



NCN: [2023] UKFTT 00402 (GRC)

Case Reference: EA/2022/0212

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

Heard: by determination on the papers

Heard on: 28 April 2023

Decision given on:

Before: Judge Alison McKenna

PETER TILSON

Applicant

- and -

**THE INFORMATION
COMMISSIONER**

Respondent

RULING

**on application to extend time to admit application for permission to appeal:
I refuse to extend time.**

REASONS

1. On 21 December 2022, I determined a strike out application made by the Information Commissioner. I agreed that the Notice of Appeal in this case had no reasonable prospects of success, after considering representations from both parties. This was because the Notice of Appeal did not engage with the Tribunal's jurisdiction in respect of the Information Commissioner's Decision Notice but made submissions about the public authority's record keeping. The submissions made under rule 8 (4) replicated the Applicant's erroneous focus on the public authority.
2. By application made on 8 April 2023, the Applicant applied for a set aside or permission to appeal in respect of the decision of 21 December 2022. That application was ready for determination only yesterday, when the Applicant confirmed that he had supplied all the medical evidence which he wished the Tribunal to consider. He stated in his application of 8 April 2023 that he had initially decided not to supply the Tribunal with any medical evidence in support of his application on the advice of Dr

Reuben Kirkham, but he later provided such evidence when asked. The Applicant states he is a lawyer. Dr Kirkham is not a lawyer and I do not understand him to be the Applicant's non-legal representative in these proceedings as he has not notified the Tribunal of this under rule 11 of the GRC Rules.

3. The Applicant's application for permission to appeal or set aside should have been made within 28 days of the decision of 21 December 2022 being sent to him. He acknowledges that this application is late but asks me to exercise my discretion to admit it on the basis that he was unwell and unable to make the application sooner.
4. Firstly, the circumstances in which a Decision may be set aside are clearly set out in rule 41 of the GRC Rules. The Applicant has made no reference whatsoever to those conditions in his application and so I refuse to extend time to permit the application for set aside as I cannot consider whether the conditions for making that application are met.
5. Turning secondly to the application for Permission to Appeal, I have discretion to extend the time limit for making the application under rule 5 (3) (a) of the Tribunal's Rules. In deciding whether to exercise my discretion I have considered the Upper Tribunal's decisions in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC) and *Leeds City Council v HMRC* [2014] UKUT 0350 (TCC). I have also considered the Upper Tribunal's decision in *BPP University College of Professional Studies v HMRC* [2014] UKUT 496 (TCC) in which the *Data Select* principles were applied. (*BPP* was considered further in the Court of Appeal and the Supreme Court, but on a different point).
6. In Morgan J's decision in *Data Select Limited v HMRC* [2012] UKUT 187 (TCC):

[34] ... Applications for extensions of time limits of various kinds are commonplace and the approach to be adopted is well established. As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions: (1) what is the purpose of the time limit? (2) how long was the delay? (3) is there a good explanation for the delay? (4) what will be the consequences for the parties of an extension of time? and (5) what will be the consequences for the parties of a refusal to extend time. The court or tribunal then makes its decision in the light of the answers to those questions.

7. Applying the recommended approach, I find as follows:

- (i) The purpose of the time limit is to ensure that proceedings are conducted in an orderly way and that the principle of finality in litigation may be observed;
- (ii) The period of delay was fourteen weeks, assessed as at 27 April 2023, which was the date when all the medical evidence was received and the application was ready for determination. I consider this to be a very significant delay;
- (iii) In considering the explanation given for the delay, I note that the Notice of Appeal dated 8 April 2023 states that the Applicant has long covid. However, in his email of 24 April 2023 the Applicant has altered this to 'potential long covid'. I have considered medical evidence dated 18 and 26 April 2023 from the Applicant's GP; dated 19 April 2023 from a therapist; dated 25 April from an osteopath and also a prescription. I am sorry to read that the Applicant is in poor health, but I note that none of the evidence mentions covid or long covid. It does mention a range of other conditions which appear to date back to the summer of 2022. I accept that the Applicant has been unwell, and he states that he finds his various symptoms debilitating, but none of the evidence he has produced states that the Applicant was incapacitated by these conditions or even that they would have made making an application to the Tribunal difficult. Accordingly, I find that the reason given for the serious delay in making this application is not a good one because the evidence supplied in support of medical reasons simply does not support the application;
- (iv) Finally, turning to (iv) and (v), I must consider the consequences for the parties of extending or not extending time. If I refuse, then the Applicant may apply for permission to appeal against my refusal to extend time. If I agree, then the Upper Tribunal will

proceed to consider his appeal against my strike out decision. Both options clearly involve costs to the public purse.

8. It is appropriate for me to consider the Appellant's proposed grounds of appeal here, as very strong grounds may cause me finally to exercise my discretion in his favour. I understand his grounds of appeal to be as follows: (i) that he thinks I struck out a large number of appeals on the same day as his; (ii) that his rule 8 (4) invitation was a nullity because it was issued by a clerk and not a judicial office holder; (iii) that he was not advised what issues to address in making his rule 8 (4) submissions; (iv) that the Tribunal should have obtained the full file before making its decision; (v) that the Tribunal should have exercised its jurisdiction to make inquiries as to what information the public authority held; (vi) that the Tribunal failed to apply a sufficiently rigorous test to the public authority's conduct of its searches.
9. In my decision of 21 December 2022, I referred the Applicant to the Upper Tribunal's decision in *HMRC v Fairford Group (in liquidation) and Fairford Partnership Limited (in liquidation)* [2014] UKUT 0329 (TCC), which made clear that when considering the application for strike out made by the Information Commissioner, I was not required to conduct a mini-trial but rather to decide whether the appeal was fit for a full hearing. These grounds do not address that test and it does not seem to me that they are *arguable* as grounds for impugning the strike out, which is the decision which it is sought to appeal.¹
10. I conclude that there has been a very significant delay in making this application and that the Applicant's explanation for this has not been supported by the evidence he has supplied. His proposed grounds of appeal are not, in my view, arguable. In all the circumstances, I have concluded that it would not be appropriate to exercise my discretion so as to extend time to allow the application for permission to appeal to proceed and so I hereby refuse to do so.

(signed)
Judge Alison McKenna

Dated: 28 April 2023

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¹ See Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.

