



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

EA/2009/0045 and EA/2011/0035

RULING ON APPLICATION FOR PERMISSION TO APPEAL

Introduction

1. This is an application by Mr William Thackeray (the “Appellant”), made under Rule 42 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the “Rules”), for permission to appeal against a decision of the First-tier Tribunal (Information Rights), dated 20 July 2011.
2. In that decision, the Tribunal decided not to admit the Appellant’s two Notices of Appeal because they failed to comply with the requirements of Rule 22(2)(a). The Tribunal also decided not to exercise its discretion under Rule 7(2) to waive those requirements.

Background

3. In September 2010, the Appellant made two requests for information to the BBC under the Freedom of Information Act 2000 (“FOIA”). Both were refused. The Appellant complained to the Commissioner who upheld the BBC’s refusals. The Appellant then sought to appeal to the Tribunal against the Commissioner’s Decision Notices.
4. The Appellant’s Notices of Appeal gave his address as follows:

[Address redacted]
5. The Appellant stated that the address he had provided was a residential address, but refused to confirm that it was his address. The Appellant argued that there was no requirement for him to supply his personal address. The Tribunal found it likely that the address was that of a third party.
6. The Tribunal also found that Rule 22(2)(a) required the Appellant to provide his personal address. The Tribunal decided not to exercise its discretion under Rule 7(2) to waive this requirement.

The Scope of the Tribunal’s Consideration of an Application for Permission to Appeal

7. Rule 43 provides that on receiving an application for permission to appeal, the Tribunal must first consider, taking into account the overriding objective in Rule 2, whether to review the decision in accordance with Rule 44. Rule 44(1)

provides that the Tribunal may only undertake a review if it is satisfied that there was an error of law in the decision.

8. If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action, the Tribunal must consider whether to give permission to appeal to the Upper Tribunal. An appeal to the Upper Tribunal lies only on a point of law.
9. The first question therefore, is whether any of the grounds raised by the Appellant discloses an error of law in the First-tier Tribunal's decision.
10. The issue as to whether Rule 22(2)(a) requires the Appellant to provide his own address, is a point of law. However, the issue as to whether the Tribunal should have exercised its discretion under Rule 7(2) to waive the requirement of Rule 22(2)(a) is a different matter. The exercise of discretion will usually only be reviewed if it is Wednesbury unreasonable.

Did the Tribunal err in law in its interpretation of Rule 22(2)(a)?

11. The Appellant has put forward three reasons why the Tribunal erred in law.
12. First, he says that the Tribunal's decision is incompatible with Article 10 of the European Convention on Human Rights ("ECHR") which guarantees access to information as part of the right to freedom of expression. He says that that no preconditions, such as the provision of a residential address, can apply to that right.
13. The Tribunal has not made any finding on the Appellant's entitlement to the information he seeks. What it has said is that in order for the Appellant to have his claim adjudicated upon, the Appellant must comply with certain procedural requirements. To take the Appellant's argument to its logical conclusion, no Court or Tribunal could apply any rules of procedure in any case where ECHR rights are invoked. That plainly cannot be the case. In any event, Article 10, even if engaged, is not an unqualified right. This is made abundantly clear by Article 10(2) which specifically recognises that the exercise of the right may be subject to "formalities, conditions, restrictions or penalties". To the extent that the Rules give rise to any interference with the Appellant's rights under Article 10, they are both necessary and proportionate.
14. Second, the Appellant says that the Tribunal's decision is incompatible with the overriding objective set out in Rule 2. He refers, in particular, to Rule 2(b) and (c), and says that the Tribunal's decision does not meet the objective of avoiding unnecessary formality, seeking flexibility in the proceedings, and ensuring, in so far as practicable, that the parties are able to participate fully in the proceedings.
15. Rule 2(1) states that the overriding objective of the Rules is to enable the Tribunal to deal with cases fairly and justly. However, dealing with a case fairly and justly means taking into account not only what is fair and just to the Appellant, but also what is fair and just to the other parties. For the reasons set out by the Tribunal at paragraph 25 of its decision, it considered that there

were good reasons, having regard to the interests of all the parties, why an appellant should provide his address. As indicated at paragraphs 23 and 26, the Tribunal did not apply a formalistic approach to the application of the Rules and was prepared to consider admitting the Notices of Appeal if the Appellant provided his address on certain terms. The Appellant declined this opportunity.

16. Although the Appellant has not raised the point, I should say, for completeness, that it is not an error of law not to have referred to the overriding objective explicitly, where, as here, it has been considered implicitly (see on this point: AM v Information Commissioner and First-tier Tribunal [2010] UKUT 435 (AAC)).
17. Third, the Appellant says that the Tribunal's decision is incompatible with the overriding objective set out in Rule 2(a) of the Civil Procedure Rules as regards "ensuring that the parties are on an equal footing" because the parties cannot be on an equal footing if one party is intimidated by the threat of violence by a third party.
18. It is assumed that the Appellant intended to refer to rule 1.1(2)(a) of the Civil Procedure Rules. However, the Civil Procedure Rules do not apply to proceedings before the Tribunal. They apply only to proceedings in the County Court, the High Court, and the Civil Division of the Court of Appeal. (see rule 2.1(1)). Broadly the same principles as contained in rule 1.1(2)(a) are in any event encompassed within Rule 2 of the Tribunal Procedure (First-Tier Tribunal General Regulatory Chamber) Rules 2009 which has been considered.

Did the way in which the Tribunal applied Rule 7(2) amount to an error of law?

19. The Appellant also says that the Tribunal should have exercised its discretion under Rule 7(2)(b) differently, and should have either required the Appellant to provide his residential address or alternatively, to substitute another party in his place who would have been willing to do so. As regards the former, the Appellant made it clear that he was not prepared to provide his address. As regards the latter, it would have been entirely outside the Tribunal's powers to have made any such direction. As noted in paragraph 28 of the Tribunal's decision, no such application to substitute a party was made. The Appellant had had ample opportunity to do so.
20. In short, I am not satisfied that the Appellant's grounds of appeal identify any error of law. Permission to appeal is therefore refused.
21. The appellant's grounds of appeal are not comprehensive, however, and do not, for instance, challenge the Tribunal's interpretation of the wordings of Rule 22(2)(a). As noted in the Tribunal's decision, the Appellant has and has had several other appeals before the Tribunal where the same issue has arisen. To my knowledge, the proper interpretation of Rule 22(2)(a) has not been considered by the Upper Tribunal. Should the appellant make an application directly to it for permission to appeal, the Upper Tribunal may see merit in granting permission to appeal so that the issue can be considered. However, that is a matter for the Upper Tribunal.

22. Under Rule 23(2), as amended, the Appellant has one month from the date this Ruling is sent to him to lodge an application for permission to appeal directly with the Upper Tribunal by sending it to:

The Upper Tribunal (Administrative Appeals Chamber)
5th Floor, Chichester Rents
81 Chancery Lane
London WC2A 1DD
DX: 0012 London/Chancery Lane

Signed

Date: 7 September 2011

**Anisa Dhanji
Judge**