



DECISION NOTICE OF SHERIFF PINO DI EMIDIO

IN AN APPLICATION FOR PERMISSION TO APPEAL AGAINST  
A DECISION OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND  
(GENERAL REGULATORY CHAMBER)

in the case of

MR JONATHAN SAMMEROFF, 1 Broomvale Court, 267 Mearns Road, Glasgow, G77 5LU

Appellant

and

EAST RENFREWSHIRE COUNCIL, Eastwood Park, Rouken Glen Road, Giffnock, G46 6UG

Respondent

**FTT Case Reference ER00023-1907**

9 November 2020

The Upper Tribunal Dismisses the proceedings for want of jurisdiction under Rule 10(1) of the Upper Tribunal for Scotland Rules of Procedure 2016.

**Note of Reasons for Decision**

[1] Following an exchange of correspondence with the clerks to the Upper Tribunal for Scotland the documents which Mr Sammeroff made available to the Upper Tribunal in respect of this application are:

- a. Form UTS-1 which specifies case number ER00023-1907;

- b. First-tier Tribunal Judge McFatridge's decision dated 7 July 2020 in relation to case number ER00023-1907;
- c. a review decision in case number ER00028-1912 made by the President of the General Regulatory Chamber dated 8 June 2020; and
- d. various other supporting documents which are not material for present purposes.

[2] Upon examination of the application, I was concerned that this Tribunal did not have jurisdiction to deal with this application. In terms of an Order (Number 1) dated 7 October 2020 this Tribunal afforded Mr Sammeroff the opportunity to make further representations in respect of this proposed appeal. This Tribunal was required to give him such an opportunity under Rule 10(3) of the Upper Tribunal for Scotland Rules of Procedure 2016 ("the UTS Rules") if it was considering dismissal for want of jurisdiction. The Note of Reasons appended to Order (Number 1) explained the reasons why this Tribunal was considering the question whether it ought to dismiss this application. Mr Sammeroff has taken advantage of the opportunity afforded to him and submitted further representations in terms of a detailed letter dated 9 October 2020. The whole terms of that letter have been taken into account in making this decision. It does not contain any new material and, indeed, is accompanied by a further copy of a letter dated 13 July 2020 which had been submitted with his application form UTS-1.

[3] First-tier Tribunal Judge McFatridge's decision dated 7 July 2020 in relation to case number ER00023-1907 expressly states it is in respect of a request for a review by the appellant of an earlier decision of Adjudicator Dunipace dated 24 November 2019. Judge McFatridge provided detailed reasons for her refusal to exercise the First-tier Tribunal's discretion to re-make the decision by Adjudicator Dunipace, which had refused Mr Sammeroff's appeal. The decision of 7 July 2020 does not appear on its face to relate to

any other case. In particular, there is no suggestion within the text that it is intended to decide any issue in respect of case number ER00028-1912.

[4] A Form UTS-1 can only be used to initiate an appeal to this Tribunal in one case in normal circumstances. As the number provided by Mr Sammeroff is case number ER00023-1907, his form has been treated as relating to a proposed appeal in that case only. This decision relates only to the proposed appeal against the decision of the First-tier Tribunal in case number ER00023-1907 and no other case. The decision dated 8 June 2020 by the President of the Chamber in relation to review of a decision in case number ER00028-1912 relates to a similar dispute between the same parties but in relation to a different appeal arising from a different incident. No part of this decision is intended to deal with any issue arising in case number ER00028-1912.

[5] The Parking and Bus Lane jurisdiction was brought within the integrated structure of Scottish Tribunals within the General Regulatory Chamber of the First-tier Tribunal for Scotland as part of a rolling programme of reform on 1 April 2020. There was no statutory right to seek permission to appeal decisions of adjudicators to the Upper Tribunal for Scotland prior to 1 April 2020. As the original decision of Adjudicator Dunipace is dated 24 November 2019, there was no statutory right to seek permission to appeal to the Upper Tribunal for Scotland at that time.

[6] Under the Tribunals (Scotland) Act 2014 (“the 2014 Act”) the Upper Tribunal for Scotland only hears appeals in cases where permission to appeal has been granted either by the First-tier Tribunal or by the Upper Tribunal itself. Permission can only be granted if the appellant identifies an arguable error on a point of law in the decision of the First-tier Tribunal which he wishes to appeal. Certain First-tier Tribunal decisions are excluded decisions under the 2014 Act which cannot be appealed to the Upper Tribunal. All of these

matters are set out in detail at Part 6 Chapter 1 of the 2014 Act. In particular so far as relevant, section 51 provides:

“A decision falling within any of sections 52 to 54 is an excluded decision for the purposes of— ... (b) an appeal under section 46 or 48.”

Section 52 deals with decisions on review. So far as relevant, it provides:

“(1) Falling within this section is—  
 (a) a decision set aside in a review under section 43 (see section 44(1)(b)),  
 (b) a decision in such a review, except a decision of the kind mentioned in subsection (2).  
 (2) That is, a decision made by virtue of section 44(2)(a) ... (and accordingly a decision so made is not an excluded decision).”

Section 44(2)(a) of the 2014 Act relates to situations where the First-tier Tribunal has re-decided the case. The drafting of these provisions is such that it requires they are looked at together in order to understand what is an excluded decision under the 2014 Act. The effect of sections 51 and 52 is that a decision by the First-tier Tribunal to refuse to exercise its discretion to re-make the original decision is an excluded decision. Accordingly such a decision cannot be made the subject of an appeal to the Upper Tribunal.

[7] In this case the First-tier Tribunal decided to refuse to exercise its discretion to re-make the decision of the Adjudicator following a detailed review. As such, it is an excluded decision having regard to the terms of sections 51 and 52 of the 2014 Act set out above. Mr Sammeroff is not entitled to appeal an excluded decision. There is no purpose in seeking permission to appeal either from the First-tier Tribunal or the Upper Tribunal under the 2014 Act because this Tribunal does not have jurisdiction to entertain any such appeal. Therefore this application is dismissed for lack of jurisdiction.

[8] It is common for appealable decisions of the First-tier Tribunal to give notice of the nature and extent of any right of appeal. I note that Judge McFatridge made no mention of

any right of appeal. I consider she was correct to not to include any such mention in her written reasons for decision.

[9] In the event this Tribunal is in error in concluding that that it does not have jurisdiction, and the decision Mr Sammeroff wishes to appeal against is not an excluded decision under the 2014 Act, Mr Sammeroff has failed to seek permission from the First-tier Tribunal. He has missed out a step that ought to have been taken before making his application to this Tribunal. He has asked this Tribunal to consider his application for permission to appeal notwithstanding that failure and has made reference to exceptional circumstances of a personal nature that have distorted his timelines. If the application was not being dismissed for lack of jurisdiction, it would have been dismissed as premature because no attempt had been made to apply to the First-tier Tribunal for permission to appeal. Mr Sammeroff has not exhausted his statutory options in the First-tier Tribunal. This has had the effect of by-passing the First-tier Tribunal in circumstances where the 2014 Act requires that Tribunal to be the first port of call for consideration of questions of permission to appeal and extension of time.

#### **Notice to the parties**

[10] 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 42 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 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.