



**Tribunals Service**  
Information Tribunal

**Information Tribunal Appeal Number: EA/2008/0064**  
**Information Commissioner's Ref: FS50177327**

**Determination on papers 22 September 2008**

**BEFORE**

**CHAIRMAN**

**Murray Shanks**

**Between**

**PROFESSOR JOE SIM**

**Appellant**

**And**

**INFORMATION COMMISSIONER**

**Respondent**

**Decision**

The Tribunal rules that the notice of appeal in this case was served out of time under rule 5(1) of the Information Tribunal (Enforcement Appeals) Rules 2005 and rejects the Appellant's application under rule 5(2) to extend time and accordingly strikes out the appeal.

### **Reasons for Decision**

1. Professor Sim seeks to appeal against a decision notice issued by the Information Commissioner under section 50 of the Freedom of Information Act 2000 which is dated 2 July 2008. His notice of appeal states that it is made under section 60 of the Act but it is clear from the decision notice that there has been no certificate issued under section 23(2) or 24(3) so that his appeal would lie, if at all, under section 57.
2. The rules of procedure governing such appeals are the Information Tribunal (Enforcement Appeals) Rules 2005 which include the following provision:

**5(1) Subject to paragraph (2) below, a notice of appeal must be served on the Tribunal within 28 days of the date on which the notice relation to the disposal of the disputed decision was served on or given to the appellant.**

**(2) The Tribunal may accept a notice of appeal served after the expiry of the period permitted by paragraph (1) above if it is of the opinion that, by reason of special circumstances, it is just and right to do so.**
3. Professor Sim accepts in his notice of appeal that his appeal is out of time and puts forward grounds for an extension under rule 5(2). Notwithstanding this I was not entirely clear that the appeal was out of time and I therefore invited the parties to clarify certain matters in relation to service of the decision notice and the notice of appeal and to make any further written submissions they wished in relation to rule 5(2) to enable the Tribunal to reach a decision on extending time if necessary. The parties helpfully responded by email on 19 September 2008.
4. On further consideration I have no doubt that the notice of appeal was served out of time. The Commissioner's decision notice was sent by special delivery post on 2 July 2008 to Professor Sim's work address and delivered there in the ordinary course on 3 July 2008: service would therefore be deemed to have been effected on that day unless the contrary was proved (see section 7 of Interpretation Act 1978) and it is clear from his own statements that it did in fact come to his attention

on that day. The last day for service of the notice of appeal was therefore 1 August 2008 (28 days later, excluding the specified day: see *Zoan v Rouamba* [2000] 1 WLR 1509 paras 23 and 24). In fact the notice of appeal was posted by Professor Sim from Denmark on Saturday 2 August 2008 and was not received by the Tribunal until Tuesday 5 August 2008.

5. I therefore need to consider the application under rule 5(2). The factual position is that Professor Sim is a full time lecturer at Liverpool John Moores University. He states, and I accept, that he learnt of a family bereavement on 2 July and consequently, following a brief visit to his office on 3 July, he had to go to Denmark where he was until 12 July. I accept that this would have been a difficult and busy time for him. On his return he had to catch up with various issues at work and attend a conference in London for three days. He returned to Denmark on 30 July 2008 for his annual leave. He made contact with the Tribunal in the course of his journey, obtained the notice of appeal form, completed it in Denmark on 1 August and sent it to the Tribunal, as I have said, on 2 August.
6. Do these facts amount to “special circumstances” which make it just and right for me extend time? I am afraid I do not so regard them. I accept that a family bereavement may amount to special circumstances and that Professor Sim could not have been expected to turn his attention to the notice of appeal until 13 July. However, as at that date he should have been aware that if he wished to appeal he would have to act before the end of July. Like any busy professional he of course had many other things to do but that fact cannot amount to “special circumstances” and I do not see any reason why he should not have served a notice of appeal before he left for his annual leave.
7. I therefore reject the application under rule 5(2). The Commissioner also invites me to take account of the fact that the appeal is hopeless on its face. Having looked at Professor Sim’s grounds of appeal it seems to me that the Commissioner must be right about this because the exemption relied on is section 23 which is an absolute exemption and the only points raised in the grounds of appeal are that it would be in the public interest for the information to be disclosed, which is irrelevant in the context of an absolute exemption. For this reason also I am not of the opinion that any special circumstances which may have been established could have made it

just and right to extend time: whatever the reasons for the late appeal there is no point in extending time if it is hopeless.

8. In the light of these conclusions it must follow that the appeal should be struck out.

Signed

Deputy Chairman

Date 23 September 2008