



DECISION (No. 3) on PRELIMINARY ISSUES OF

SHERIFF GEORGE JAMIESON

**ON AN APPEAL AGAINST A DECISION OF THE FIRST TIER TRIBUNAL FOR
SCOTLAND (LOCAL TAXATION CHAMBER)
IN THE CASE OF**

Assessor for Tayside Valuation Joint Board

Assessor

- and -

Miss Zarine Manekshaw and Mr David Masterton

Respondents

FTS Case Reference - FTS/LTC/CT/23/41019

Representation: Appellant: Murphy, Advocate

Respondents: David Masterton and Mr Minochecher Manekshaw, Lay Representative

Paisley 28 February 2024

Decision

The Upper Tribunal for Scotland, having considered the assessor's additional written submissions lodged on 8 January 2025 pursuant to UTS Order No.3 dated 4 November 2024, Decides the preliminary issues discussed at the preliminary hearing on 23 August 2024, fixed pursuant to UTS Order No. 2 dated 28 May 2024, in accordance with the Decision set out in the Note appended hereto; Orders the assessor to reply to the respondents' Response to Order No. 3 setting out their submissions for an extension of time for their appeal to the FTS, not later than 11 April 2025.



NOTE

Introduction

[1] This Decision addresses two preliminary issues arising from the Decision of the FTS dated 28 September 2023 to extend time for lodging a council tax appeal to the FTS by the respondents in this appeal: (a) whether the FTS could lawfully extend time for making the appeal to the FTS, so as to allow that appeal to be made outwith the statutory time limit prescribed for the appeal to the FTS; and, if so, (b) the test to be applied by the FTS in extending time for the appeal.

[2] By subsequent Decision dated 23 November 2023, the FTS granted the assessor permission to appeal to the UTS against its Decision to extend time for the appeal on a number of grounds, including: (a) error of law in that the FTS had identified the wrong legal test for extending time for the appeal; (b) by applying that wrong legal test for extending time for the appeal; and (c) *esto* the FTS had discretion to allow a late appeal, by not applying the correct legal test for extending time for the appeal.

[3] The assessor's appeal against the Decision of the FTS on these questions was received by the UTS on 8 January 2024. There then followed the usual two month period for the Response to the appeal by the respondents and the Reply thereto by the assessor. Thereafter, by Order No. 1 dated 5 April 2024, and upon consideration of the Response and Reply, the UTS sisted the appeal under rule 7 (3)(k) of the Upper Tribunal for Scotland Rules of Procedure 2016 for a period of six to eight weeks to allow the UTS to prepare a detailed Note containing a list of issues for consideration of the parties.



[4] By Decision No. 1 and Order No. 2, both dated 28 May 2024, the UTS recalled the decision, quashed the Decision of the FTS dated 28 September 2023, decided to remake the decision to extend time for this appeal, provided a detailed Note for parties' consideration, and ordered a preliminary hearing to discuss the issues arising in the appeal with the parties.

[5] That preliminary hearing took place on 23 August 2024. The UTS reserved its Decision in respect of the preliminary issues arising in this appeal on conclusion of that hearing. However, the UTS found it necessary to order additional written submissions from the assessor and the respondents, which it did in its Decision No. 2 and Order No. 3, both dated 4 November 2024. Those additional submissions were received by the UTS from the respondents on 3 January 2025 and from the assessor on 8 January 2025. The UTS was thereafter satisfied that both parties had made all relevant submissions on the preliminary issues arising in this appeal.

[6] This, therefore, is the final, considered, Decision of the UTS on those preliminary issues (Decision No. 3). The UTS's understanding of the questions in this appeal has developed over the time it has required to consider this appeal. This Decision therefore supersedes any contrary views expressed by the UTS during this appeal.

[7] As the UTS has decided in its Decision No. 2 dated 28 May 2024 to remake the decision of the FTS on extending time for the respondents' appeal to the UTS, and allowed the respondents time in its Order No. 3 dated 4 November 2024 to make written submissions on extension of time for their appeal, the UTS now orders the assessor to reply to those submissions from the respondents within the six week period set out in this Decision No. 3.



[8] Subject to any appeal to the Court of Session, the UTS will thereafter issue a substantive decision on whether time is to be extended for the respondents' appeal to the FTS, applying the considerations for a late appeal identified in this Note.

Additional Grounds of Appeal to the UTS

[9] By its subsequent Decision dated 23 November 2023, the FTS also granted the assessor permission to appeal on the grounds of: (a) procedural error on the part of the FTS in that it had not heard the assessor on the questions arising in this appeal; and (b) by providing inadequate reasons for its Decision. It is not necessary for the UTS to consider those grounds of appeal in this Decision as, by its earlier decision to remake the decision on extending time for the appeal to the FTS, any procedural errors by the FTS are "cured" by the UTS which has afforded both parties an opportunity to be heard on the questions of law arising in the appeal, and by providing these reasons for its disposal of the questions of law arising in the appeal.

Background to the Present Appeal

[10] The respondents purchased the dwelling in question on 22 July 2022. On 26 October 2022, the assessor gave notice to them of a re-banding for council tax purposes from band E to band G. On 3 April 2023, the respondents posted a proposal (dated 31 March 2023) to the assessor to alter the banding to band F. On 5 May 2023, the Assessor formally rejected this proposal as not being well-founded.

Time Limit for the Appeal to the FTS

[11] The time limit for the appeal to the FTS in this case was set out in regulation 15(6) of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993.



[12] This period began with the date on which service of the assessor's notice stating his opinion that the proposal was not well founded was required, whether or not such service was made. This was a six-week period at the time of the respondents' appeal in this case.

[13] The assessor received the respondents' proposal on 5 April 2023 and was therefore required to serve notice on the respondents stating his opinion that the proposal was not well founded no later than 16 May 2023. The respondents then had a further six weeks beginning with that date to appeal to the FTS. The last day for lodging their appeal was therefore 26 June 2023.

[14] The respondents' appeal required to be lodged with the FTS in accordance with the procedural rules of the FTS by virtue of regulation 15(6)(b) of the 1993 Regulations. Rule 35(1) of the First-tier Tribunal for Scotland Local Taxation Chamber Rules of Procedure 2022 required the appeal to the FTS to be made by giving written notice to the FTS. Rule 35(3)(f) required the respondents to serve the notice of appeal on the FTS on or before the later of: (i) the applicable time period specified in paragraph (6) of that regulation; and (ii) 15 May 2023.

[15] The Respondents therefore required to serve their notice of appeal on the FTS no later than 26 June 2023. They emailed their notice of appeal to the FTS on 8 July 2023. Their appeal was therefore out of time by 12 days. It was acknowledged by the FTS on 14 July 2023.

Amendments to the Time Limit

[16] Regulation 15 of the 1993 Regulations was substituted by paragraph 15(8) of schedule 2 to the First-tier Tribunal for Scotland (Transfer of Functions of Valuation Appeal Committees) Regulations 2023.



[17] Regulation 15 was amended effective from 1 July 2023 by regulation 3(2) of the First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Composition and Procedure) (Miscellaneous Amendment) Regulations 2023.

[18] The version of regulation 15 which applied between 1 April 2023 and 30 June 2023 computed the starting point for the period of appeal to the FTS by reference to a period of six weeks beginning with the last day for the assessor to serve a notice stating his opinion that the proposal was not well founded. This period was increased to six months effective from 1 July 2023.

[19] The respondents submitted they ought to be given the advantage of this change, with the result their appeal should not be regarded as being out of time. However, all the relevant dates in the respondents' appeal are within the period 1 April 2023 to 30 June 2023. Their notice of appeal ought to have been served on the FTS no later than 26 June 2023. The amendment to regulation 15 was not made retroactive and so they do not benefit from it.

Distinction

[20] The preliminary issues arising in this appeal are distinct from the requirement on the council tax payer to make certain proposals to the assessor within a six month time period. There are seven decisions of the UTS and one of the Court of Session (unreported) confirming the FTS does not have discretion to extend that time limit where it applies (*XA73/11 Assessor for Fife Council v Fife Valuation Appeal Committee*, Court of Session, 21 September 2012; *Miller v Assessor for Renfrewshire Valuation Joint Board* [2023] UT 30; *McIntosh v Renfrewshire Valuation Joint Board* [2023] UT 32; *Stewart v Lothian Valuation Joint Board* [2024] UT 01; *Andrews v Ayrshire Valuation Joint Board* [2024] UT 02; *Fitzpatrick v Lanarkshire Valuation Joint Board* [2024] UT 07; *Mitchell v Renfrewshire Joint*



Valuation Board [2024] UT 22; and *Murdoch v Assessor for Renfrewshire Valuation Joint Board* [2024] UT 29). The six month time limit does not apply, however, to every proposal to the assessor, as noted in *Grant v Assessor for Highland and Western Isles Valuation Joint Board* [2024] UT 56.

[21] The questions of law arising in the present appeal are different from those arising in the foregoing cases. They concern not a late proposal to the assessor, but a late appeal to the FTS against rejection of the proposal by the assessor as not well founded.

Designation of Appellant/Respondent

[22] The assessor ought properly to have been the designated respondent in all the foregoing appeals rather than the valuation joint board. By Order No. 2 in this appeal dated 28 May 2024, the UTS substituted the assessor as the appellant in this appeal in place of Tayside Valuation Joint Board.

The Relevant Law

[23] It is necessary to consider the following statutory provisions in this Decision.

[24] Rule 2 of the First-tier Tribunal for Scotland Local Taxation Chamber Rules of Procedure 2022 (the overriding objective):

“(1) The overriding objective of the First-tier Tribunal is to deal with the proceedings fairly and justly.

(2)

(3) The First-tier Tribunal must seek to give effect to the overriding objective when it:

(a) exercises any power under these rules.

(b) interprets any rule or practice direction.”



[25] Rule 4(3)(a) of the First-tier Tribunal for Scotland Local Taxation Chamber Rules of Procedure 2022 (case management powers) (under which the FTS extended time for serving the notice of appeal to 14 July 2023):

“The First-tier Tribunal may by order extend or shorten the time for complying with any rule, practice direction or order, notwithstanding that that time may have expired.”

[26] Rule 4(3)(a) applies only to a rule of procedure contained within the First-tier Tribunal for Scotland Local Taxation Chamber Rules of Procedure 2022, to a practice direction of the FTS, or to any order made by the FTS under the 2022 Rules.

[27] Subject to what is said hereafter about rule 35 of those Rules, the time limit in this case did not originate in any rule within the 2022 Procedure Rules, a practice direction of the FTS Local Taxation Chamber, or any order made by the FTS under the 2022 Rules.

[28] Rules 35(1) and (3) of the First-tier Tribunal for Scotland Local Taxation Chamber Rules of Procedure 2022 (notice of appeal) provide in respect of council tax appeals:

“(1) An appeal to the First-tier Tribunal is to be made by giving written notice to the First-tier Tribunal in accordance with the following paragraphs.

(3) A notice of appeal must be served on the First-tier Tribunal:

(a) where the appeal is under section 81(1) of the 1992 Act, within 4 months of the date of service by the appellant of the first notice under subsection (4) of that section bringing the grievance in question to the attention of the levying authority;



- (b) where the appeal is brought under paragraph 3 of schedule 3 to the 1992 Act in relation to a penalty imposed under paragraph 1 or 2 of that schedule, within 2 months of the date on which the penalty was imposed;
- (c) where the appeal is brought under paragraph 2 of schedule 6 to the 1992 Act in relation to a completion notice, within 21 days of the date of service on the appellant of such notice;
- (d) where the appeal is against a proposal treated as invalid for lack of title or out of time under regulation 8 of the 1993 Regulations, within 28 days of the date of service by the assessor on the appellant of notice under paragraph (1) of that regulation;
- (e) where the appeal is against a proposal treated as invalid for lack of information under regulation 9 of the 1993 Regulations, within 28 days of the date of service by the assessor on the appellant of notice under paragraph (1) of that regulation;
- (f) where the appeal relates to a disagreement as to proposed alteration under regulation 15 of the 1993 Regulations the later of:
 - (i) the applicable time period specified in paragraph (3) of that regulation, and
 - (ii) 15 May 2023.”

[29] Rule 35(4) of the First-tier Tribunal for Scotland Local Taxation Chamber Rules of Procedure 2022 nonetheless provides:

“If the appellant sends the notice of appeal after the end of the relevant period specified in paragraph (3), the notice of appeal must include a statement of the reasons on which the appellant relies for justifying the delay, and the First-tier Tribunal must treat any such statement as a request for extending that time limit.”



[30] Regulation 15(4) of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 provides:

“Where a proposal has not been accepted as well-founded by the assessor and has not been withdrawn the proposer may in accordance with paragraph (6) refer the disagreement between him and the assessor about the accuracy of the [valuation] list as an appeal to the [FTS].”

[31] Regulation 15(6) of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 provides:

“An appeal under paragraph (4) must be served on the First-tier Tribunal for Scotland:

(a) before the end of the period of six weeks beginning with—

(i) the date on which service of the notice in paragraph (1) was required, whether or not such service is made, or

(ii) 1st April 2023,

whichever is the later, and

(b) in accordance with the procedural rules of that Tribunal.”

[32] Regulation 15(6) contains no express power to dispense with or extend the time limit for the appeal.

Council Tax Appeals in General

[33] This appeal refers to a problem with time limits for council tax appeals. Council tax appeals are defined in rule 1 of the 2022 Rules as:



“An appeal under section 81(1) (appeal to valuation appeal committee), schedule 3, paragraph 3 (penalties) or schedule 6, paragraph 2(1) (completion of new buildings: Scotland) of the 1992 Act, or Part II (alteration of valuation list) of the 1993 Regulations.”

[34] These appeals are listed in in rules 35(3)(a) – (f) of the 2022 Rules referred to above. The time limit for the appeals referred in rules 35(3)(a) – (e) reflect the time limits contained in the primary or subordinate legislation relating to those appeals.

[35] The assessor’s position is that while the FTS may have *power* to extend time for the lodging of a council tax appeal in relation to proposals to alter the valuation list referred to in rule 35(3)(f)(i) of the 2022 Rules under rule 4(3)(a) of the 2022 Rules, a late appeal may only be allowed by the FTS under that rule where the appellant personally had done all that he or she could reasonably have done to bring the appeal on time and, if not on time, as soon as possible after that. This is because the source of the time limit is found in regulation 15(6)(a)(i) of the 1993 Regulations and rule 4(3)(a) of the 2022 Rules only permits the FTS to extend time in relation to its own rules, practice notes or orders.

[36] The assessor maintains this position would apply even if there were no error in the 2022 Rules. The assessor concedes there may be such an error. This is because rule 35(3)(f)(i) of the 2022 Rules refers to regulation 15(3), rather than the actual time limit in regulation 15(6)(a)(i) of the 1993 Regulations.

[37] Regulation 15(3) is the six month (formerly six week) period for the assessor to consider the proposal. Regulation 15(6)(a)(i) is the six-week time limit to appeal to the FTS calculated with reference to that six-month period.



[38] As rule 35(3)(f)(i) of the 2022 Rules refers only to the six month period (in the respondents' case the six week period in force between 1 April 2023 and 30 June 2023), it thereby excludes the six week period for making the appeal that follows on from that period in regulation 15(6)(a)(i).

[39] This may be an unsatisfactory situation. In response, the UTS would have the option either of holding this was an obvious error, and reading rule 35(3)(f)(i) as actually referring to the time limit in regulation 15(6)(a)(i) of the 1993 Regulations, or concluding that as procedural rules cannot override the terms of regulations (see *Re Davis* (1871- 1872) LR 7 Ch. App. 526 per James LJ at page 529); Bennion, *Statutory Interpretation*, (5th edition), pages 244 and 458), rule 35(3)(f)(i) must be read literally as applying only to the time limit in regulation 15(3) of the 1993 Regulations.

[40] The assessor's position is that whatever approach were taken by the UTS to the interpretation of rule 35(3)(f)(i) of the 2022 Rules, the fundamental issue would not change: the FTS might have power to extend time for an appeal referred to in rule 35(3)(f)(i) of the 2022 Rules under rule 4(3)(a) of those rules, but its discretion to do so would be limited to cases in which the appellant personally had done all that he or she could reasonably have done to bring the appeal on time and, if not on time, as soon as possible after that.

Comparative Law

[41] The Consolidated Practice Statement, April 2024, PS1.2, footnote 4 of the President of the Valuation Tribunal for England recognises the VTE has discretion to extend time limits for statutory appeals in respect of council tax as procedural rules "must be read subject to the Human Rights Act which guarantees the right to a (fair) hearing".



[42] It may, therefore, be difficult to accept, in the Scottish context, that statutory time limits for appeals to a court or tribunal are immutable (see *McCallum v Secretary of State for Education* [2024] EWHC 87 (Admin), paragraphs 23 – 33; MacPhail, *Sheriff Court Practice*, 4th edition, paragraphs 27.13 – 27.16). The assessor has conceded this point but still maintains that the FTS may only exercise its power to allow a late appeal under rule 35(3)(f)(i) of the 2022 Rules where the appellant personally had done all that he or she could reasonably have done to bring the appeal on time and, if not on time, as soon as possible after that.

The Other Council Tax Appeals

[43] The time limit for an appeal under section 81(1) of the Local Government Finance Act 1992 is within 4 months of the date of service by the appellant of the first notice under subsection (4) of that section bringing the grievance in question to the attention of the levying authority (rule 35(3)(a), 2022 Rules). The local authority would be the respondent in such an appeal. The four-month time limit is now a creation of the 2022 Rules, enacted under section 82(2)(a) of the 1992 Act (power to prescribe the time within which any proceedings before the FTS are to be instituted). It was previously prescribed by regulation 22(3) of the 1993 Regulations (now repealed).

[44] The time limit for an appeal brought under paragraph 3 of schedule 3 to the 1992 Act in relation to a penalty imposed under paragraph 1 or 2 of that schedule is within two months of the date on which the penalty was imposed (rule 35(3)(b), 2022 Rules). The local authority would be the respondent in such an appeal. The two month time limit is now the creation of the 2022 Rules as no time limit for the appeal is prescribed by paragraph 3 of schedule 3 to the 1992 Act. It was previously prescribed by regulation 23(2)(b) of the 1993 Regulations (now repealed).



[45] The time limit for an appeal brought under paragraph 2 of schedule 6 to the 1992 Act in relation to a completion notice is within 21 days of the date of service on the appellant of such notice (rule 35(3)(c), 2022 Rules). The assessor would be the respondent in such an appeal. The time limit reflects the time limit for the appeal referred to in paragraph 2(1) of schedule 6 to the 1992 Act.

[46] The time limit for an appeal against a proposal treated as invalid for lack of title or out of time under regulation 8 of the 1993 Regulations is within 28 days of the date of service by the assessor on the appellant of notice under paragraph (1) of that regulation (rule 35(3)(d), 2022 Rules). The assessor would be the respondent in such an appeal. The time limit for the appeal reflects the time limit for the appeal prescribed by regulation 8(2) of the 1993 Regulations.

[47] The time limit for an appeal against a proposal treated as invalid for lack of information under regulation 9 of the 1993 Regulations is within 28 days of the date of service by the assessor on the appellant of notice under paragraph (1) of that regulation (rule 35(3)(e), 2022 Rules). The assessor would be the respondent in such an appeal. The time limit for the appeal reflects the time limit for the appeal prescribed by regulation 9(3) of the 1993 Regulations.

[48] As will be noted, council tax appeals either involve the local authority or the assessor as respondent. The council tax appeals involving the local authority as respondent are subject to time limits prescribed in the 2022 Rules whereas appeals involving the assessor as respondent are subject to time limits prescribed in schedule 6 to the 1992 or in regulations 8(2), 9(3) or 15(6) of the 1993 Regulations.



[49] The assessor concedes the FTS *might* have power to extend time for a council tax appeal involving the local authority under rule 4(3)(a) of the 2022 Rules with reference to the overriding objective in rule 2 of those rules.

[50] However, the assessor's interest was in appeals involving the assessor. As those appeals were subject to time limits prescribed by the 1992 Act or the 1993 Regulations, the FTS had only a limited discretion to allow these appeals to be received late; no provision existed in the 1992 Act or 1993 Regulations for the extension of these time limits by the FTS.

HMRC, Petitioners 2005 SLT 1061

[51] Lord Drummond Young gave the following guidance in *HMRC, Petitioners 2005 SLT 1061* at paragraph [22] of his Opinion:

“[A] provision ... designed to permit appeals out of time... should be viewed in the same context as other provisions designed to allow legal proceedings to be brought even though a time limit has expired. The central feature of such provisions is that they are exceptional in nature; the normal case is covered by the time limit, and particular reasons must be shown for disregarding that limit. The limit must be regarded as the judgment of the legislature as to the appropriate time within which proceedings must be brought in the normal case, and particular reasons must be shown if a claimant or appellant is to raise proceedings, or institute an appeal, beyond the period chosen by Parliament.

Certain considerations are typically relevant to the question of whether proceedings should be allowed beyond a time limit. In relation to a late appeal... these include the following; it need hardly be added that the list is not intended to be comprehensive. First, is there a



reasonable excuse for not observing the time limit, for example because the appellant was not aware and could not with reasonable diligence have become aware that there were grounds for an appeal? If the delay is in part caused by the actings of the [respondent] that could be a very significant factor in deciding that there is a reasonable excuse. Secondly, once the excuse has ceased to operate, for example because the appellant became aware of the possibility of an appeal, have matters proceeded with reasonable expedition? Thirdly, is there prejudice to one or other party if a late appeal is allowed to proceed, or if it is refused? Fourthly, are there considerations affecting the public interest if the appeal is allowed to proceed, or if permission is refused? The public interest may give rise to a number of issues. One is the policy of finality in litigation and other legal proceedings; matters have to be brought to a conclusion within a reasonable time, without the possibility of being reopened.”

The Extent of the FTS's Discretion for Extending Time for a Late Appeal

[52] The assessor conceded the FTS could allow a late council tax appeal involving the assessor, but submitted such appeals, including the current appeal, could be received late only in the circumstances set out in *Neilly v Nursing and Midwifery Council* [2019] CSIH 32; 2019 SC 565, applying in a modified form *Adesina v Nursing and Midwifery Council* [2013] 1 WLR 3156, itself based on the Supreme Court decision in *Pomiechowski v District Court of Legnica, Poland* [2012] 1 W.L.R. 1604. The test was whether the appellant personally had done all that he or she could reasonably have done to bring the appeal on time and, if not on time, as soon as possible after that. The test applied to appeals brought under both primary and subordinate legislation. *Neilly* itself



involved an appeal to the Court of Session under an Order in Council enacted as subordinate legislation. Regulation 15(6)(b)(i) of the 1993 Regulations, setting out the time limit in this case, was expressed in mandatory terms.

[53] Time limits for appeals to the FTS involving the assessor under schedule 6 to the 1992 Act or under regulations 8, 9 or 15 of the 1993 Regulations were expressed in mandatory terms. The time limits considered by the Lands Valuation Appeal Court in *National Commercial Bank of Scotland v Assessor for Fife* 1963 S.C. 197 and *Teesdale v Assessor for Renfrew* 1963 S.L.T. (Notes) 65; *sub nom Teesdale v Renfrewshire Assessor* [1963] RA 233 were directory in nature, and accordingly those cases had no application to appeals under schedule 6 to the 1992 Act or under regulations 8, 9 or 15 of the 1993 Regulations.

[54] The respondents submitted that *National Commercial Bank of Scotland v Assessor for Fife* 1963 S.C. 197 and *Teesdale v Assessor for Renfrew* 1963 S.L.T. (Notes) 65; *sub nom Teesdale v Renfrewshire Assessor* [1963] RA 233 should be followed in this case: the time limit in their appeal was of a procedural nature only and therefore could be extended by the FTS where the respondents had a reasonable excuse for lodging their appeal late and no substantial prejudice had been caused to the appellant by the late lodging of their appeal.

Ramanathan v Patel 2023 SLT (Tr) 1

[55] The assessor relied on this case as authority for the proposition the FTS had no power to extend time for a statutory appeal or application where the time limit was prescribed by regulations. By virtue of regulation 9(2) of the Tenancy Deposit Schemes (Scotland) Regulations 2011, a tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order



under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit no later than 3 months after the tenancy has ended.

[56] The UTS opined that the FTS had no power to extend this time limit under the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (paragraphs [9] and [12]). I agree with that opinion. The 2017 Rules are not, however, a reliable guide to the 2022 Rules as there is no equivalent of rules 35(3) and 35(4) of the 2022 Rules in the 2017 Rules.

[57] Rule 5A of the 2017 Rules deals with “time limits”. It provides:

“(1) This rule applies where no time limit for making an application is prescribed by or under another enactment.

(2) Where the application relates to a right of appeal from any decision, the application must be lodged with the First-tier Tribunal, in accordance with rule 5, within 21 days after the date on which notice of the decision to which the application relates was sent to the applicant.”

[58] This rule appears to be modelled on rule 2.6 of the Summary Application Rules 1999 which creates a 21 day period for a statutory appeal to the sheriff where the enactment under which the appeal is brought has not prescribed a time limit for the appeal.

[59] Rule 16A of the 2017 Rules provides for “Regulation of Procedure”:

“Subject to the provisions of housing legislation, the Tribunals Act and these Rules, the First-tier Tribunal may regulate its own procedure, including—

(a) extending or shortening the time for complying with any rule or order.”



[60] Rule 16A is therefore restricted to extending or shortening procedural time limits under the 2017 Rules, not statutory time limits for applications or appeals under the housing legislation. This appears to be very clear.

[61] The complexities that apply to council tax appeals are not mirrored in relation to tenancy deposit applications and therefore *Ramanathan v Patel* does not assist the UTS in determining the questions that arise in this appeal.

Discussion of the Preliminary Issues Arising in This Appeal

[62] The UTS accepts the assessor's submission that, in principle, statutory appeals are, in general, only competent if made within the time limit prescribed for the appeal, whether by primary or subordinate legislation (see *Sutcliffe v Secretary of State for Education* [2024] EWHC 1878).

[63] This follows from the sound policy reasons for adhering to statutory time limits discussed by the Supreme Court in *Pomiechowski v District Court of Legnica, Poland* [2012] 1 W.L.R. 1604. In general, a statutory appeal must be submitted within the time period or time limit prescribed by primary or subordinate legislation and, if not so submitted, may only be lodged or served late where the appellant personally has done all that he or she could reasonably have done to bring the appeal on time and, if not on time, as soon as possible after that (*cf MacCallum v Secretary of State for Education* [2024] EWHC 87 (Admin)).

[64] This general principle may however be subject to exceptions. An enactment itself may provide for a dispensing power on the part of the court or tribunal to allow a late appeal, for example on cause shown (as in section 22(2) of the Protection of Vulnerable Groups (Scotland) Act 2007), or on permission of the tribunal (as in the current version of section 49 of the Taxes



Management Act 1970), or it may allow the administrative decision maker a discretion to allow an appeal to proceed late (see for example *Bureau Workspace Ltd v Advocate General for His Majesty's Revenue and Customs* 2024 SLT 219).

[65] The assessor founded on the distinction between statutory time limits which were mandatory in nature such as the time for appeals under schedule 6 to the 1992 Act or under regulations 8, 9 or 15 of the 1993 Regulations, rather than time limits regarded as directory in nature as decided by the Lands Valuation Appeal Court in *National Commercial Bank of Scotland v Assessor for Fife* 1963 S.C. 197 and *Teesdale v Assessor for Renfrew* 1963 S.L.T. (Notes) 65; *sub nom Teesdale v Renfrewshire Assessor* [1963] RA 233.

[66] However, the distinction between mandatory and directory procedural provisions has been superseded by the approach adopted by the House of Lords and the Supreme Court in *R v Soneji* [2005] UKHL 44, [2006] 1 AC 340 and *A1Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27, [2024] 3 WLR 101. The approach favoured in those cases is to enquire after Parliament's intention as to the consequences of non-compliance with a statutory provision. The approach in those cases was recently approved by the Inner House of the Court of Session in *Glasgow City Council, Appellant* [2025] CSIH 2, 2025 SLT 112.

[67] Parliament may expressly exclude the exercise of a power to allow a late statutory appeal (as in section 3ZB(3) of the Local Government (Scotland) Act 1975; *Armour on Valuation for Rating*, August 2024 Release, paragraph 5-16); it may confer an express power to allow a late statutory appeal (as in section 28F(4) Education (Scotland) Act 1980, "on good cause being shown"); or it may make no provision either allowing for or prohibiting a late statutory appeal.



[68] In the present case, Parliament did not specifically provide for a dispensing power for late appeals to the FTS under schedule 6 to the 1992 Act or under regulations 8, 9 or 15 of the 1993 Regulations in those appeal provisions.

[69] However, nor has Parliament prohibited the exercise of such power by the FTS. The UTS must therefore in this appeal ascertain Parliament's intention as to the consequences of a council tax proposal appeal not being submitted within the time prescribed by regulation 15(6)(a)(i) of the 1993 Regulations.

[70] Council tax proposals bear similarity with proposals in connection with valuation for rating. The UTS considers that Parliament cannot have intended to restrict late appeals in relation to proposals affecting the council tax valuation list only to the limited circumstances set out in *Neilly v Nursing and Midwifery Council*. First, Parliament took the deliberate step of prohibiting late appeals under section 3ZB(3) of the Local Government (Scotland) Act 1975 in connection with valuation for rating, but cannot have otherwise intended to restrict the more generous grounds for a late appeal affecting valuation in relation to local taxation approved by the Lands Valuation Appeal Court in *National Commercial Bank of Scotland v Assessor for Fife* 1963 S.C. 197 and *Teesdale v Assessor for Renfrew* 1963 S.L.T. (Notes) 65; *sub nom Teesdale v Renfrewshire Assessor* [1963] RA 233.

[71] Secondly, the limited approach to the FTS's discretion in respect of late "proposal" appeals favoured by the assessor would be inconsistent with the citizens' right to access to justice in a matter that may significantly affect their financial circumstances.



[72] Thirdly, this approach would create an unfair distinction between council tax appeals involving the local authority in which time may be extended for the appeal by reference to the overriding objective that the FTS act fairly and justly in applying the 2022 Procedure Rules.

[73] Fourthly, rule 35(4) of the 2022 Rules makes no distinction between different types of council tax appeal in referring to the appellant's statement of reasons for a late appeal, which is then treated as an application to the FTS to extend time for the appeal.

[74] The UTS has difficulty in accepting the assessor's submission that that rule 4(3)(a) of the 2022 Rules is the vehicle by which the FTS may extend time for appeals which are subject to time limits in primary or subordinate legislation, but that its discretion to do so is limited in nature to the test set out in *Neilly v Nursing and Midwifery Council*. The UTS accepts the reasoning in *Neilly* in the context of statutory appeals to the Court of Session, but not its application to council tax appeals to the FTS. If rule 4(3)(a) only applies to time limits created by the 2022 Rules, then it cannot be the basis of the FTS's power to extend time for late appeals under schedule 6 to the 1992 Act or under regulations 8, 9 or 15 of the 1993 Regulations which contain time limits for those appeals.

[75] The UTS would find that power implied in rule 35(4) of the 2022 Rules and the approach adopted by the Valuation Tribunal in England in the Consolidated Practice Statement, April 2024, PS1.2, footnote 4 of the President of the Valuation Tribunal for England, which recognises that the VTE has discretion to extend time limits for council tax appeals in primary legislation or regulations as such provisions "must be read subject to the Human Rights Act which guarantees the right to a (fair) hearing".



[76] The main issue in this appeal turns on the extent of that discretion. Council tax appeals are a highly specialised area of the law. There is therefore justification for a specific approach being taken with those appeals, so that all council tax appeals are treated in a similar way.

[77] The UTS considers there is no need for a particular test for extending time for an appeal under schedule 6 to the 1992 Act or under regulations 8, 9 or 15 of the 1993 Regulations in the absence of any statutory test where the time limit originates in primary or subordinate legislation rather than the 2022 Rules. The FTS can look at various factors to determine whether extending time for the appeal would be the just course of action. It would consider factors such as whether the appellant had a reasonable excuse for the delay, the length of the delay and whether the respondent to the appeal had been prejudiced by the delay, factors referred to by the Lands Valuation Appeal Court in *National Commercial Bank of Scotland v Assessor for Fife* 1963 S.C. 197 and *Teesdale v Assessor for Renfrew* 1963 S.L.T. (Notes) 65; *sub nom Teesdale v Renfrewshire Assessor* [1963] RA 233, and by Lord Drummond Young in *HMRC, Petitioners* 2005 SLT 1061.

Decision

[78] The FTS may allow a late council tax appeal lodged under rule 35(3)(f) of the First-tier Tribunal for Scotland Local Taxation Chamber Rules of Procedure 2022, having regard to the guidance given by the Lands Valuation Appeal Court in *National Commercial Bank of Scotland v Assessor for Fife* 1963 S.C. 197 and *Teesdale v Assessor for Renfrew* 1963 S.L.T. (Notes) 65; *sub nom Teesdale v Renfrewshire Assessor* [1963] RA 233, and by Lord Drummond Young in *HMRC, Petitioners* 2005 SLT 1061.

Further Appeal



[79] A party aggrieved by this decision may apply in writing to the UTS for permission to appeal to the Court of Session on a point of law within 30 days of the date on which this decision was sent to that party.

[80] Any such written application must: (a) identify the decision of the Upper Tribunal to which it relates; (b) identify the alleged error or errors of law in this decision; and (c) in terms of section 50(4) of 2014 Act, state the important point of principle or practice that would be raised in the further appeal or any other compelling reason for allowing a further appeal to proceed.

George Jamieson
Sheriff of North Strathclyde
Judicial Member of the Upper Tribunal for Scotland