Appeal No. UKEATPA/0993/18/RN

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 18 October 2019

Before

HIS HONOUR JUDGE AUERBACH

(SITTING ALONE)

MR A M FINCHAM — APPELLANT

ALPHA GROVE COMMUNITY TRUST — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEAL FROM REGISTRAR'S ORDER

APPEARANCES

For the Appellant	MR AM FINCHAM (Appellant in Person)
For the Respondent	MS ROSE SMITH (Solicitor) Instructed by: Doyle Clayton Solicitors Level 10 One Canada Square London E14 5AA

SUMMARY

PRACTICE AND PROCEDURE – Time for Appealing

The Claimant in the Employment Tribunal sought to bring an appeal to the EAT. The documents that he delivered to the EAT within the time limit for doing so were not complete. There was one page missing from the copy of the Grounds of Resistance, which formed part of the Response Form, in the bundle of documents that he delivered. After this was drawn to his attention, he supplied the missing page. This was 20 days after the last day for instituting an appeal in time. The Registrar had been correct to hold that the appeal was not properly instituted until the missing page was supplied, and that it was instituted out of time.

However, the information contained on the last page was not necessary to an appreciation of the Employment Tribunal's decision or the issues raised by the proposed Grounds of Appeal. The failure to include a copy of the last page was a genuine error on the part of the Claimant, which he had not appreciated until it was drawn to his attention. When it was, he acted promptly to rectify it. He had not been lax or dilatory in any other respect. In all these particular circumstances, this was an exceptional case in which an extension of time should be granted.

HIS HONOUR JUDGE AUERBACH

1. I have heard today an appeal against an order of the Registrar in which she determined that the substantive appeal, which the Claimant in the Employment Tribunal seeks to bring, was not properly instituted until 12 December 2018. At that point it was 20 days out of time, the time in which to appeal having expired on 22 November 2018. The Registrar went on to decline to extend time for presentation of the appeal up until that date.

2. The Claimant, who has been a litigant in person throughout, confirmed to me, in discussion at the start of the hearing this morning, that he sought by this appeal to challenge both the Registrar's determination that his substantive appeal was not properly instituted in time and, if he was unsuccessful in that, her refusal to extend time.

3. Ms Smith, who appeared today on behalf of the Respondent, accepted, in the opening discussion, that it was open to me to consider both points. In accordance with established authority, I am not in any way bound by the Registrar's Decision, or to confine my consideration to a review of her Decision. I have considered these points entirely afresh.

4. I had the benefit of written skeleton arguments from both sides and of hearing oral argument from both the Claimant and Ms Smith this morning. When I was considering the papers prior to this morning's hearing, it occurred to me that there were some prior authorities not included in my bundle which it might be helpful for the parties to see, not necessarily because they, or any of them, establishes any distinct point of law, but as potentially illustrative of the approach which it may be said has been taken in some previous cases, where the

particular issue arising was not dissimilar from that arising in this case. That said, every case, of course, turns on its own particular facts and circumstances.

5. However, I caused the parties to be provided with copies of these additional authorities and they both had an opportunity to consider them whilst I dealt with another matter that was in my list this morning first. It also transpired, however, that neither of the parties had, prior to today, seen a copy of their opponent's written skeleton argument, and so copies were furnished to them and I also rose for a further period to enable them both to consider their opponent's written skeletons. I then proceeded to hear oral argument after both parties indicated to me that they had now had sufficient time to consider the written skeletons.

6. The Employment Tribunal, East London Hearing Centre, Employment Judge Hallen, heard the Claimant's claims in September 2018. Its Judgment and Reasons were then sent to the parties on 11 October 2018. The Claimant appeared, at that Hearing, in person, and the Respondent by a solicitor. The Tribunal, in its Decision, dismissed a claim by the Claimant for breach of contract damages. His claim of unfair dismissal succeeded and he was awarded a basic award of £900 and a compensatory award of £1,300.

7. Due to the nature of the particular matters that I have to decide, I do not need to set out the factual background, or to describe the Tribunal's Reasons, in very much detail. However, in brief, the Respondent is described by the Tribunal as a multi-purpose charitable centre offering social and recreational facilities and services to local communities in the Isle of Dogs and the London Borough of Tower Hamlets. The Claimant was dismissed for the given reason, which the Tribunal accepted as the genuine reason, of conduct. This was said to have been, on various occasions, by way of his refusal to carry out reasonable management instructions, gross

insubordination in relation to the content of certain emails that he sent, and speaking to the Chair of Trustees in a rude, insubordinate and intimidating manner.

8. The Claimant's claim of unfair dismissal succeeded because the Tribunal found that the dismissal was procedurally unfair in two respects. The first was that the Respondent went ahead with the disciplinary hearing in his absence in circumstances where the Tribunal found it should fairly, because of the reasons he had given for not being in a position to attend a hearing on the same day, have put off the hearing to allow him a better opportunity to attend. Secondly, the Tribunal found that there was unfairness, because the manager who dealt with his internal appeal limited their consideration of the matter to the question of whether the manager who dismissed had wrongly gone ahead with the dismissal hearing in his absence; but they did not afford the Claimant any wider right of appeal than that. However, the Tribunal went on to find that, had these matters been handled fairly, then the Claimant would have been dismissed, fairly, within a period of one month from the actual date of his dismissal. For this reason, they confined his award to a basic award together with an amount to reflect loss of earnings for that one-month period. They also found that reinstatement, which had been requested by him, was not practicable, given all of their other findings in the case.

9. As to the breach of contract claim, this was partly a claim for notice monies, because the Claimant had been summarily dismissed; but the Tribunal found, on the basis of the evidence before it and its own appreciation of the facts of the case, that he was guilty of misconduct for which the Respondent was entitled summarily to dismiss him. The other part of the breach of contract claim was mainly founded upon the Claimant's case, that he was entitled to have been paid at the rate of pay mentioned in a job advertisement to which he had responded. However the Tribunal, in summary, found that the rate of pay on which he had been hired, and which had

been agreed and formed the basis of his actual terms and conditions of employment, was different to that. There had, however, been some errors when that hourly rate had been increased, but these had been rectified by a payment that was then made to him. There was a further claim for a payment of £500, but the Tribunal found that this sum of money had been offered on an *ex gratia* basis, rather than being a sum to which the Claimant was entitled.

10. Following the promulgation of the Tribunal's Decision, the Claimant sought a reconsideration but, on preliminary consideration, that was refused. That was communicated to the parties on 18 October 2018.

11. The last day for the submission of a properly instituted appeal to the EAT was 22 November 2018. On 20 November 2018 the Claimant delivered, by hand, to the EAT, his Notice of Appeal together with some accompanying documentation. He obtained a receipt from the EAT in standard form, which identified that the delivery was by hand, and that it had occurred before 16:00 that day, that time being a cut-off under the Rules and **Practice Direction** for determining whether an appeal, if properly instituted, had been instituted on the day in question or on the next day. The receipt contained the following standard words:

> **"This is a receipt for the document lodged. It is not confirmed by the Employment Appeal Tribunal that the documents have been lodged in accordance with the Employment Appeal Tribunal Practice Direction."**

The words, "not confirmed by the Employment Appeal Tribunal" appeared in the notice in bold.

12. Subsequently, in a phone call, and in an email to the Claimant on 11 December 2018, the EAT administration informed him:

> **"The ET3 Grounds of Resistance, appears to be incomplete.**
>
> **Page number 30, paragraph H has a heading Remedy by no text underneath it.**

Please send any missing pages

....."

13. The Claimant scanned in and sent to the EAT, on 12 December 2018, a copy of the last page of the Grounds of Resistance which formed part of the response to his original claim. On the foot of the previous page was a sub-heading "H, Remedy". On the next, and last, page there were two paragraphs in which the Respondent indicated that it did not consider either reinstatement or re-engagement to be appropriate, denied that the Claimant was entitled to any remedy, but pleaded that, should his unfair dismissal claim succeed, he had contributed wholly to his dismissal, had failed to mitigate his loss, and/or that there should be a reduction applying the principles laid down in **Polkey v AE Dayton Services Limited** [1987] UKHL 8 and/or because he had failed to comply with the ACAS code of practice. There was also a further paragraph in which the Respondent said it reserved the right to amend its Grounds of Resistance following provision of any further and better particulars or information from the Claimant.

14. A copy of that final page having been received, the EAT communicated to the Claimant that it considered that his appeal had not been properly instituted until then, because of the hitherto missing page, but that it was properly instituted on 12 December 2018, 20 days out of time. The Claimant was asked whether he wished to apply for an extension of time. There was then various correspondence in which the Claimant maintained that the EAT was wrong to treat his appeal as having been instituted out of time, and, that being his position, stated that he was not applying for an extension of time. However, ultimately both questions were considered by the Registrar.

15. In her Decision, the Registrar referred to a number of the leading authorities regarding the power to extend time for a late appeal to the EAT, including **Aziz v Bethnal Green City Challenge Co Ltd** [2000] IRLR 11, **Muschett v London Borough of Hounslow** [2007] UKEAT/0281/07/0608, **United Arab Emirates v Abdelghafar** [1995] ICR 65 and the Court of Appeal's decision in **Green v Mears Ltd** [2019] ICR 771, confirming the correctness of the approach taken by the EAT in those previous authorities. She referred to specific information in respect of the strict 42-day time limit being available in the judgment booklet to which the Employment Tribunal directs the recipients of its Decisions. She noted that being unrepresented is not an excuse for ignorance of time limits, that litigants in person are not generally entitled to greater indulgence than those who are represented, and that the duty of complying with time limits is on parties and their advisers. There is no duty on the staff of the EAT to advise litigants as to the procedures to be followed.

16. The Registrar went on to state that, for an appeal to be properly instituted, all of the requisite documents must be included together with the Notice of Appeal, as set out in the EAT's Rules and **Practice Direction**. Additionally, it was the Claimant's responsibility to check and ensure that the copy documents that he brought to the EAT were complete and had no pages missing. She concluded that the missing page was a result of his own oversight and noted that, in his own submissions in the run up to her decision, he had not expressly confirmed that he had personally checked the paperwork or asserted that he was certain that all the pages were present when he hand-delivered his application to the EAT. She also observed that he had not explained why he had left it until so close to the deadline to submit his appeal. She concluded that the appeal had been instituted 20 days out of time, that the Appellant had not provided an explanation that amounted to a good excuse, nor was there any other reason for granting an extension; and she declined to do so.

17. As I have indicated, I have considered all of these matters afresh and in light of the written and oral arguments that I have received from the parties.

18. I turn, first, to the question of when this appeal was properly instituted. The Claimant says that he does not accept that it is correct that there was missing, from the documents that he handed in to the EAT on 20 November 2018, a copy of the last page of the Grounds of Resistance. He says that it is possible that that page was not missing from the documents that he handed in, and that somehow some error occurred on the part of the EAT staff after he handed the materials into the EAT office on that day; and that it has not been shown that this is *not* what happened. However, Ms Smith correctly submitted that the onus is on the Claimant to establish, on the balance of probabilities, that he did enclose complete documentation with what he handed in to the EAT. She also submitted that it is more likely that the error was an error on his part, in copying and assembling the documents, than an error on the EAT's part in, as it were, simply losing one page of what he had handed in.

19. I agree, on this point, with Ms Smith. The onus is on the Claimant, when there is a factual dispute of this sort, to show on the balance of probabilities that the documentation that he handed in was complete and included this missing page. He does not claim to have any positive evidence, such as a record that he made of what he had copied or some electronic record or note, or any other kind of evidence, to demonstrate positively that the copy that he handed into the EAT was complete and included the last page. It is clear that he did have all of the pages of the response form in his possession, as a complete copy was contained in the bundle of papers he had retained from the Employment Tribunal hearing. That is clear because, when the EAT subsequently raised the fact that this page appeared to be missing, he was able to locate it amongst his paperwork, scan it in, and email it to the EAT. However, that does not

show that it was amongst the pages of the documentation, a copy of which he handed into the EAT on 20 November 2018. Nor is there any particular reason, from any evidence, to infer that he did hand in a complete copy, but the EAT somehow lost it or it went astray or did not make its way onto the EAT's file. That being the state of the evidence, and the onus being on him, points to the conclusion that he has not shown that the documentation was complete.

20. I would add that, in any event. it seems to me inherently more likely that, in the copying process, one way or another, he, without realising this to be the position, I fully accept, produced and handed into the EAT a copy that had one page missing, than that the EAT, having received a complete document, managed to lose one page of what it had received between taking possession of it from the Claimant and putting the material on the EAT's own file, given that everything else was present and safely found its way onto the file.

21. The authorities clearly establish that the requirement in the Rules and **Practice Direction** for specified documents to be included, save in certain cases where an explanation for the non-inclusion is provided, mean that the documents in question that are included with the Notice of Appeal have to be complete. The conclusion that this one page was missing from what the Claimant handed in, means that the copy of the Grounds of Resistance that he provided was not complete, and he therefore had not complied with the **EAT's Rules and Practice Direction** in this respect at that point. Additionally, as a matter of fact, that was not rectified until he provided a scanned copy of the missing page on 12 December 2018. I therefore agree with the Registrar on the first issue, that this appeal was not properly instituted until that date, and therefore it was 20 days out of time.

22. I turn to the question of extension of time. There are number of general principles that are well established in the authorities. Firstly, that the extension of time is an indulgence and not a right. A party who has litigated their claim at first instance, been unsuccessful in some respect or otherwise wishes to challenge the outcome on appeal, bears the onus of instituting their appeal within time and does not have the right to an extension if they do not do so. Secondly, the 42-day time limit for appealing to the EAT is a particularly generous one which, among other things, makes generous allowance for the difficulties that might be faced, including by litigants in person. Thirdly, in principle, no greater indulgence is to be given to litigants in person than to those who are represented, having regard to the generous time limit, and to the availability of information through various means about what documentation is required, and by when it is required.

23. Next, it is the duty of the party seeking to appeal, to ensure that they do comply and that all their documentation is presented complete within the time limit. It is not the duty of the EAT, or its staff, either before or after the time limit has expired, to raise defects in compliance with a party, to inform them, within any particular time frame, whether or not their documentation is considered to comply, or otherwise to take proactive steps to assist them, by checking and informing them whether they have complied. It is the responsibility of the party seeking to appeal, to take the necessary trouble and care to ensure that they understand what they have to do and to ensure their own compliance. Many of the cases which arise involve some accidental or unintentional error on the part of the party seeking to appeal, but that is not, itself, a sufficient reason for granting an extension of time.

24. It is also well established, and referred to in terms in the EAT's Rules and **Practice Direction**, that the fact that a party has applied to the Employment Tribunal for a

reconsideration and is awaiting the outcome of that, does not, by itself, either give rise to an extension of time or constitute a good excuse or reason for not properly instituting an appeal within time.

25. Against that background, a number of the arguments advanced by the Claimant do not assist him to establish either that he had a good excuse or that this was an exceptional case. He devoted a considerable part of his written and oral submissions to being critical of the EAT and its processes and procedures. He was critical of the fact that the EAT's standard receipt acknowledges receipt of whatever documents have been lodged, but does not contain any identification or listing of what documents actually have been lodged, how many pages they contained, whether they appeared to be complete, and so forth. Indeed they contain a statement that no assurance is given about that. The Claimant said that this is unhelpful, in his view poor practice, and does not assist certainty in litigation.

26. I do not agree with any those submissions. That is essentially because, to repeat, it is the responsibility of the party concerned to ensure that they have complied, and complied within the time limit, and to take whatever steps they may wish or think it prudent to take in order to be able to demonstrate that they have done, should there be a dispute about it later on. It is additionally not a well-made submission, given that, precisely for that reason, the EAT standard receipt states, in terms, that it is not confirmed by the Employment Appeal Tribunal that the documents have been lodged in accordance with the **EAT's Practice Direction.**

27. Similarly, the Claimant's complaint that the EAT had been slow or inefficient to bring the matter to his attention is misconceived and misplaced. The EAT did not have any obligation to bring it to his attention within any particular timescale. He was wrong to suggest

that there is somehow a formal two-stage process, an initial stage in which the documents are delivered and receipt is acknowledged in general terms, and then a second stage in which the EAT formally confirms whether it has identified any issues.

28. Thirdly, the Claimant says that the EAT itself was not sure whether the documentation was complete because it said, in its email, that the Grounds of Resistance "appeared" to be incomplete. However that was bound to be the position, because the EAT does not have any documents except those which are supplied to it by the parties. Sometimes people generate or submit documents which in fact do end abruptly. The reader might think that the document ends so abruptly that there must be something missing, but it turns out that in fact there is not. Only the person who has a copy of the complete document can definitively answer that question. The EAT could see that there was a heading at the bottom of the last page of what it had, which rather suggested that there must be another page; but it could not be sure whether there was until the Claimant confirmed that there was, and provided a copy of the missing page. However he, of course, had that missing page in his possession from the outset.

29. However, there were better points raised by the Claimant which did have some traction. Firstly, Ms Smith submitted that he had, as it were (though these were not her specific words), bought this upon himself by leaving the presentation of his Notice of Appeal and documentation until two days before the appeal deadline arrived. However, this was not a case where the Claimant got into difficulties specifically because he had left matters very late. There are plenty of cases in the reports, where individuals who have left it sometimes until the last day or even the last hour then encounter various logistical or other difficulties, and miss the deadline as a result of that. The Claimant's mistake in accidentally, one way or another, failing to include in the paperwork that he handed in, a copy of the last page of the Grounds of

A Resistance, did not come about because he only had two days to go; it was just a mistake that he could have made if he had had one day to go or seven days to go.

B 30. When I raised this point with Ms Smith in the course of argument, she said that, nevertheless, had the Claimant not presented the documents so close to the deadline, there was a greater chance that his mistake might have been picked up within the deadline. However, here again, I do not regard the fact that the point was not picked up until 11 December, so that, C when the Claimant submitted the missing page on 12 December, he was 20 days out of time, as particularly significant. That is for two reasons. Firstly, it is precisely because there was no onus on the EAT to review the contents and to get back to the Claimant on any issues arising D within any particular timescale. It is perfectly possible that if, say, the Claimant had put in his paperwork seven days before the time limit expired, the point might still not have been picked up by the EAT until some time, possibly days or even weeks, after the time limit expired.

E 31. Secondly, this point does not have much traction in this case because it is a fact that the Claimant was not going to himself spot that there was a page missing, unless or until it was drawn to his attention. Further, this is not a case where the Claimant has been particularly slow F to put right the problem, once he was alerted to it. It was raised on the afternoon of 11 December. The Claimant told me, and I have no reason to disbelieve it, that he was out and about when he got the first phone call, and he emailed the scanned missing page the next G morning. So he did act promptly once it was raised. Bearing in mind all of that, it seems to me that I should not attach any particular significance adversely to him either to the fact that he only presented his appeal and documentation, apart from this missing page, two days before the H deadline, nor to the fact that in the event it was only on 12 December, some 20 days after the deadline expired, that he provided the missing page.

32. Nevertheless, says Ms Smith, it remains the case (or now does in light of what I have factually found), that the fault was that of the Claimant. It was his error, and his responsibility to take care to ensure that the copies that he made and provided, of all the documentation that he needed to supply, were complete in every respect when he handed them in. Further, she submitted, there is no good reason why he could not have done so. This was not a case of a good excuse or otherwise an unusual or exceptional case.

33. Every case does turn on its own facts, but I provided the parties with some examples of Decisions of either the EAT or the Court of Appeal, in which an issue had arisen because of a copy document accompanying the Notice of Appeal being incomplete. **Woods v Suffolk Mental Health Partnership NHS Trust** [2007] EWCA Civ 1180 was the case in which Ward LJ, famously to employment lawyers, said: "The denizens of the Employment Appeal Tribunal seem to me to be a hard hearted lot and mercy flows thinly in the lifeblood of the rules and practice which govern their consideration of applications to extend time for appeal." This was a reference by him to the, by then already established, body of authority indicating the very strict basis for consideration of applications for extension of time. However, notwithstanding those observations, he and the other members of the Court of Appeal unanimously found that the EAT had not, in that case, erred in declining to extend time where the copy of the Claim Form provided had been incomplete.

34. In **Nationwide Leisure Ltd v Parnham** [2009] UKEAT/0724/09/0611, a page from the copy Claim Form provided to the EAT was missing. However, it transpired that the respondent in that case, which was the party seeking to appeal, had only itself received an incomplete copy of the Claim Form from the Employment Tribunal. Having regard to the fact that the respondent was therefore the victim of an error on the part of the Employment Tribunal, it is

perhaps unsurprising that the application in that case, by way of appeal to the Judge, for extension of time, succeeded. I agree with Ms Smith, however, that this is a distinguishing feature from the present case, in which the mistake was that of the Claimant and not of the Employment Tribunal or the EAT's administration.

35. **Hine v Talbot & Ors** UKEATPA/1783/10 is another case where, before the Judge, the application for extension of time was successful. In that case, one page of a copy of the Tribunal's reasons was missing from what was sent to the EAT, but it appeared that this was because solicitors dealing with the matter had failed to check that each page had successfully scanned. It was also observed by the EAT, at paragraph 24, that the missing page was not needed, to enable the EAT to see the relevant material to understand the essential dispute between the parties upon which the proposed appeal was based. Although the error there was of a solicitor, rather than the individual seeking to appeal, it was nevertheless an error on the part of someone, as it were, on their team. These facts are much closer to those of the present case, subject to the question, to which I will come, of the significance or not of the missing page. There was also some suggestion, in **Hine**, that the solicitors had relied on something said by a member of the EAT staff; but there is no such parallel in this case.

36. Lastly, there is **Sud v London Borough of Ealing** [2011] EWCA Civ 995. In that case there was one page missing from the copy of the Claim Form. However, the Court of Appeal considered an extension of time should have been granted. That was because the appeal in that case related to two claims where the Claim Forms were in substantially the same form. One of the Claim Forms was complete and all the essential information in respect of the second claim was to be found in that first Claim Form, so that the missing page from the second Claim Form was not of any practical consequence. Again, I note therefore that a key issue in that case

leading to the Court of Appeal's view, that time should be extended, revolved around the importance or not of the missing page, for an appreciation of the Grounds of Appeal.

37. I return to the facts of this case. Whilst the error here was on the part of the Claimant, in either not copying or not checking he had properly included, every page of the Response Form, nevertheless all that was missing from his documentation was that one page – the last page – of that one document. I agree with Ms Smith's submission that this page was not negligible in its content – it did not, for example, merely contain the Respondent's solicitors' sign off or even just the last paragraph reserving the right to amend the Grounds of Resistance. It contained substantive submissions regarding the Respondent's position on remedy. However, I do not think that that this was material that needed to be seen in order for the EAT to appreciate the substantive basis on which the Claimant seeks to appeal the unfair dismissal decision.

38. The Employment Tribunal, in its Decision, indicated that it had considered that the **Polkey** principle applied and that the Claimant's compensation should be limited to one month's compensation and his basic award, on the basis that he would have been fairly dismissed within a month had a fair procedure been followed. Additionally the Tribunal indicated, in its Decision, that it did not consider this case to be appropriate for reinstatement or re-engagement. No issue is raised in the Tribunal's decision about contributory conduct or failure to mitigate loss. So no resort is needed to the last page of the Response Form in order to understand the Tribunal's Decision. Nor is it needed to enable consideration of the points the Claimant seeks to raise in the Notice of Appeal, including as to whether there was evidence on which the Tribunal could properly have held that he was fairly found guilty by the Respondent of gross misconduct, whether the Tribunal could properly have so found for itself, and/or the challenge he seeks to bring to the Tribunal's rejection of his application for reinstatement.

Indeed, it seems to me that, even if the Respondent had not specifically pleaded these points in its Grounds of Resistance, the Tribunal would have been bound to consider the **Polkey** question, having regard to its other findings. A Tribunal is also bound, in any case in which it has found someone to be unfairly dismissed, and they have indicated that they are seeking reinstatement or re-engagement, to consider whether or not to make such an order.

39. In all the circumstances, therefore, having regard particularly to the fact this page does not seem to me to have contained material information necessary to the consideration of the Grounds of Appeal, I conclude that this is an exceptional case in which the extension of time should be granted. I am reinforced in that view by the fact that it seems to me that, although he did make this mistake, the Claimant did, in other respects, make every effort to be diligent and conscientious. He did, subject to the fact that this page was missing, take on board which documents were required, he was cognisant of when the time limit was due to expire, and, believing that it was a better way of making sure that nothing went wrong, he decided to come to the EAT's offices in person to deliver his documents by hand. As I have said, he also acted promptly when the fact that there was a page missing was drawn to his attention. Apart from the crucial mistake, this is not a case of a party in any other respect having been lax or dilatory in their approach to complying with the requirements of the Rules and **Practice Direction**.

40. I therefore uphold the Registrar's Decision that this appeal was not properly instituted in time. However, I allow the appeal in respect of her Decision not to extend time. I will extend time, for these exceptional reasons, and on the particular facts of this case, so that the appeal is to be treated as having been presented in time with that extension. It will therefore go forward to the next stage.