

Freedom of Information Act 2000 (FOIA)

Between

Wilson & Wilson

Appellants

And

Information Commissioner

Respondent

Ruling

1. The Appellants have submitted an undated Notice of Appeal (the Notice) which was received by the Tribunal on 4th October 2007. It relates to a Decision Notice issued by the Respondent to a firm of solicitors, Richmonds, and acknowledged in the Notice as having been served on 3rd May 2007.
2. The Information Tribunal (Enforcement Appeals) Rules 2005 provide, as is relevant to this Ruling:

Rule 4

(1) An appeal must be brought by a written notice of appeal served on the Tribunal.

(2) The notice of appeal shall –

(a) identify the disputed decision and the date on which the notice relating to the disputed decision was served on or given to the appellant; and

(b) state –

(i)the name and address of the appellant

(ii) the grounds of the appeal

.....

(v) where applicable the special circumstances which the appellant considers justify the Tribunal's accepting jurisdiction under rule 5(2) below; and

(c) be signed by or on behalf of the appellant.

Rule 5

(1) Subject to paragraph (2) below, a notice of appeal must be served on the Tribunal within 28 days of the date on which the notice relating to the disputed decision was served on or given to the appellant.

(2) The Tribunal may accept a notice of appeal served after the expiry of the period permitted by paragraph (1) above if it is of the opinion that, by reason of special circumstances, it is just and right to do so.

(3) A notice of appeal shall if sent by post in accordance with rule 31(2) below, be treated as having been served on the date on which it is received for dispatch by the Post Office.

3. The Appellants accept in the Notice that it is served on the Tribunal out of time and provides as their reason that an original notice of appeal was served incorrectly by Richmonds, on their behalf, on the Respondent who delayed dealing with it and did not forward it to the Tribunal.

4. The Tribunal sort clarification of the grounds for considering the application under Rule 5(2) and wrote to the Appellants as follows:

“ In order for the Tribunal to consider whether there are special circumstances which make it just and right for your appeal to be accepted would you please provide us with the correspondence between your solicitors and the Information Commissioner’s Office which provide evidence of the reasons for the delay in appealing. It would also be helpful if the solicitors could provide a written submission explaining the delay. The Tribunal would also like to give you a further opportunity to explain in more detail what has happened.”

5. The Appellants have submitted to the Tribunal correspondence and telephone notes between Richmonds and the Commissioner’s Office which I have taken into account in this Ruling. In summary these show that:

a. The Commissioner issued a Decision Notice in which it set out clearly the right of appeal in the following extracted form

Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

- b. The Commissioner's letter of 3rd May 2007 accompanying the Decision Notice also referred to the right of appeal in similar terms.
 - c. Richmonds had made representations to the Commissioner's Office in relation to the original complaint before the Decision Notice was issued. Some of these were only addressed by the Commissioner after the issuing of the Decision Notice but only on the basis of explaining how the Commissioner had dealt with the complaint and his eventual decision and which again pointed out the appeal procedure to this Tribunal.
 - d. By letter dated 25th May to the Commissioner, Richmonds provided detailed criticisms of the handling of the complaint and the findings in the Decision Notice and requested, in effect, that the Commissioner reconsider his decision.
 - e. Richmonds did not receive an acknowledgment of their letter and on 6th July 2007 wrote requesting a response which was followed by a series of attempted telephone follow ups.
 - f. It was not until 13th August 2007 that the Commissioner formally responded by letter treating the representations made by Richmonds as a complaint as to the way that the Commissioner's Office had handled the FOI complaint and not as an appeal to this Tribunal.
6. The Appellants seem to assert that this correspondence amounts to a notice of appeal under Rule 4 cited above which was served in time, albeit to the wrong body. I do not accept that it amounted to a valid notice of appeal. Rule 4(1) clearly states that an appeal must be served on the Tribunal. Service on the Commissioner does not fulfil this requirement.
 7. However the Appellants did eventually serve a notice of appeal on the Tribunal but well out of time. It therefore falls on me to decide whether there are any special circumstances under Rule 5(2) where it could be considered just and right to accept the appeal out of time. In relation to this I do not wish to distinguish between the complainant referred to in the Decision Notice, namely Richmonds, and the Appellants. Clearly Richmonds were acting for the Appellants in the matter and for the purposes of this Ruling are treated as the same party.
 8. The Appellants appear to have made their complaint to the Commissioner through their solicitors. The Decision Notice is addressed to Richmonds as the complainant. They were duly notified of the appeal process which they chose to ignore and instead wrote and corresponded with the Commissioner. The Commissioner understandably regarded this as a complaint against his handling of the FOI complaint. In any case he is under no obligation to accept a notice of appeal on behalf of the Tribunal or has any obligation to serve a misdirected notice on the Tribunal. If the intention at that stage was to appeal against the Decision Notice then as solicitors, Richmonds, should have known better and dealt with matters properly in accordance with the legal rules, particularly when put on clear notice to do so. There is no excuse that the Commissioner's Office did not respond for some time to their communications.
 9. I therefore find that there are no special circumstances to take into account in this case and find that the appeal is out of time. In coming to this decision I have sympathy with the Appellants who appear in this case to have mistakenly relied on their professional advisors to pursue their cause.

Signed

Chairman

Date