfied there is an error of law in the original decision. In this case, I conclude that there has been an error of law to the extent that the Principal Judge had no power to consider the merits of the applications then before him because they were not validly instituted. I do not, however, consider that it would be appropriate to take any action on the Review but rather that it would be appropriate to give permission to appeal this ruling to the Upper Tribunal.

*Permission to Appeal*

16. I consider that permission to appeal should now be given, in order for the Upper Tribunal (Administrative Appeals Chamber) to give an authoritative ruling on the issues raised in this case.
17. Under rule 21(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended, Mr Bhamjee now has one month from the date this ruling is sent to him to lodge an appeal with the Upper Tribunal (Administrative Appeals Chamber), 5<sup>th</sup> Floor, Chichester Rents, 81 Chancery Lane, London, WD2A 1DD. Further information about the appeal process is available on the Upper Tribunal’s website at <http://www.osscc.gov.uk/index.htm>.

EA/2010/0196 & 7  
EA/2011/0013 & 14  
EA/2011/0038, 0039 and 0040

Signed:

Alison McKenna

Tribunal Judge  
First-tier Tribunal (Information Rights)  
Dated: 18 February 2011