



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL

Appeal No: EA/2012/0023

BETWEEN:

BENJAMIN HICK

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

THE BOARD OF TRUSTEES OF THE TATE GALLERY

Second Respondent

REFUSAL FOR REQUEST TO STAY AND FURTHER DIRECTION

1. The Appellant's request for a stay of proceedings is refused.
2. Consent is given for the Appellant's withdrawal of his appeal under rule 17(2) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules"). Accordingly, these proceedings have ended.

Request to Stay Proceedings

3. The Appellant has requested (and been denied) a stay of proceedings a number of times, after having also requested an extension of time in submitting grounds of appeal, and delayed in providing clear grounds of appeal.
4. Reasons for the refusal to stay were given on 2 March (see appendix.) Nothing has changed of substance to alter this decision. In particular:
 - a. I have been given no evidence or reason to believe the appeal the Appellant has said is being considered by the Court of Appeal would have any bearing on our deliberations in such a way as would assist the Appellant in his appeal.
 - b. There is no compelling reason given for inviting the Audit Commission and HMRC to comment in this case.
 - c. The Appellant's assertion that there should be a stay in view of the Second Respondent's obstruction seems to lack proper reasoning.

Withdrawal

5. The Appellant previously noted in a previous application for stay or withdrawal on 30 March that rule 17 allows for an application for reinstatement within 28 days. It was explained if he was to withdraw his case, he risks it not being reinstated, and that positions of the other parties as well as his own reasons would likely be considered.

Judge Taylor

27 April 2012

APPENDIX



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL

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BETWEEN:

BENJAMIN HICK

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

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THE BOARD OF TRUSTEES OF THE TATE GALLERY

Second Respondent

REFUSAL FOR REQUEST TO STAY AND FURTHER DIRECTION

1. The Appellant's request for a stay of proceedings is refused. Accordingly, the direction requiring clarification of grounds has also not been stayed.
2. If the Appellant does not comply by 9 March with the Direction 4 of 23 February, this will lead to the automatic striking out of the proceedings under rule 8(1) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules").

Background to Request

3. On 24 January 2012, The Appellant was refused an extension of time to lodge grounds of appeal by the Tribunal. It was explained that it was “*not necessary for you to fully prepare your case at this stage. You only need to explain briefly why you consider the Information Commissioner's decision is wrong where possible referring to paragraphs in the Notice.*”
4. The guidance accompanying the notice of appeal form explains that:

“Your Grounds of Appeal should explain, in detail, which parts of the IC's Decision Notice you disagree with and why; (not the actions or decisions of a public authority or any other party). This is an extremely important part of your application and your grounds should show why you consider the Commissioner's notice or parts of it are wrong. Please do not hesitate to use additional sheets if necessary... It is unnecessary to go to a large amount of trouble to prepare for the appeal at this stage. It is better to lodge the appeal in time and seek guidance from a judge as to what further evidence or documentation is required.”
5. The Notice of Appeal was lodged on 1 February. In this, the Appellant explained that he is a litigant in person, and that his grounds were that the Commissioner's decision was erroneous because the reasons for the decision are based on flawed and unreliable evidence. However, there was no detail explaining why the Appellant disagreed with decision or why the evidence the Commissioner relied on was unreliable. Whilst the Appellant also submitted accompanying quite lengthy documents, it was not clear how to extract from these any sense of what the sufficient grounds might be.
6. On 24 February, the Appellant was emailed directions requiring him to clarify what his grounds were by 2 March, in particular: “*a clarification of his grounds within a self-standing document, such that it will not be necessary to read other documents so as to elucidate his main arguments. The Judge has seen a copy of the letter from the Tribunal office of 24 January 2012, indicating that in serving his grounds he only needed to explain briefly why he considered the Information Commissioner's decision was wrong. However, his grounds do not sufficiently provide reason or substantiate his assertion that the Commissioner erred in the decision because it is flawed and based on unreliable evidence.*”

Request to Stay Proceedings

7. On 28 February he requested a stay of proceedings for “*6 months or more*” before clarifying the grounds, stating:
 - a) it would not be possible to meet the deadline of 2 March because of a commitment to meet a deadline with the Court of Appeal (which he later informed the office related to a personal injury claim and

- harassment)
- b) there was sufficient evidence already for permission to appeal to the Court of Appeal. Any further evidence might be more cost effectively required to be provided by the Defendants
 - c) if permission to appeal were granted, the cost of a tribunal could be avoided.
 - d) given the profile and complexity of the case, it would seem in the public interest to find legal representation, and his experience suggested it would take a firm at least six months to prepare the case.
 - e) more evidence had come to light concerning the defendant's response to the second complaint.

Reasons

- 8. My decision to refuse a stay and issue this further direction is based on the background described above and the following reasons:
 - a. I have taken into account the overriding objective and the parties' obligation to cooperate with the Tribunal set out in rule 2 of the Rules, including dealing with the case proportionately, avoiding delay and being fair to all parties;
 - b. The Appellant's application for extension before lodging his notice of appeal has already been considered and refused in January. He has submitted a notice in time, but it did not fully contain what would normally be expected so as to be able to understand or even elucidate the basic kernel of his arguments. Without this, it would seem extreme extremely difficult for the Respondents to be able to progress with meaningful responses that addressed the issues of the appeal, and unreasonable for them to incur the time and costs in doing so. Therefore, the Appellant was given more to time to submit grounds of appeal that could be properly understood;
 - c. Although he is a litigant in person, the Tribunal set up is intended to enable those without a legal background or representation to use it. This includes the Tribunal ensuring an informal process where possible and avoiding legal jargon; guidance being available to explain the whole process including what is needed from the Appellant; and the Tribunal ensuring through the 'inquisitorial system' that he is not disadvantaged by it posing questions during the hearing that it might expect a lawyer to pose on the Appellant's behalf, so that the tribunal can be sure to reach the best decision. Consequently, many Appellants conduct their appeals with no legal representation.

- d. The Appellant has stated that he requires six months or more to instruct legal representatives because his case is complex and will take a firm that long to prepare. It is the Appellant's right to have a legal representative. However, six months or more is an unrealistically long period for a lawyer to need to clarify the grounds or prepare the case. Further, I have received nothing from the Appellant to support that the case is particularly complex - the Decision Notice is relatively short and succinct. Accordingly, the Appellant does not need legal representation, and if he wants it, there is no compelling reason presented as to why this should add to the time to prepare his appeal.
- e. The existence of a deadline the Appellant has on 2 March does not necessitate a stay of 6 months or more, and he has now been given a further extension of another week.
- f. The clarification of the grounds does not need not be a long document, and indeed can be shorter than the Appellant's application for stay, which the Appellant was able to submit in the time. but should simply explain the reason why the decision is flawed and based on unreliable evidence, so that the kernel of his arguments can be understood and responded to by the respondents.

The Appellant should please note that (a) it is not possible to appeal to the Court of appeal without first having the appeal considered by this Tribunal; (b) the directions have not requested evidence from you at this stage, but rather the brief arguments that properly explain why you think the Commissioner was wrong in law or in the exercise of his discretion when reaching his decision.

Judge Taylor

2 March 2012