



Neutral Citation Number: [2024] UKUT 355 (LC)

Case No: LC-2024-727

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

FTT REF: CH1/18UE/PHI/2024/0038 to 0050

12 November 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – PROCEDURE – FTT not entitled to require a party to serve its directions on another party

WYLDECREST PARKS MANAGEMENT LTD

**Berrynarbor Park,
Sterridge Valley,
Ilfracombe,
EX34 9TA**

**Upper Tribunal Judge Elizabeth Cooke
Decision on written representations**

© CROWN COPYRIGHT 2024

The following cases were referred to in this decision:

English v Emery Reimbold & Strick Ltd [2002] 1 WLR 2409

Hyslop v 38/41 Residents Co Ltd [2017] UKUT 398 (LC)

Scott v. Scott [1913] AC 417

Introduction

1. This is an appeal against an order by the First-tier Tribunal (“the FTT”) that the appellant serve its directions on the other party to the proceedings. It was determined under the Tribunal’s written representations procedure. There is no respondent, because the order was made at a time when the proposed respondents in the FTT had not been served with the proceedings and so they were not involved in or affected by the order.

The background

2. In September 2024 the FTT received an application from the appellant for the review of pitch fees under the Mobile Homes Act 1983 in relation to 13 occupiers of Berrynabor Park, Ilfracombe, EX34. On 24 September 2024 the FTT gave directions for the conduct of the proceedings, including a requirement for the respondents to write to the FTT acknowledging receipt of the application and directions, and for the preparations for the hearing and the assembly of a bundle. Paragraph 11 of the directions stated:

“By 30 September 2024 the Applicant shall send a copy of these Directions and a copy of the Tribunal’s Statement of Rules and Procedure to each of the Respondents. The Applicant shall confirm to the Tribunal that they have served these documents by 2 October 2024. In default of compliance the application shall be struck out without any further notice being given.”

3. I refer to that paragraph of the directions as “the order”, and that is the order now appealed.
4. Rule 7 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the FTT’s rules”) says this:

“(1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

...

(6) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction made by the Tribunal to every party and to any other person affected by the direction.”

5. The directions (including the order) were made by a legal officer of the FTT. The appellant asked the FTT for permission to appeal that order, on the ground that the FTT is not entitled to require it to serve the FTT’s directions on the respondent without a “good reason” as required by rule 7(6).
6. Tribunal legal officers are not judges, and do not make judicial decisions that are susceptible to appeal. Rule 5(3) of the FTT’s rules provides that within 14 days of the date when the FTT sends to a party notice of a decision made by a legal officer or other member of staff pursuant to power delegated to him or her, that party may apply in writing to the FTT for that decision to be considered afresh by a judge. In “considering afresh” the judge makes a judicial decision which can then be appealed.
7. The order made by the legal officer should have contained a statement setting out the effect of rule 5(3) but it did not (or at least the copy provided to the Tribunal did not).

Rather than seeking permission to appeal, the appellant should have asked for a judge to consider the order afresh, and if it was not content with the judge's decision it could then have sought permission to appeal to the Upper Tribunal.

8. That procedural muddle was not spotted by the FTT, and a judge made an order of 11 October 2024 refusing permission to appeal. She referred to *Hyslop v 38/41 Residents Co Ltd* [2017] UKUT 398 (LC) which she said decided the point argued in the grounds of appeal, to rules 29(1) and 16(2) which allow the FTT to require a party to serve a copy of the application on another party, and to rule 6(3) which she said allows the FTT to direct a party to serve directions on other parties. Further, she referred to rule 7(6) and asserted that it says “unless there is a good reason we are entitled to direct that it is a party who will send such a direction out.”
9. The appellant then applied to this Tribunal for permission to appeal the order made by the legal officer.
10. I treat the judge's order refusing permission to appeal as a fresh consideration and re-making of the legal officer's order, pursuant to rule 5(3), and I grant permission to appeal it to the Upper Tribunal because it has a realistic prospect of success. Indeed, the appeal succeeds, for the following reasons.
11. The FTT's rules give it extensive case management powers. In particular Rule 6(3)(d) provides that the FTT may:
 - “permit or require a party or another person to provide or produce documents, information or submissions to any or all of the following –
 - (i) the Tribunal;
 - (ii) a party;
 - (iii) in land registration cases, the registrar.”
12. Moreover, rule 16(2) says:
 - “(2) The Tribunal may provide any document (including any notice or summons or other information) under these Rules by—
 - (a) itself sending or delivering the document; or
 - (b) requiring a party to do so.”
13. In *Hyslop v 38/41 Residents Co Ltd* the Tribunal (the Deputy President, Martin Rodger QC) had to decide whether the rules enabled the FTT to require an applicant to send to a respondent (a) the notice of application by which proceedings were commenced, and (b) its own reasoned decision
14. So far as the notice of application is concerned rule 29 says this:
 - “(1) When the Tribunal receives a notice of application in accordance with rule 26(1) or a statement of case in accordance with rule 28(4), the Tribunal must provide a copy of the application and any accompanying documents to the respondent.”

15. In *Hyslop* the Deputy President held that the reference in that rule to “providing” a copy of the notice of application invites reference to rule 16(2), and that the rules do indeed enable the FTT to require the applicant to send the notice of application to the respondent.
16. The FTT’s decision, however, was a different matter. The Deputy President said this:

“60. The proposition that justice requires that the final decision of a court or tribunal must be made available to the parties affected by it is so fundamental that it is difficult to find direct authority for it. It is obvious that the delivery of a decision is an indispensable part of dealing with a case fairly and justly. In *Scott v. Scott* [1913] AC 417, 476 Lord Shaw of Dunfermline described publicity in the administration of justice as “one of the surest guarantees of our liberties”, and quoted from Jeremy Bentham: “publicity is the very soul of justice.” More recently, in *English v Emery Reimbold & Strick Ltd* [2002] 1 WLR 2409 at para [16] Lord Philips MR said, of the duty to give reasons: “justice will not be done if it is not apparent to the parties why one has won and the other has lost”. That justice be public is not only a requirement of the common law. Article 6(1) of the European Convention on Human Rights provides that “judgment shall be pronounced publicly”.

17. Therefore the Deputy President reasoned that the FTT’s obligation to provide a decision notice and written reasons to each party at the conclusion of the proceedings could not be satisfied by providing those documents to one party and asking or directing it to forward them to every other party. Rule 16(2) is not wide enough to be read in that way; the provision of the decision to each party is the FTT’s responsibility and it cannot require a party to do that for it.
18. The decision in *Hyslop* did not, as the judge thought, deal with the point at issue in this appeal. The Deputy President was asked to decide about the notice of application and the decision, and not about directions made by the FTT. I understand why the FTT might have taken the view that the reasoning in the decision was wide enough to include its directions, because it appears that directions were given on receipt of the notice of application and the FTT’s direction to the applicant was to send both the notice of application and the initial directions to Mrs Hyslop:

“3. The application must have been made shortly before 20 October 2015 as, on that date, the FTT gave directions to CHG which included the following:

‘The landlord must by 30 October 2015 serve a copy of the application and these directions on each of the leasehold respondents and shall confirm to the tribunal that it has done so’.”

19. That would appear to indicate that the FTT did in that case exactly as it has done in this one, by requiring the applicant to give to the respondent not only a copy of its application but also the FTT’s directions. But the basis of Mrs Hyslop’s appeal was the fact that the applicant, not the FTT itself, had sent her the notice of application; there was no further reference to directions in the decision and there seems to have been no argument about them. Mrs Hyslop appealed when she realised she had not received the application and the final decision, and may have known nothing about the directions that were supposed to be sent with the application. The Deputy President’s attention does not appear to have been

drawn to the fact that the directions will have been addressed to both parties, not only to CHG, which is why Mrs Hyslop needed a copy of them.

20. So the decision in *Hyslop* cannot be relied upon as a decision on the point in issue in the present appeal, and the Tribunal now has to decide whether rule 16(2), together with rule 7(6), enable the FTT to require an applicant to send its directions to the respondent instead of sending them itself. Certainly rule 7(6) does not in terms enable the FTT to require a party to send its directions to another party. But is that the combined effect of rules 6(3), 16(2) and 7(6)?
21. In my judgment the rules do not allow that. Rule 16(2) is no more apt to describe directions or an order of the FTT than it is to describe the FTT's reasoned decision. Directions require action from the parties, and the consequences of not complying with them are serious even though they do not constitute the FTT's final decision. If the FTT's directions are delivered by a party rather than by the FTT there is an obvious risk of dispute about whether and when they were delivered. There is also the risk of compromise of the perception of the FTT's independence if it uses a party as its own messenger. Importantly, directions - like a final decision - can be appealed, and an application for permission to appeal directions and reasoned decision alike must be made, according to rule 52(20) of the FTT's rules:

“... within 28 days after the latest of the dates that **the Tribunal sends** to the person making the application:

 - (a) written reasons for the decision;
 - (b) notification of amended reasons for, or correction of, the decision following a review; or
 - (c) notification that an application for the decision to be set aside has been unsuccessful.”
22. The emphasis there is added. If the directions or decision is sent out by a party, that provision does not work and time for applying for permission to appeal never starts to run. In the same way rule 5(3), as we saw above, makes provision for a party to ask for a fresh consideration by a judge of a direction made under delegated powers “within 14 days after **the Tribunal sends** notice of a decision made by a member of staff ... to a party”. Again the emphasis is added; the FTT has to send the decision itself, and there is no provision for it to require a party to do so, so as to minimise the possibility of confusion and dispute about the time the directions were sent to the party and about when the time for seeking permission to appeal begins.
23. So there are many good reasons why the FTT should be required to send out its directions itself. As the Deputy President said in *Hyslop* in the context of the FTT's final decision, if rule 16(2) had been intended to enable the FTT to delegate to a party the sending of its directions to a party to whom they are addressed, it would have made that crystal clear.
24. What then of rule 7(6)? It is worth looking again at rule 7(6) in the context of the rule as a whole:

“7.— Procedure for applying for and giving directions

- (1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.
- (2) An application for a direction may be made—
 - (a) by sending or delivering a written application to the Tribunal; or
 - (b) orally during the course of a hearing.
- (3) An application for a direction must include the reason for making that application.
- (4) Except with the permission of the Tribunal, if a written application for a direction is made without the consent of every party the applicant must provide—
 - (a) a copy of the proposed application to every other party before it is made; and
 - (b) confirmation to the Tribunal that the other parties have been notified that any objection they wish to make to the application must be provided in accordance with paragraph (5).
- (5) A party who wishes to object to a written application that has been made to the Tribunal for a direction must send written notice of the objection to the Tribunal and the applicant for the direction.
- (6) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction made by the Tribunal to every party and to any other person affected by the direction.
- (7) If a party or any other person sent notice under paragraph (6) of the direction made by the Tribunal wishes to challenge that direction, they may do so by applying for another direction which amends, suspends or sets aside the first direction.”

25. Rule 7(4) requires the party making the application to send it to the other party or parties. Rule 7(6) requires the FTT itself to send out its directions. The contrast is obvious. If rule 7(6) had contemplated that another party could be required to send the directions instead, it would have put that beyond doubt either by wording similar to that of rule 7(4), or by making a direct reference to rule 16(2), or by echoing the provision in rule 16(2) for the FTT to send the directions either by itself sending or delivering them or by requiring a party to do so. In my judgment the point of rule 7(6) is that it is the FTT’s responsibility to send its directions to every party and every person affected by its decision unless there is a good reason, not for someone else to do so, but for the directions not to be sent at all. Such cases will be rare. I am mindful of the inconvenience, and the resource implications, of the FTT having to send out its directions itself, particularly in a case like the present with multiple parties, but the rules to that effect are clear and the reasons why it has to do so are as I have discussed.

26. So the FTT is in fact rather more constrained even than the appellant thought. There is no provision for the FTT to require it to send the FTT’s directions to the respondents, for whatever reason.

Conclusion

27. The order expressed in paragraph 11 of the directions of 24 September 2024 is set aside. It is for the FTT to send its directions to the intended respondents to the appellant’s application.

Upper Tribunal Judge Elizabeth Cooke

12 November 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.