Upper Tribunal for Scotland

2020UT45
Ref: UTS/AP/20/0013

DECISION OF

Lady Carmichael

ON AN APPLICATION TO APPEAL
IN THE CASE OF

NW c/o, Cairn Legal, 1st Floor - Regent House, 113 West Regent Street, Glasgow, G2 2RU

Appellant

- and -

Glasgow City Council, Legal Services, City Chambers, GLASGOW, G2 1DU

Respondent

6 November 2020

Decision

I refuse the appeal and uphold the decision of the First-tier Tribunal (Health and Education Chamber). I remit the matter to that tribunal for further procedure in respect of those elements of the claim that it did not exclude as time-barred in its decision of 6 February 2020.

Introduction

1. The appellant's claim is in relation to alleged discrimination in respect of restraint or exclusion of a child. The incidents of restraint or exclusion are said to have taken place between 29 September 2017 and 16 May 2019. On 6 February 2020 the First-tier tribunal ("FtT") dismissed the claim, other than in respect of an incident involving restraint of the child on 16 May 2019 and in respect of a contention that of 16 May 2019 could, together

with previous alleged incidents involving restraint during the school session 2018-19 amount to conduct extending over a period.

2. The incidents excluded from further consideration by virtue of the FtT's decision of 6 February are exclusions in October 2018, on 6 December 2018 and 22 January 2019. The FtT declined to exercise its discretion under rule 61(5). That aspect of its decision is not challenged in this appeal.

3. On receipt of an application for permission to appeal, the FtT directed a review of the decision. The legal member of the original panel of the FtT reviewed the decision, and determined under section 44(1)(a) of the Tribunals (Scotland) Act 2014 to take no action. The FtT then considered and granted the application for permission to appeal.

4. Parties proceeded on the basis that the latest incident relevant to the appeal was the incident of exclusion on 22 January 2019. The claim was sent to the tribunal by email. The decision of 6 February records that the FtT received the claim on 25 July 2019. The review decision records that it was date stamped as having been received on that date, and that the claim was entered on the tribunal system at 0830h that day. None of that is in dispute.

5. Rule 61(1) and (4) of the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 ("the 2018 Rules"), which are set out in the schedule to the First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017 (SSI 336/2017) is in the following terms:

   "61(1) A claim to the First-tier Tribunal shall be made by notice in writing and shall be signed by the claimant or, at the discretion of the First-tier Tribunal, a claim transmitted by electronic means may be accepted without the claimant's signature.

   (4) The First-tier Tribunal shall not consider a claim unless the claim has been received by the First-tier Tribunal before the end of the period of six months beginning when the act complained of was done. Conduct extending over a period is to be treated as done at the end of the period."

6. Parties were at one in submitting that the period specified in rule 61(4) expired on 21 July 2019, which was a Sunday, and that was not on any view a working day for the purposes of the 2018 Rules.

7. Parties' submissions raise issues as to the construction and application of rules 1 and 104 of the 2018 rules, which are, so far as material, in the following terms:

"1(1) In these Rules:

"working day" means any day which is not—

(a) a Saturday;
(b) a Sunday;
(c) a day from 27th December to 31st December inclusive; a
(d) day in July; or
(e) a day specified as a bank holiday in Scotland in or by virtue of the Banking and Financial Dealings Act 1971

(2) In these Rules –

…

(b) where the time prescribed by these Rules for doing any act expires on a day which is not a working day, that act is done in time if it is done on the next working day.

104(1) A notice given under these Rules shall be in writing and a person required under these Rules to notify a matter to the First-tier Tribunal shall do so in writing.

(2) Notices and documents required by these Rules to be sent or delivered to the First-tier Tribunal may be sent by post, by fax or by electronic communication to or be delivered at the address of the First-tier Tribunal or such other address as the First-tier Tribunal may notify.

…

(4) Any notice or document, other than a citation under rule 78 or 79, required or authorised to be given or sent under these Rules shall, subject to the provisions of paragraph (6) be deemed to have been given or sent if it was—

(a) sent by first class post properly addressed and pre-paid to the addressee at their ordinary or last notified address; or

(b) transmitted by fax or communicated electronically to a fax number or electronic address specified by the addressee.

(5) Any such notice or document as is referred to in paragraph (4), shall, unless the contrary is proved, be deemed to have been received—

(a) where sent by first class post, on the second working day after posting; or

(b) if transmitted by fax or communicated electronically, on the first working day after the day on which it is received in legible form.

(6) Any such notice or document as is referred to in paragraph (4) shall not be transmitted by fax or electronic communication to a person unless that person has confirmed in writing that notices or documents will be considered to have been duly sent if transmitted or communicated to a specified fax number or electronic address.

…

(9) In this rule, "working day" has the meaning given to it in rule 1 except that it includes any day in July which is not a Saturday, a Sunday or a day specified as a bank holiday in accordance with these Rules.

8. The exclusion of days in July from the definition of working days in rule 1(1) appears to be because July is the only full calendar month for which Scottish schools are generally on holiday. If time were to run through July that might pose difficulties for parties in complying with time limits to do particular acts which require investigation with staff who are liable to be unavailable during July. It is reasonably to be inferred that at least one intention of the legislature in excluding days during July was to avoid that difficulty. The legislative history supports that inference. Rule 2 of the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006 made similar provision to those of rule 1 of the 2018 rules, as did rule 2 of the Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011, as regards the definition of working days and time limits which expired on a non-working day. The definition of working days was retained when the functions of the Additional Support Needs Tribunals for Scotland were transferred to the FtT. That was notwithstanding representations from professionals who represented children and families to the effect that the exclusion of days in July from working days meant that placing requests were sometimes not determined before the start of the new school year, to the disadvantage of the children concerned: see the analysis of responses and responses to the Consultation on the rules of procedure for the First-tier Tribunal for Scotland Health and Education Chamber https://consult.gov.scot/tribunals-administrative-justice-policy/additional-support-needs-tribunals/.

The decision of the FtT

9. The reasoning of the FtT appears at paragraphs 9 and 10 of its decision of 6 February:

"9. An argument was made to the effect that rule 104(5)(b) provides that if transmitted by fax or communicated electronically a notice or document received by the tribunal shall be deemed to have been received (subject to a couple of exceptions not relevant to the present claim), unless the contrary is proved on the first working day after the day on which it is received in legible form. Working day being defined in rule 1 to exclude any date in July, it was argued that the effective deadline for lodging of the claim in relation to events in January 2019 was 1 August 2019.

10. However this argument did not take account of rule 104(9) which provides that "working day" for the purposes of rule 104 has the meaning given to it in rule 1 except that it includes any day in July. Consequently the terms of rule 104 make it clear that for the purposes of rule 104, 25 July 2019, being the date of receipt, was a working day. We were not persuaded there could be any other interpretation of the rules and in particular of the combined effect of rules 61 and 104. Accordingly every incident on which the claimant sought to rely was time barred subject to the further arguments we considered below."

10. The review decision of the FtT includes the following:

"6. The claim was date stamped as received by the tribunal on 25 July 2019 and it was, naturally, agreed that this was more than 6 months after the matters complained of with the exception of an incident that occurred on 16 May 2019. On its own rule 61(4) is mandatory (subject to rule 61(5)) and clear, making no reference to working days. It is also noteworthy that rule 1(2)(b), which the claimant is arguing applies to rule 61, refers to the time prescribed for doing any act. Whereas rule 61(4) refers to the receipt of the claim, not the sending of same. It does not appear on the wording of rule 1(2)(b) that it is intended to apply to the passive (requiring no action by the tribunal) receipt of a claim.

7. However, rule 104 requires to be considered. Rule 104(4) provides, subject to certain exceptions that are not relevant to the present claim, that anything given or sent under the rules shall be deemed to be given or sent if sent by first class post, fax or electronically, subject to the usual conditions about the correct address being used. Rule 104(5) then provides that, unless the contrary is proved, any such notice shall be deemed to have been received (a) where sent by first class post, on the second working day after posting; or (b) if transmitted by fax or communicated electronically, on the first working day after the day on which it is received in legible form. Rule 104(9) provides that "working day" for the purposes of rule 104 has the meaning given to it in rule 1 except that it includes any day in July. Consequently if rules 104(4) and 104(9) apply then, as stated in the tribunal's decision the terms of rule 104 make it clear that for the purposes of rule 104, the date of receipt was a working day.

8. It has been suggested that it is arguable that the lodging of a claim under rule 61(4) does not count as a notice or document under rule 104, and that rule 104 only applies to notices or documents lodged during the currency of a claim. It is suggested this is lent weight by the heading of rule 104 "Manner and time of services of notices". I do not agree with this argument. It was not suggested at the hearing that rule 104(4) does not apply and it refers to "any notice or document" required or authorised to be given or sent under the rules. Rule 61 clearly authorises the claim to be submitted by notice with the words "A claim to the First-tier tribunal shall be made by notice" and outlines the requirements of that notice. Rule 104 governs the service of notices in its heading as well as rules 104(4) and 104(5). I can see nothing in the rules to suggest rule 104 excludes the first notice in the claim process.

9. However, the solicitor for the claimant argues that rule 104(5) does not apply as he describes this part of the rule as comprising deeming provisions only, to be used in circumstances where the date of receipt is not proved. Authority for this interpretation derives from the wording of rule 104(5) specifically using the words "unless the contrary is proved." However the flaw in this argument is that rule 104(5)(b) specifically provides that the date of deemed receipt for electronic communications will be "on the first working day after the date on which **it is received** (my emphasis) in legible form**."** Accordingly the rule specifically envisages the date of receipt as being known (or being proved) but then advises that the date of deemed receipt is to be the day after actual proven receipt for electronic communication.

10. If I was to accept the interpretation the claimant's solicitor puts on rule 104(5) then the provisions of rule 104(5)(b) could never come into play because for them to operate the date of receipt must be known and if the date is known, following his submission, rule 104 does not operate at all. Accordingly it seemed to the tribunal and to me, on review, that if the terms of rule 104(4) apply to the submission of a claim then the provisions of 104(5) operate to fix a date of receipt and in terms of rule 104(9) a working day includes days in July.

11. Another relevant point is if the claimant were correct and rule 104(5) only applies in circumstances where receipt requires to be "deemed", this leads to an absurd circumstance in that where the date requires to be deemed, a deemed date in July would be considered a working day and accordingly the time limit would expire in July. However if the provisions of rule 104(5) do not apply (the date of receipt being known) then if rule 1(2) applies (as the claimant suggests but which I have indicated in paragraph 9 above I do not accept) then a claim received at exactly the same time would have its time limit extended to 1 August. As the responsible body argues, there is no logic to this outcome.

12. Further arguments are made in the written response from the responsible body to the review, relate to the logic of the claimant's argument that at certain time of the year claimants would get up to a month longer to lodge a claim rather than rely on just and equitable arguments that a claimant would require to make at other times; and that there is no reason for this jurisdiction to have procedural rules providing for such an "arbitrary" extension when compared with other claims for discrimination under the Equality Act 2010. I did not give any weight to these arguments but record them should they require to be considered during any appeal.

13. Another aspect of this question which I have considered on review is whether the date of receipt has actually been proved. The solicitor for the claimant has argued that rule 104(5) does not apply as the date of receipt has been proved. The wording used in the rule is "unless the contrary is proved", but the contrary has not been proved. All we have is a claim form with a date received stamp of 25 July and an acceptance by parties that this is the date when the claim was received. Effectively we have all, the tribunal and parties, accepted at face value that date stamp. We do not know whether, for example, the notice came through electronically outwith working hours the day before. Normally where a fact is agreed between the parties the tribunal would not need to seek proof of that fact, but where the operation of a rule seems to require something to be proved there is an argument that the tribunal ought to seek that proof – perhaps by making further enquiries; or alternatively, refer to rule 104(5), determine that the contrary has not been proved and use the provisions in rule 104(5) to determine the date of receipt. For what it is worth, I have now made enquiries with the case officer and am advised that emails are not retained for longer than 6 months but that the claim was added to the system at 08:30 on 25 July, so it is certainly possible that it was actually sent and received electronically, albeit not read, on 24 July. Now given my views expressed in previous paragraphs about the application of rule 104(5) it is not necessary to come to a view on this point, but in my view if parties are in agreement about a fact then a tribunal is entitled to take that fact as proved."

Submissions

Appellant

11. The appellant contended that the effect of rule 1(2)(b) was that the deadline for receipt of the claim was Thursday 1 August 2019. The last day for receipt by the tribunal of the claim was 21 July, having regard to the time limit in rule 61(4). That was a Sunday. The definition of working days in rule 1 excluded days in July, and the next working day was 1 August. The appellant disputed that rule 104 was relevant in this case. The date of receipt of the claim was known to be 25 July, and there was no need to resort to rule

104(5) in order to ascertain when it was in fact received. The definition of working days in rule 104(9) was confined to its definition for the purposes of rule 104, and had no relevance to rule 1(2) (b). If the respondent's analysis (set out more fully below) were correct, that would mean that the only time limit in respect of which it had any effect was that in rule 11.

12. Although rule 1(2)(b) referred to the doing of an act, it was an unduly narrow construction of it to exclude from its scope the receipt of a notice by the tribunal. The claimant must act by sending or transmitting the claim, such that it was received by the Tribunal within the six month period prescribed.

13. The purpose of the 2018 Rules was to provide a framework in which claims of unlawful discrimination could be brought. Those regulations were subsidiary to the Equality Act 2010 ("the 2010 Act"), being made under powers conferred by Schedule 17, Part 3, Paragraph 10 (2)(b) of that Act. It was therefore appropriate to have regard to the 2010 Act and to Parliament's purpose in enacting it. That was, according to the preamble to the 2010 Act, '…to require the exercise of certain functions to be with regard to the need to eliminate discrimination… [and] to increase equality of opportunity…'

14. It was necessary also to have regard to rule 2(1) of the 2018 Rules, and the overriding objective of dealing with references and claims fairly and justly. "Fairly and justly" should be interpreted in the context of the purpose of the 2010 Act as expressed in its preamble.

15. The rules at issue in this appeal were ambiguous, and the Upper Tribunal should therefore prefer the construction that served the purpose of eliminating discrimination and increasing equality of opportunity, rather than that which restricted the ability of the party to bring a claim of unlawful discrimination. The claim engaged the child's Convention rights, namely Article 2 of Protocol 1 (education), and Article 14 (non-discrimination). It also engaged Article 6(1) (determination of civil rights).

16. The appellant recognised that the state was entitled to impose a time limit for bringing proceedings. Where provisions imposing a time limit were ambiguous, however, they must be read and given so far as possible in a way which is compatible with the Convention rights: Human Rights Act 1998, section 3.

Respondent

17. The respondent contended, first, that the time period specified in Rule 61(4) was one defined by reference to months. It made no reference to days, or to working days. There was accordingly no basis upon which to have any regard to the provisions of rule 1(2)(b). In this connection the respondent relied on the following passages in the opinion of the Lord President (Clyde) in *McNiven v Glasgow Corporation* 1920 SC 584, at 588:

"I have already said that *prima facie* the provisions of the Public Authorities Protection Act with regard to the bringing of an action within six months have not been complied with in the present case. The argument of counsel for the pursuer in favour of applying a construction to these provisions concerned itself with considerations borrowed from authorities which deal with time limitations in reference to steps of process and the like, in which the measure of the computation of the time is by days. It is true that, where a certain number of days are prescribed as the period within which a particular step must be taken, the Court has repeatedly construed the limitation to mean that, if the last day of the period so prescribed is one on which the step cannot be taken or completed, then an additional day may be allowed in order to admit of the final step being effectively taken or completed. But the measure which is adopted in this Act for the computation of the time composing the limited period within which the right of action is confined is the month, not the day. I acknowledge, as a logical proposition, that, if one can imagine the case of an entire month—being the last month of the period—presenting no available opportunity for performing the act to which the limited period of six months is assigned, one would be faced with a case exactly similar to that which occurs when the computation of the time is made by days, and the last day is one on which the act in question cannot be done or cannot be completed. But, accepting, as I do, the full authority of those decisions which have given that licence in the case of a period computed by days, I think it is necessary to bear in mind that, even in those cases, a day, albeit the last day, is computed as a useful day, and as part of the period, even though only a part—it may be a relatively small part—of that day is in fact available for the purpose of performing or completing the act in question. The subject-matter of such limitations has usually been the performance of some act in a Court process. The office at which the act requires to be done may be shut the whole of Sunday, in which case the act cannot be performed, or at least completed, on that day. It is very likely that such an office is open only half a day on Saturday; but it has never been suggested that, because Saturday was the final day of the period of limitation, any construction of the limitation was called for. Such construction has been confined to the case where the final day is a full *dies non*. Accordingly, I can find nothing in a limitation which is measured by months to warrant my holding that such limitation implies, not merely that in each of the unit months there shall be opportunity of performing and completing the act, but that there shall be on each of the days composing such unit, or, to bring the matter to the crucial point, on the last of the days composing the last unit, opportunity of performing and completing the act. I see no more reason to suppose that that is the result with regard to a prescribed period of six months than to

suppose that, in the case of a prescribed period of six days, every hour, and in particular the last hour of the sixth day, must be available for the purpose of performing and completing the act. I see no ground in the present case for applying any construction to this Act, or for endeavouring to make it mean anything else than just what it says …"

18. The respondent's argument was that, having regard to the reasoning in *McNiven*, rule 1(2)(b) must be confined to time limits in the rules which are expressed in terms of days, rather than months.

19. Further, the plain language of rule 1(2)(b) indicated that it was not intended to have any application in relation to the time limit in rule 61(4). Rule 61(4) imposed a requirement that the claim must have been received by the tribunal by a particular date. It was not referring to the doing of an act.

20. The respondent also argued that the FtT was correct to use the definition of working days in rule 104(9). The respondent supported and relied upon the reasoning of the FtT which is quoted above. The respondent submitted, in particular, that "rule 104 alters the normal rule 1 as regards working days."

21. In its submission the respondent speculated that the email sending the claim may have been sent and received on 24 July, and submitted that, on that hypothesis, it would have been deemed, if rule 104(5)(b) applied, to have been received on 25 July. The respondent did not suggest that the application of rule 104(5)(b) would result in receipt being deemed to be later than 25 July.

Decision

22. I am refusing the appeal, because the provisions of rule 1(2)(b) do not apply to receipt of a claim by the tribunal. The expression "doing any act" is not apt to encompass the passive receipt by the tribunal of the claim. The only provision for extension of time for receipt of the claim is that in rule 61(5), which provides the tribunal with an equitable discretion. My construction is based on the plain language of the rules.

23. I accept that the receipt of the claim is something that must follow from an act on the part of the claimant or the claimant's agent. Rule 1(2)(b), however, refers to a "time

prescribed by [the] Rules for doing any act". Rule 61(5) does not prescribe the time for the act of sending, but imposes a requirement as to the time of receipt.

24. The provisions of those rules are not ambiguous. The appellant's contentions as to the interpretation of the rules in accordance with the purpose of the 2010 Act and the Convention rights proceed on the hypothesis that the rules relevant to the disposal of this appeal are ambiguous. As I reject that hypothesis, I make no further observations about those contentions.

25. I make the following observations regarding other points raised by parties or in the decisions of the FtT.

26. The decision in *McNiven* is not directly in point, and I do not rely on it to reach the construction that I have. The statute with which the Lord President was concerned in *McNiven* was one which made no provision for extending the period within which the act in question – the commencement of the action – must be done, whereas there is a provision in this case which the appellant contended had the effect of extending the period. The construction of a statutory time limit measured in days so as to extend it where the last day for doing an act was a day on which it could not be performed was one created by the court, in cases where the statute in question made no provision for such an extension. The court recognised that even in a time limit measured in months, there would be a last day upon which it may be complied with, but held that construction could not assist where the time limit in question was measured in months, rather than days. Had I been persuaded that the language of rule 1(2)(b) was apt to include receipt of a claim by the tribunal, I would not have considered that the decision in *McNiven* prevented its application to a time limit expressed in months rather than days.

27. The construction I have reached does not deprive rule 1(2)(b) of content, although I accept that it may have quite limited effect given the terms in which most of the time limits in the rules are expressed. The 2018 rules contain a number of examples of time limits being specified by reference to "working days". Some of those rules, like rule 104, contain definitions of "working day" which is specifically for the purposes of the rule in question: e.g. rule 36. Most do not. The definition of "working day" in rule 1(1) will apply to working out what are and are not working days for the purposes of those rules which do not contain their own definition of the expression. Rule 1(2)(b) has no utility where a time limit is expressed in terms of "working days". There is only one rule which

includes a time limit expressed in "days" rather than "working days", and that is rule 11. That rule relates to the time limit for seeking review of a decision of the FtT.

28. In this case, where there is no dispute as to the date of receipt of the notice, and given the view that I have taken as to the construction of rule 1(2)(b), the disposal of the appeal does not require me to reach a concluded view as to the proper construction of rule 104, and in particular rule 104(5)(b). With or without the application of that deeming provision, the claim was clearly received later than 21 July. I make the following observations.

29. Rule 104 applies to notices, and is apt to include a claim which requires to be made by notice in writing in terms of rule 61. The only examples of provisions with precisely the same wording that I have discovered are in the rules which governed the procedure of the Additional Support Needs Tribunals for Scotland. There is no uniformity of approach to the date of deemed receipt of documents in the procedure rules governing the Scottish First-tier Tribunal chambers. Some of the rules are silent on the point (e.g. the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020; The First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018), with the result that the provisions of section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 will apply. The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 include rule 6 which is in similar terms to section 26 of that act:

"6.—(1) Where any formal communication requires to be served on any person, it is deemed to be served if—
(a) it is sent to the proper address of the person—
(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000(a)); or
(ii) by a postal service which provides for the delivery to be recorded; or
(b) it is sent to the email address provided by the person.
(2) Where a formal communication is served as mentioned in paragraph (1) it is to be taken to have been received 48 hours after it is sent unless—
(a) the proper address is outwith the United Kingdom; or
(b) the contrary is shown."

30. Rule 104(5)(b) is unusual. Provisions dealing with the date of deemed receipt, service or execution usually identify that date by reference to a set period after the date of sending. There are particular difficulties in construing it and applying the rule, for the reasons identified by the FtT judge when he made the review decision. It is hard to see why a notice or other document should be deemed to have been received later than the date on which it was actually received in a legible form. The rule itself indicates that the date of actual receipt is known. It can, therefore, presumably be proved, thus obviating the need for a deeming provision.

31. So far as proof of when a notice or other document has actually been received, in the case of receipt by the tribunal, the date stamp of the tribunal itself in most cases is likely to be the best available evidence. It will probably be rare for there to be a suggestion that the date stamp is not accurate. If there is such a suggestion, then other evidence may be required.

32. Regarding the respondent's submission that rule 104(9) "alters the normal rule 1 as regards working days", I make the following observations. Rule 1(2)(b) and rule104(5) and (9) perform different functions. Rule 1(2)(b) is making provision for when an act requires to be done, in circumstances when the time specified for doing the act expires on a day which is not a working day. Rule 104(5) is not making provision for when something requires to be done, but to deem that a notice has been received at a particular time in specified circumstances. The time at which receipt is deemed to have occurred is calculated by reference to "working days". "Working days" for the purposes of rule 104(5) is as defined in rule 104(9). The definition in rule 104(9) is confined to the use of the expression "working day" where it appears in rule 104. It has no relevance to the use of the expression in rule 1(2)(b). The definition of "working day" for the purposes of rule 1(2)(b) is that which appears in rule 1(1).

33. I therefore refuse the appeal and uphold the decision of the FtT. I remit the matter to the FtT for further procedure in respect of those elements of the claim that it did not exclude as time-barred in its decision of 6 February 2020.

A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper

*Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*

Lady Carmichael

Member