
[2024] EWHC 1158 (Admin)

No. AC-2023-LON-001507

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice

Thursday, 15 February 2024

Before:

MR JUSTICE GRIFFITHS

B E T W E E N :

MONDAY ILENOTUMA

Appellant

- and -

(1) TEACHING REGULATION AGENCY
(2) SECRETARY OF STATE FOR EDUCATION

Respondents

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THE APPELLANT appeared In Person.

THE FIRST RESPONDENT did not attend and was not represented.

MR M VINALL appeared on behalf of the Respondent.

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**A P P R O V E D J U D G M E N T**

**MR JUSTICE GRIFFITHS**:

1 This is a preliminary oral hearing to determine whether the appellant should be granted an extension of time to file the appellant's notice. He is applying for such an extension of time, but I have also been assisted by submissions as to whether he, actually, requires one, so I will consider both questions.

2 The background to the appeal, and, therefore, the application, is that the respondent, the Secretary of State for Education, made a prohibition order against the appellant with a two-year review period. This prohibition order accepted a recommendation by a Professional Conduct Panel of the Teaching Registration Agency (TRA) following a hearing on 13 February 2023, at which the appellant was present and represented.

3 The effect of the prohibition order is that the appellant is prohibited from teaching in any school, sixth-form college, relevant youth accommodation or any children's home in England, and may not apply for the prohibition order to be set aside until 1 March 2025 at the earliest.

4 The panel's reasoned decision and its recommendations to the Secretary of State, together with the Secretary of State's reasoned decision to make the prohibition order in response, are contained in a single 21-page document dated 22 February 2023, which I will call the "decision".

5 The applicant strongly disputes the allegations and the findings made against him in the decision. He points to the hardships that he has suffered as a result of what was said about him and also as a result of his inability to work as a consequence of the prohibition order. However, in order to maintain his challenge to the decision, he needs to appeal and, in order to appeal, he needs to comply with the requirements as to what has to be filed and where and when. That is the question that I have to examine in this preliminary hearing.

6 The original TRA professional conduct hearing occurred between 13 and 15 February 2023. The decision was dated and posted on 27 February 2023. It stated that the appellant had a right of appeal "to the King's Bench Division of the High Court within 28 days from the date he is given notice of the order".

7 The appellant says that he actually received the letter and decision on that day (that is 27 February 2023), because it was sent to him immediately by email from his counsel at the TRA hearing. Therefore, the statutory 28-day deadline for lodging a compliant appellant's notice was 28 days from 27 February 2023 to 27 March 2023, there being 28 days in February that year. The prohibition order took effect from 1 March 2023.

8 On 23 March 2023 (which was, accordingly, within the time limit), the appellant attempted to submit appeal documentation to the High Court, but he has explained what happened on that day. He says that he was misdirected by the receptionist at the reception desk in the Royal Courts of Justice. He had two options: drop the papers either into the criminal box or into the civil box. He queried this, and the receptionist told him that, since it was not a criminal matter, he should drop it in the civil appeals office box. He did as he understood he was being told and dropped it in that box accordingly.

9 There is a copy of at least the first page of the document as it stood at that date in the bundle for today's hearing (although the later pages, it is accepted, are not in the form which they bore on that earlier date, because they were subsequently updated as part of the appellant's efforts to remedy defects which were later drawn to his attention). That first page is stamped

"Received" by the civil appeals office on a date which does appear to be 23 March 2023. However, the civil appeals office was the wrong office.

10 The appellant was written to, he tells me, by the civil court office in a letter of 27 March 2023 (which he received by post on 30 March 2023), telling him that he should resubmit to the right office, which was the administrative court, and seek an extension of time.

11 Accordingly, the appellant made his second attempt to lodge his appeal documentation, this time to the correct court, the administrative court. He did this on 31 March 2023. Again, I do not have the original of the documentation that he lodged on that occasion, because I only have the updated version of those documents. For example, although the grounds of appeal at p.14 of the bundle, which follow the appellant's notice, are stamped on the first page and are signed and dated 23 March 2023, this is plainly a version of the document well after that date – for example, at p.18 of the bundle, the section describing exhibit 12 refers to documents of 15 April 2023, which cannot have existed on 23 March 2023. Similarly, the notice of appeal itself, which is signed and dated (on p.10 of the bundle) 23 March 2023, contains a narrative in section 11 (p.8 of the bundle), which includes events after that date. It refers to bundles being returned on 30 March, a letter received from HMCTS on 31 March and the appellant's second trip to the Royal Courts of Justice to resubmit on the date which I have been told is 31 March.

12 There is nothing sinister in the discrepancy between the signature and the date of 23 March and stamps of that earlier date and the pages, which clearly were written after those dates. A complete explanation has been given to me by the appellant, which I accept. He tells me that the elements which are dated 23 March (including the seal, his own handwritten signature and the date), were electronic images which were, therefore, reproduced in the later versions of the document which he created by adding the various subsequent revisions. He accepts that the version in my bundle is not the version in the state it was on 23 March or on 31 March, but a subsequent state. He is not able to produce to me the versions as they stood at those two earlier dates.

13 Had the filing in the second attempt been effective for time limit purposes on 31 March 2023, it would still have been out of time, in the sense that it was more than 28 days after 27 February 2023. Neither the filing on 23 March nor on 31 March were accompanied by a fee or a fee remission application or certificate. It is not clear whether they were accompanied by the panel decision or order of the Secretary of State being appealed from. Although the latest version of the documents does refer to that document, a letter from the administrative court dated 12 April (which is in my bundle at p.75), indicates that, by that date, the order or decision under challenge had still not been enclosed. It is, however, accepted by the Secretary of State that I should proceed on the basis that the assurance given to me today that the original decision was included with all the appellant's attempts to file, including those on 23 March and 31 March, should be accepted at face value for present purposes. Therefore, the only defects which are relied upon to prevent the lodging on 23 March or, indeed, on 31 March, being effective so as to stop time running, are that neither of those documents (as the appellant himself agrees) was accompanied by the appropriate fee, or a fee remission application or certificate.

14 What the appellant relies upon in that respect is a letter at p.77 of my bundle from the Department of Work and Pensions dated 22 March 2023, which he says he lodged with his papers on 23 March and on 31 March 2023. That letter says,

> "Dear Sir / Madam,

> This is to confirm that Mr Monday Ilenotuma of [address]
> Has made a claim for:
> Universal Credit.
> The claim is awaiting assessment 1 March 2023 Universal Credit. Benefit is in payment at a rate of (not known) per week/month.
> Payment commenced on (not known)
> Payment ceased on (not known)".

15 It is then signed and stamped. This is not a fee remission application or certificate. It is not even clear evidence that such an application, were it to be made, would have been successful at the date of that letter because the letter simply notes that the claim was awaiting assessment and had been made, not that it had been granted (although it was, as I understand it, subsequently granted).

16 For the reasons stated in its letter of 12 March 2023, the administrative court declined to issue the appellant's notice, which had been lodged with the other documents on 31 March 2023. The administrative court letter of 12 April 2023 said,

> "Unfortunately, we were unable to issue your claim for the following reasons:
>
> - In section 2 of the N161 appellant's notice, you have not listed a date for the decision which you are attempting to challenge. Please ensure that it is consistent with any decision document provided.
>
> - You may have to apply for an extension of time under section 10 of your form. Please seek legal advice on this.
>
> - Please enclose a copy of the order or decision you are seeking to challenge. This decision should be dated with the same date which you have referenced in section 2 of the N161 appellant's notice.
>
> - Please note that the court requires your application and supporting documents to be paginated, indexed and bound.
>
> - You have not paid the necessary fee of £259.
>
> There are a number of options which you can follow to pay the fee. Please see the fees office guidance PNG section 8, p.10 of the attached ACO guidance.
>
> **Please attend to the above matters before returning your application and accompanying documents** which we have enclosed with this letter. Please note we have not retained any copies of your documents, so you will need to resubmit your entire application".

There is then a heading, "Need assistance with your forms?", directing the appellant to the Citizen's Advice Bureau at the Royal Courts of Justice, where there are "staff who are legally trained and can assist court users with completing their form(s)".

17 It does appear from this that the appellant's filing at that stage, 12 April 2023, had not enclosed a copy of the order or decision under challenge, or (if it was enclosed) did not identify that as the decision under challenge because the date of the decision under challenge had not been stated in the form N161. More to the point, for the purposes of the argument advanced by the respondent, it does appear that the necessary fee had not been enclosed and a fee remission application or certificate had not been enclosed, a point which, as I have said, is not disputed.

18 Following receipt of that letter, the appellant acted swiftly. On Saturday, 15 April 2023, he completed an online application for fee remission and obtained a "Help with fees" reference number. He says that, if he had known about these matters that he needed to correct, he could have done so within the time limit.

19 On 17 April 2023, which was a Monday, he returned to the Royal Courts of Justice and, undoubtedly, filed all the requisite documents, including the decision, and the application for fee remission reference number, with the correct office, which was the administrative court. His appellant's notice was sealed by the administrative court on 17 May 2023. However, the date upon which he lodged those perfected documents, 17 April 2023, was outside the statutory time limit. This is because, by regulation 17 of The Teachers' Disciplinary (England) Regulations 2012,

> "A person in relation to whom a prohibition order is made may appeal to the High Court within 28 days of the date on which notice of the order is served on that person".

20 An appeal is commenced by filing an appellant's notice "at the Appeal Court" (see CPR 52.12(2)). Further requirements are imposed by Practice Direction 52B, which in section IV deals with initiating an appeal. Paragraph 4.1 says,

> "An appellant's notice (Form N161 or, in respect of a small claim, Form N164) must be filed and served in all cases. The appellant's notice must be accompanied by the appropriate fee or, if appropriate, a fee remission application or certificate.
>
> 4.2 **Documents to be filed with the appellant's notice:** The appellant must file with the appellant's notice–
>
> …
>
> (b) a copy of the sealed order or determination under appeal …"

Paragraph 3,5 of Practice Direction 52D, governing statutory appeals, such as this one, provides,

> "Where any statute prescribes a period within which an appeal must be filed, then, unless the statute otherwise provides, the Appeal Court may not extend that period".

21 In *Jinks v. Teaching Registration Agency* [2023] EWHC 1059 (KB), Linden J held that an application which was submitted to the right court but which, amongst other defects, failed to file the supporting documents required and failed to include payment of the required fee, was not brought in time and should not be permitted to proceed. Mr Ilenotuma points out that the facts of that case were more extreme than the facts of his own case because he was less markedly out of time, even on the respondent's arguments, than Mr Jinks.

22 Giving judgment, Linden J said at para.8 that the requirement to file with the documents specified in para.4.2 of the Practice Direction and to pay a fee or have applied for fee remission were "important and proportionate requirements which seek to ensure that the appeal is conducted efficiently and fairly to both parties". He applied dicta in *Stuewe v. Health and Care Professions Council* [2022] EWCA Civ. 1605; [2023] 4 WLR 7 in which an extension of time was also refused.

23 Giving judgment in *Stuewe,* Carr LJ reviewed the authorities and relevant provisions, including the provision in para.3.5 of Practice Direction 52D that the appeal court may not extend the statutory period for filing an appeal. She demonstrated that that provision is, as a result of cases that she cited, subject to "A narrow discretion that arises in exceptional circumstances" (para.48). She said,

> "… there is a discretion (or duty) to extend time for the bringing of a statutory appeal but only in exceptional circumstances, namely, where to deny a power to extend time would impair the very essence of the right of appeal. That is the key question. Once the discretion (or duty) arises, it must then be exercised to the minimum extent necessary to secure ECHR compliance" (para.49).

She added at para.52,

> "Put simply, and without being in any way prescriptive, exceptional circumstances are unlikely to arise where an appellant has not personally done all that they could to bring the appeal in time".

24 Carr LJ's reference to ECHR compliance is to an appellant's right of access to a court under Article 6(1) of the European Convention on Human Rights (see para.44 of her judgment), following *Tolstoy Miloslavsky v United Kingdom* [1995] 20 EHRR 442; [1996] EMLR 152; *Pomiechowski v District Court of Legunica*, *Poland* [2012] UKSC 20; [2012] 1 WLR 1604 and *Adesina v. Nursing and Midwifery Council* [2013] EWCA Civ. 818; [2013] 1 WLR 3156. Carr LJ said at para.54 of *Stuewe*,

> "… the central and only question for the court is whether or not 'exceptional circumstances' exist, namely, where to deny a power to extend time would impair the very essence of the right of appeal. Any gloss is unhelpful. Answering the question may or may not include consideration of whether or not the litigant has done everything possible to serve within time, depending on the facts of the case. Once the discretion (or duty) arises, it must then be exercised to the minimum extent necessary to secure compliance with Article 6 rights".

25 The respondent has very properly drawn my attention to some obiter dicta of Fordham J in the case of *Sun v. General Medical Council* [2023] EWHC 1515 (Admin.) in which he suggested, notwithstanding what appears to be the clear statement by the Court of Appeal of what the questions are in an application to extend time beyond a statutory appeal time limit, an additional requirement should be assumed from limb two of the test set out in *Tolstoy*, which was a case about the provision of security of costs. The European Court of Human Rights in *Tolstoy* said at para.59,

> "The Court must be satisfied, firstly, that limitations applying do not restrict or reduce the access left to the individual in such a way, or to such an extent, that the very essence of the right is impaired. Secondly, a restriction must pursue a legitimate aim and there must be a reasonable relationship between the means employed and the aims sought to be achieved …"

26 It is not, so far as I am aware, being suggested in this case, nor has it been suggested in any case, that imposing a 28-day time limit or other time limit of that order for an appellant's notice to be lodged, either with the appropriate fee or with a fee remission application or certificate, would restrict access to the court, to an extent which went beyond pursuing a legitimate aim or failed to satisfy the necessary and reasonable relationship between the means employed and the aims sought to be achieved. No doubt that is why the Court of Appeal in *Stuewe* was able to crystallise the key clear and sole question in the way in which it did. However, for the avoidance of doubt, I am satisfied that a legitimate aim is pursued by the imposition of time limits on lodging appeals and the requirement that fees should be paid for them as a condition of having them lodged effectively or, in the case of those who are entitled to fee remission, that the fee remission application or certificate should accompany the appeal documents in place of the fee itself. The legitimate aim is the requirement of finality and due despatch in the resolution of judicial business and fairness to the respondents, who are entitled to know, within a reasonable period, whether the relief that they have obtained is under challenge. There is a reasonable relationship between the means employed and the aim sought to be achieved in this respect. Therefore, even if there is a two-stage question in these cases, I am satisfied that the second limb of *Tolstoy* is satisfied.

27 In *Stuewe* Carr LJ cited a number of cases in which, as she put it in para.55, "the high threshold triggering the jurisdiction" to extend the statutory time limit on article 6 grounds had not been met. In *Jinks*, Linden J said at para.21,

> "… the onus is on an appellant to initiate an appeal in accordance with the rules rather than on members of court staff to advise potential appellants about how this is done".

28 In *Barton v. Wright Hassall LLP* [2018] 1 WLR 119, Lord Sumption said at para.18,

> "In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce

> compliance with the rules: CPR rule 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties".

29 The respondent accepts that, at least for the purposes of this case, the fact that the appellant initially filled in the wrong division of the high court should not be held against him, because of the advice he apparently received from the court staff. However, the respondent says that this does not excuse the appellant's failure to file the requisite documents and, in particular, either the required fee or proof that he had applied for remission of fees, which, in fact, he had not. Until those defects had been rectified, the appeal was not properly filed, they say, and time continued to run against him.

30 In *Gupta v. General Medical Council* [2020] EWHC 38 (Admin.), an extension of time was refused when a filing was made within time but on the wrong form and without the court fee or evidence of an application for fee remission. The judge, Julian Knowles J, held that it was not enough that Dr Gupta was, in fact, entitled to fee remission, as he demonstrated by making a successful application a few days later. *Gupta* was referred to with approval in *Stuewe* at para.55.

31 I am satisfied that in this case the appellant does require an extension of time since he did not file the essential documents (leaving aside the point about where he attempted to file) until 17 April 2023; in particular, he did not include a fee remission application or certificate. The letter saying that he had made a claim, which had not been granted, for Universal Credit was not a satisfactory compliance with para. 4.1 of Practice Direction 52B in that respect.

32 Until those defects had been rectified, the appeal was not properly filed and time continued to run against him. The deadline was, in my judgment, 27 March 2023, which he accepts, because he received the decision 28 days before that on 27 February 2023. The date when he first filed a perfected set of documents, including the reference number for the application for "Help with fees", was not until 17 April 2023, which was out of time, and it is for that reason that he does require an extension of time.

33 The appellant at the point he received the panel's decision had access to legal advice. He had been represented at the hearing which led to the decision and he received the decision from his barrister. The rules and practice directions are publicly available, for example, on the internet. I have great sympathy with the appellant's difficulties as a litigant in person. However, he is a professional man and he demonstrated to me by his written and oral submissions that he has the intelligence and analytical ability to research and understand the rules applicable to the filing of an appeal. He had, in the absence of representation, to discover these matters for himself. He was not entitled to expect the court staff to give him full advice on exactly what he needed to file. The absence of that advice on his earlier visits, therefore, does not avail him.

34 Leaving aside the question of the correct court office, as I do, the appellant was not misled by anyone. The rules were available to him and applied to him, as they did to everyone, whether they were legally represented or not.

35 I do not think that the requirements of the rules are in breach of limb two of *Tolstoy*, as I have already indicated.

36 The question, therefore, is whether to deny an extension of time on the facts of this case would impair the very essence of the appellant's right of appeal, or fail to afford him his article 6 right of access to the court.

37 I do not think it would. The 28-day time limit was long enough for the appellant to find out and comply with the requirements of an effective appeal filing. Indeed, he concedes that, if he had known what he was meant to do, he would have been able to do it within time. It was the appellant's responsibility to fulfil those requirements and he was capable of doing so. He also had access to advice although he did not take advice. He made a mistake, but it was his mistake and holding him to the consequences of it does not deprive him of his article 6 rights.

38 Consequently, the appeal being out of time, I have no duty or power under article 6 to extend the time and I decline to do so.

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