



NCN: [2023] UKFTT 302 (GRC)

Case Reference: EA/2022/0426

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

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Heard: by determination on the papers  
Heard on: 17 March 2023  
Decision given on: 17 March 2023

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Before:  
Judge Alison McKenna

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**Mrs J S HUGHES**

**Applicant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

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**RULING**  
**on Rule 4 (3) Application:**  
**I refuse to extend time to consider this matter out of time.**

**REASONS**

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1. On 20 January 2023, the Registrar refused to extend time for this Notice of Appeal to proceed. By application dated 27 January 2023, the Applicant asked for the Registrar's Decision to be considered afresh by a Judge, pursuant to rule 4 (3) of the Tribunal's Rules<sup>1</sup>. This I now do.
2. The Applicant made an application to the Information Commissioner under the Freedom of Information Act 2000. The Information Commissioner rejected her application on the basis that there had not been a valid information request. No Decision Notice was published.
3. There is no requirement to set out grounds of appeal in relation to a request for a fresh consideration under rule 4 (3), but the Applicant has done so. First, she disputes the Registrar's conclusion that her Notice of Appeal was filed 6 days late. I am afraid I do not agree with her reading of rule 12 of the

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<sup>1</sup> [General Regulatory Chamber tribunal procedure rules - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/111111/General_Regulatory_Chamber_tribunal_procedure_rules_-_GOV.UK_(www.gov.uk))

GRC's Rules with regard to the calculation of time. The provision discounting days other than working days applies where a relevant time period ends on a day other than a working day. It does not mean that one should discount non-working days in their entirety from calculating time limits. As such, I agree with the Registrar's calculation that the Notice of Appeal dated 14 December 2022 was 6 days out of time with regard to the Information Commissioner's letter of 10 November 2022.

4. However, it would be more accurate to regard the question of time limits as red herring, because it is clear to me that the Tribunal has no jurisdiction to determine the appeal. The Tribunal may only entertain a Notice of Appeal in relation to a Freedom of Information matter where a Decision Notice has been issued by the Information Commissioner. In this case, there has been no Decision Notice and the letter of 10 November 2022 itself generates no right of appeal.
5. The Applicant's second ground of disagreement with the Registrar's Decision is an argument that the Tribunal should, in the public interest, direct the Information Commissioner to issue a Decision Notice using its case management powers. I also do not agree with this statement. Only the Administrative Court may direct the Information Commissioner to issue a Decision Notice in any case, as the Tribunal does not have this supervisory jurisdiction. Case management powers cannot be relied on to exercise powers that Parliament has not conferred on this Tribunal.
6. I note that I have discretion to extend the time limit rule 5 (3) (a) of the Tribunal's Rules. However, if I were to do so in this case, then I would immediately proceed to strike out the appeal under rule 8 (2) (a) as the Tribunal clearly has no power to determine it. Such a strike out would be mandatory.
7. In all the circumstances, I have concluded that it would not be appropriate to exercise my discretion to extend time to admit the Notice of Appeal, and so I now refuse to do so. It follows that these proceedings are at an end.

**(signed)**

**Judge Alison McKenna**

**Dated: 17 March 2023**

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