



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

**RULING in relation to a late appeal from**

**The Information Commissioner's  
Decision Notice No: FS 50202116  
Dated: 14<sup>th</sup> December 2009**

**Appellant: Professor Prem Sikka**

**Respondent: Information Commissioner**

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**RULING**

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1. In this case the notice of appeal was lodged with the First-tier Tribunal ("FTT") out of time. Prof Sikka asks the FTT to accept the late notice.
2. The FTT's powers to deal with such applications can be found in the Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009 as amended ("the 2009 Rules"). Rule 22(4) states that  

"if the appellant provides the notice of appeal to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 5(3)(a) (power to extend time) –

  - (a) the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time: and
  - (b) unless the Tribunal extends time for the notice of appeal under rule 5(3)(a) (power to extend time) the Tribunal must not admit the notice of appeal."
3. Under paragraph (1) "the appellant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of appeal so that it is received –
  - (b) ...within 28 days of the date on which notice of the act or decision to which the proceedings relate was sent to the appellant."

4. The Tribunal is given case management powers under rule 5. Under rule 5(3)(a) "...the Tribunal may ...extend or shorten the time for complying with any rule ..., unless such extension or shortening would conflict with a provision of another enactment containing a time limit."
5. The background and chronology to the case is as follows. Prof Sikka made a FOIA request to HM Treasury ("HMT") on 6 March 2006. HMT eventually refused part of the request on 28 March 2007 ("the Refusal Notice"). Prof Sikka asked for an internal review on 31 July 2007 which does not appear to have been received by HMT until September 2007. It took until 13 March 2008 for HMT to undertake the review which upheld the Refusal Notice. Prof Sikka complained to the Information Commissioner ("the IC") on 16 May 2008. The IC investigation commenced on 3 July 2009.
6. The IC's Decision Notice is dated 14 December 2009 ("the DN"). It was sent to Prof Sikka by letter dated the same date addressed to him at the University of Essex during the university holidays. Prof Sikka, who appears to be a full time academic, did not personally receive the DN until his return from the Christmas break which was delayed because of bad weather and research commitments until 18 January 2010. Although he had corresponded with the IC's office by email during the investigation of the complaint the DN was only sent by post. The inference is that if Prof Sikka had been sent the DN by email he would have received it during the vacation.
7. On receiving the DN Prof Sikka informs the First-tier Tribunal (FTT) that he took some time to consider and reflect on the DN. He then contacted the IC's office, presumably to appeal, who informed him that he should contact the FTT. He spoke to the FTT(Information Rights) team leader on 25 February 2010 who advised him to complete a notice of appeal which he did and which was lodged with the FTT on 4 March 2010 by letter dated 2 March 2010.
8. He appears to have been sent the DN on 14 December 2009 which would make the lodging of his appeal 46 days out of time. If we were to take the time period from the date that he received the DN on 18 January 2010 his appeal was lodged 39 days later, 11 days out of time.
9. Prof Sikka accepts his appeal is out of time and his explanation is that he is representing himself and is unfamiliar with tribunal appeals. Moreover the case is important, that the IC made some mistakes which need to be corrected and in the interests of "equity and even-handedness" the appeal should be allowed to proceed.
10. The predecessor to the FTT (Information Rights), the Information Tribunal, was bound by a different set of rules of procedure which gave power to the Tribunal to allow an appeal out of time where it was of "the opinion that, by reason of special circumstances, it is just and right to do so". There would appear to no such limitation in the 2009 Rules. The FTT seems to have very wide powers to allow late appeals. However the 2009 Rules have an overriding objective to enable the Tribunal to deal with cases fairly and justly – rule 2. Rule 2(2) provides examples of how the Tribunal can deal with cases fairly and justly. None of these appear to relate to out of time applications as

such. However in my view that does not restrict the Tribunal from considering the overall objective when exercising its powers under rules 22 and 5.

11. In this case the applicant is an unrepresented person with little or no experience of FOIA, although clearly intelligent and articulate. Like many applicants he went back to the IC's office for advice about appealing, despite the notice in the DN giving the FTT (Information Rights) contact details. Before appealing he discussed the matter with Tribunal Services to ensure he knew how to apply. Such reassurance is often sought by unrepresented litigants and even some legal advisers. Prof Sikka was keen to ensure his notice of appeal was correctly completed with proper grounds of appeal and the necessary supporting documentation. He knew he was applying out of time because he completed the appropriate part of the form giving reasons why his application should be accepted out of time.
12. His request was for a copy of the Sandstorm Report commissioned by the Bank of England from Price Waterhouse in 1991 in relation to the collapse of the Bank of Credit & Commerce International (BCCI). Parts of the report were released or already in the public domain. The IC found that the withheld parts were exempt under s.40(2) (personal data) and s.27(1)(a) (international relations). Prof Sikka challenges these findings principally on the basis of the high level of public interest in the demise of BCCI and the fact that it was so long ago which weakens the public interest in maintaining the exemption.
13. I have taken all these matters into account (and note the delay taken from the date of the request to the time the DN was issued). I have decided that in all the circumstances of this particular case it would be just and fair to allow this appeal to proceed.
14. I would observe that when dealing fairly and justly with out of time applications under the 2009 Rules tribunals might wish to take into account, inter alia:
  - a. the lateness of the application;
  - b. the extent to which the appellant has complied with rule 22(4)(a);
  - c. the date the applicant received the decision notice;
  - d. whether the reason for the delay was due to a holiday, ill health or other causes largely beyond the control of the appellant;
  - e. the complexity of the decision being appealed;
  - f. the fact an appellant is unrepresented and unfamiliar with the appeal process;
  - g. the fact the appellant had made enquiries about appealing before the deadline; and
  - h. the public interest in the disputed information.
15. Also in view of this case I would recommend that the appeal form and guidance notes are amended so as to assure the appellant that 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. In my experience unrepresented litigants often think their case needs fully presenting at this early stage which can result in delay. However the applicant

will still need to provide sufficient information as to what is his/her case otherwise there could be a risk that the Tribunal will strike out the case under rule 8(3)(c) because it considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

16. I would also observe that the 2009 Rules give considerably more flexibility than the previous rules to deal with out of time applications. The applicant can apply to the FTT for an extension of time under rule 5(2)(a) even before lodging a formal appeal. Alternatively the application can be part of the notice of appeal. This seems to be more in line with the overriding objective. Where a potential appellant realises s/he needs more time to consider whether or not to appeal or to draft the grounds of appeal, s/he can apply at that stage, preferably within the 28 day period, to request an extension of time to lodge the appeal. Such applications should not only provide good reasons for the delay but should also propose a reasonable date by which the applicant would be able to lodge the appeal, with minimum further delay.

**Signed,**

**John Angel  
Principal Judge  
FTT(IR)**

**9th April 2010**



**IN THE FIRST TIER TRIBUNAL  
(INFORMATION RIGHTS)**

**REVISED RULING on an APPLICATION for PERMISSION to APPEAL  
By**

**THE INFORMATION COMMISSIONER**

1. This is an application dated 7 May 2010 by the Information Commissioner for permission to appeal against the Ruling of the First Tier Tribunal (Information Rights) (“FTT”) dated 9 April 2010 that the Notice of Appeal of Prof Sikka lodged with the FTT on 4 March 2010 in appeal number EA/2010/0054 was accepted despite being lodged out of time.
2. The right to appeal against a decision of the FTT is restricted to those cases which raise a point of law. The FTT accepts that this is a valid application for permission to appeal under rule 42 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended (“the Rules”).
3. The FTT has considered whether to review its decision under rule 43(1) of the Rules, taking into account the overriding objective in rule 2, and has decided that this is a case where its decision should be reviewed because the grounds of the application may raise an error of law.
4. In his grounds of appeal the Information Commissioner considers that the FTT correctly directed itself that the relevant provisions in relation to out of time appeals were contained in:
  - (i) Rule 22(4) of the Rules; and
  - (ii) Rule 5(3)(a) of the Rules.
5. The Commissioner also considered the FTT directed itself, again correctly, that the overriding objective in rule 2(2) of the Rules should be taken into account in deciding whether to extend time under rules 22(4) and 5(3)(a).
6. However, the Commissioner considers that the FTT erred in failing to direct itself that:
  - (i) notwithstanding the wide terms in which rules 22(4) and 5(3)(a) were drafted, it was important that the time limit for the lodging of an appeal should be complied with;
  - (ii) hence the Tribunal would not extend time unless the appellant could show a good reason for having failed to lodge the claim within time; and
  - (iii) moreover, even where there was a good reason for the failure to lodge the claim within time, the Tribunal would not extend time unless the appellant acted with reasonable expedition once the time limit had expired.
7. The FTT accepts that these are proper directions but that it did so direct itself.

8. The FTT clearly recognised in its Ruling the time limit for lodging appeals and implicitly that it was important for such time limit to be complied with. Again it recognised that the appellant must show good reason or reasons for having failed to lodge the claim in time which is why the Ruling so closed examined the reasons given by Professor Sikka for the late appeal. Finally the FTT implicitly accepted that the Tribunal should not extend time unless the appellant acted with reasonable expedition once the time limit had expired by calculating the number of days the notice was lodged out of time and examining the steps Professor Sikka had taken before eventually lodging his appeal.
9. Even if the FTT is wrong and did not properly direct itself, which it does not accept, then if properly directed it would have still come to the same decision to allow the appeal to proceed out of time.
10. The Commissioner submits that if the FTT had properly directed itself then in this case the Tribunal would inevitably have refused to accept Professor Sikka's appeal, for the following reasons:
  - (i) The Decision Notice is dated 14<sup>th</sup> December 2009. It was delivered on 15<sup>th</sup> December 2009. It was properly served on Professor Sikka at his work address. This was the address given by him for correspondence, and was the same address as he has given for service in his appeal to the Tribunal.
  - (ii) The time limit for service of Professor Sikka's appeal therefore expired on 12<sup>th</sup> January 2010.
  - (iii) Professor Sikka says that he did not see the Decision Notice until 18<sup>th</sup> January 2010. He says that this was after his return from the Christmas break which was delayed because of bad weather and research commitments. Professor Sikka appears not to have made any arrangements for post sent to his work address on or after 15<sup>th</sup> December 2009 to be forwarded to him, or to be checked to see if any action was required. In the circumstances he has failed to put forward any good reason for his failure to lodge the appeal on or before 12<sup>th</sup> January 2010. Holiday commitments and/or general pressure of work cannot be a good reason for a failure to lodge an appeal within a statutory time limit.
  - (iv) In any event, Professor Sikka failed to act with reasonable expedition after the expiry of the time limit. He did not lodge the appeal until 4<sup>th</sup> March 2010. He did not even contact the Tribunal about his proposed appeal until 25<sup>th</sup> February 2010.
11. The FTT gave Professor Sikka the opportunity to respond to these submissions. He responded by email dated 13 May 2010 as follows:
  - "1) A large amount of the previous correspondence in connection with my request was conducted via email. However, the Decision Notice was not sent to me via email even though it was available in electronic form as evidenced by the fact that it is now freely available on the internet ([http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs\\_50202116.pdf](http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs_50202116.pdf)). Therefore, I was not aware that the Decision Notice had been sent to me on 14<sup>th</sup> December 2009 and in that vacuum could not make any arrangements for forwarding the mail. The reasons for not sending the Decision Notice to me via email are not known.

- 2) The matter had been with the Commissioner for a considerable time and I did not receive any phone call or email notification to inform me that a Decision Notice was on its way. If a prior notification had been sent stating that the Decision Notice was imminent and/or has been mailed then I would have tried to have the surface mail forwarded to me, even though such processes are not common. However, there was no prior notice from the Information Commissioner and thus the action hinted by the Counsel for the Commissioner could not be taken.
- 3) The Decision Notice is 21 pages long and refers to a variety of Acts and legislative sections. The language of the law can be daunting and it took a while to do the appropriate reading and digest the material and consider its significance. I am not a lawyer and this was my first ever appeal. That is why I sought advice from the Information Commissioner's office and from the office of the First Tier Tribunal. I first sought advice from the Information Commissioner's office on 11th February 2010 (mentioned in my Notice of Appeal, dated 2 March 2010), a detail omitted from paragraph 6 (iv) of the document lodged by Counsel for the Commissioner.
- 4) In good faith I have acknowledged my own culpability in this matter and very much hope that the ruling given on 9<sup>th</sup> April 2010 by Principal Judge John Angel would be allowed to stand. I believe that great matters of public interest and even-handedness are involved. The Bank of Credit and Commerce International (BCCI) was closed in July 1991. It was the biggest banking fraud of the twentieth-century, but after some 19 years a key document is still not publicly available. Its contents could shed some light on regulation and accountability of government. My Notice of Appeal also indicated that the Commissioner has erred. By H.M. Treasury's own admission, the Sandstorm Report (the document requested) was released to one or more courts. In my view this constituted a publication but the same report has been denied to me and the Information Commissioner did not offer any good reason for denial of this report to me."
12. The FTT finds that fully directing itself that its Ruling dated 9 April 2010 should stand and the appeal be allowed to proceed out of time. A large part of the delay was caused by the late receipt of the Decision Notice by Professor Sikka. It is well known that academic institutions close or are not fully operational over vacation periods. Professor Sikka does not appear to have known when the Decision Notice was being sent to him and there was no evidence that he was notified it was on its way despite the closeness to a holiday period. In any case he would have had a reasonable expectation that the Decision Notice would be sent by email as had happened with most of the other correspondence between him and the Commissioner.
13. The Commissioner contends that Professor Sikka could have acted more expeditiously after the expiry of the time limit. That would have been difficult before 18 January but there is merit in the contention after that date. However the FTT finds that in all the circumstances of this case taking into account the actions taken by Professor Sikka together with the high public interest in the subject matter of the request that taking into account the overriding objective under rule 2 it is fair and just to allow this appeal to proceed.
14. The Commissioner also contends that the FTT took into account an irrelevant consideration in deciding to extend time, namely that there was delay in issuing the Decision Notice and that this cannot be material to the question whether the Tribunal should extend time for an appeal.
15. The FTT accepts that this contention is correct but that it did not take this into account or if it did it was not a material consideration. In paragraph 13 of the Ruling the reference to the

delay was by way of a note placed in brackets. The matters taken into account were stated to be those in previous paragraphs of the Ruling not to any matters in paragraph 13.

16. It follows that the appeal has no prospect of success and that permission to appeal is refused.
17. The stay on the proceedings is now lifted and the Commissioner should submit his response to the Notice of Appeal by 4 June 2010. In setting this date the FTT has taken into account that the application for permission to appeal was made at the very end of period allowed for such matters and therefore should not need a full 28 day period to respond to the grounds of appeal.
18. Under rule 21(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended the Commissioner has one month from the date this revised Ruling was sent to him to appeal directly to the Upper Tribunal for permission to appeal. The address for lodging the appeal is as follows:

Upper Tribunal (Administrative Appeals Chamber)  
5<sup>th</sup> Floor, Chichester Rents,  
81 Chancery Lane, London,  
WC2A 1DD.  
DX: 0012 London/Chancery Lane.

Signed:

**John Angel**  
Principal Judge  
First-tier Tribunal (Information Rights)  
19 May 2010