



**DECISION (No. 4) on THE EXERCISE OF THE TRIBUNAL'S DISCRETION**

SHERIFF GEORGE JAMIESON

**ON AN APPEAL AGAINST A DECISION OF THE FIRST TIER TRIBUNAL FOR  
SCOTLAND (LOCAL TAXATION CHAMBER)  
IN THE CASE OF**

Assessor for Tayside Valuation Joint Board

Assessor

- and -

Miss Zarine Manekshaw and Mr David Masterton

Respondents

FTS Case Reference - FTS/LTC/CT/23/41019

Representation: Appellant: Murphy, Advocate

Respondents: David Masterton and Mr Minochecher Manekshaw, Lay Representative

Paisley 3 June 2025

**Decision**

The Upper Tribunal for Scotland, having considered the Appellant's written submissions lodged on 11 April 2025 pursuant to UTS Decision No. 3 dated 28 February 2025, and the Respondents' written submissions lodged on 2 January 2025 pursuant to UTS Order No. 3 dated 4 November 2024, and the parties' supplementary written submissions, setting out their submissions on an extension of time for the Respondents' appeal to the FTS, Extends time for the appeal to 14 July



2023; Remits the appeal to the Local Taxation Chamber of the FTS to hear and determine, and regulate further procedure, in the appeal.

NOTE

## Introduction

[1] In Decision No. 3 dated 28 February 2025, the UTS determined two preliminary issues by deciding: (1) the FTS could lawfully extend time for an appellant lodging a council tax appeal to the FTS under schedule 6 to the Local Government Finance Act 1992, or under regulations 8, 9 or 15 of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993, in which the assessor would appear as respondent, albeit lodged outwith the statutory time limit prescribed for the appeal to the FTS; and (2) there was no particular test to be applied by the FTS in extending time for such an appeal to the UTS.

[2] As to issue (2), the UTS determined in Decision No. 3 that the FTS could look at various factors to determine whether extending time for such an appeal would be the just course of action. It could consider factors such as whether the appellant had a reasonable excuse for the delay, the length of the delay and whether the respondent to the appeal had been prejudiced by the delay, factors referred to by the Lands Valuation Appeal Court in *National Commercial Bank of Scotland v Assessor for Fife* 1963 S.C. 197 and *Teesdale v Assessor for Renfrew* 1963 S.L.T. (Notes) 65; *sub nom Teesdale v Renfrewshire Assessor* [1963] RA 233, and by Lord Drummond Young in *HMRC, Petitioners* 2005 SLT 1061.



[3] The present appeal under regulation 15(6) of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (proposal to alter the council tax list rejected by the assessor as not well founded) was lodged late by the Respondents in this appeal.

[4] The decision on whether to allow the appeal to the FTS to proceed late is to be made by the UTS in accordance with UTS Decision No. 1 in this appeal dated 28 May 2024.

*HMRC, Petitioners 2005 SLT 1061*

[5] The guidance given by Lord Drummond Young in *HMRC, Petitioners 2005 SLT 1061* at paragraph [22] in respect of late statutory appeals is set out below for convenience:

“[A] provision ... designed to permit appeals out of time... should be viewed in the same context as other provisions designed to allow legal proceedings to be brought even though a time limit has expired. The central feature of such provisions is that they are exceptional in nature; the normal case is covered by the time limit, and particular reasons must be shown for disregarding that limit. The limit must be regarded as the judgment of the legislature as to the appropriate time within which proceedings must be brought in the normal case, and particular reasons must be shown if a claimant or appellant is to raise proceedings, or institute an appeal, beyond the period chosen by Parliament.

Certain considerations are typically relevant to the question of whether proceedings should be allowed beyond a time limit. In relation to a late appeal... these include the following; it need hardly be added that the list is not intended to be comprehensive. First, is there a reasonable excuse for not observing the time limit, for example because the appellant was not aware and could not with reasonable diligence have become aware that there were



grounds for an appeal? If the delay is in part caused by the actings of the [respondent to the appeal] that could be a very significant factor in deciding that there is a reasonable excuse. Secondly, once the excuse has ceased to operate, for example because the appellant became aware of the possibility of an appeal, have matters proceeded with reasonable expedition? Thirdly, is there prejudice to one or other party if a late appeal is allowed to proceed, or if it is refused? Fourthly, are there considerations affecting the public interest if the appeal is allowed to proceed, or if permission is refused? The public interest may give rise to a number of issues. One is the policy of finality in litigation and other legal proceedings; matters have to be brought to a conclusion within a reasonable time, without the possibility of being reopened.”

## Timeline

[6] The Respondents purchased the dwelling in question on 22 July 2022. On 26 October 2022, the assessor gave notice to the Respondents of a re-banding for council tax purposes from band E to band G. On 3 April 2023, the Respondents posted a proposal (dated 31 March 2023) to the assessor to alter the banding to band F by recorded delivery. On 5 May 2023, the assessor formally rejected this proposal as not being well-founded. By virtue of regulation 15(6) of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993, the time for the Respondents to appeal to the FTS began with the date on which service of the assessor’s notice stating his opinion that the proposal was not well founded was required, irrespective of whether such service was made. This was a six-week appeal period at the time of the Respondents’ appeal in this case. The assessor received the Respondents’ proposal on 5 April 2023 and was therefore required to serve



notice on the Respondents stating his opinion that the proposal was not well founded no later than 16 May 2023. The Respondents then had a further six weeks beginning with that date to appeal to the FTS. The last day for lodging the Respondents' appeal with the FTS was therefore 26 June 2023.

[7] The Respondents emailed their notice of appeal to the FTS on 8 July 2023. Their appeal was therefore out of time by 12 days. The FTS acknowledged the Respondents' appeal on 14 July 2023.

### Respondents' Submissions

[8] The Respondents structured their submissions in four parts, consistent with the foregoing guidance given by Lord Drummond Young.

[9] (1) Was there a reasonable excuse for not observing the time limit? The Respondents submitted they were "strongly guided" by the instructions within the official form which made clear that the only way to submit their proposal was to sign and date the proposal before returning it, "TO THE ASSESSOR AT THE ADDRESS SHOWN ON THE LETTER". From this, they understood that a physically signed hard copy was the requirement for a proposal as otherwise, provision would also have been made for an electronic online submission. Their proposal dated 31 March 2023 could therefore only be sent by recorded delivery, following their Post Office visit on 3 April 2023.

[10] They believed, therefore, that their proposal had to be submitted by post only and that their formal submission was in the post by recorded delivery. The Royal Mail website never indicated that their letter was delivered to the assessor. Concerned by this, they then took the step of driving to Perth to hand-deliver their proposal for which, after some difficulty, they obtained a delivery



receipt on 20 April 2023. On 21 April 2023, they coincidentally received a letter from the assessor, dated 19 April 2023, acknowledging receipt of their proposal.

[11] Under the provisions of regulation 7 of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993, the assessor was required to acknowledge receipt of their proposal within fourteen days, by a notice served upon them. The date of receipt of their proposal was not, however, recorded in the notice that they received. As the only date on the assessor's letter was 19 April 2023, they believed that either this date, or the 20 April 2023, the date of their hand delivery, was the date from which the time for appealing to the FTS began to run. Given the assessor's failure to comply with regulation 7, there was no mechanism available to the Respondents to deduce that 5 April 2023 was to be considered as the start date for the lodging of their appeal to the FTS. To be compliant with the regulations, they should have received the assessor's notification within fourteen days, which was by 19 April 2023 and not 21 April 2023. In then taking 19 April 2023 as the date their proposal was received by the Assessor, the twelve week period for lodging an appeal with the FTS extended to 11 July 2023 as the imposed deadline for lodging their appeal with the FTS. Their appeal to the FTS was sent, by email, on 8 July 2023 and was acknowledged by the FTS on 14 July 2023.

[12] It was therefore their firmly held belief that their appeal to the FTS had been submitted within the mandated period. They had done their best to comply with the time limit for their appeal and had been very much misled by the assessor's manifest failures to comply with the mandated detail within the regulations. In addition, they required considerable time to research



and collate a cogent rebuttal given the paucity of property data available to the public and the partial information provided by the assessor.

[13] (2) That once the excuse has ceased to operate, had matters proceeded with reasonable expedition? They were unaware that the assessor considered their appeal to the FTS to be late until informed of this by the FTS on 8 August 2023.

[14] There was no further method by which they could have expedited the submission of the appeal once they became aware that the assessor considered it to be late.

[15] (3) Was there prejudice to either party if a late appeal were allowed to proceed, or if it were refused? By its very definition, there would be prejudice to their case if the assessor's objection to their late appeal were permitted to stand as there would then be no further avenue to right what they believed to be a significant wrong. Conversely, there would be no prejudice to either party if their appeal were allowed to proceed.

[16] (4) Were there considerations affecting the public interest if the appeal were allowed to proceed, or if permission were refused? The Respondents were concerned that the processes applied by the assessor were both partial and obscure. The assessor had only ever provided partial information justifying a two-band increase which the Respondents considered to be a flawed contention; and had appeared to indicate that his failure to comply with regulation 7 of the 1993 Regulations was an internal policy to avoid "prejudicing a taxpayer's position if the assessor was incorrect".

[17] This indicated that the assessor believed he was unable to comply with regulation 7 and was therefore in wilful contravention of the 1993 Regulations, much to the disadvantage of the



public. Allowing their appeal to proceed late would serve the public interest because: (a) it would force the assessor to correct and improve internal processes; (b) give comfort to other applicants that they may have been incorrectly time barred in the past; (c) provide an evidential baseline for the assessment of other similar properties within the very rural area where the Respondents live; and (d) help rein in the process of council tax band inflation whereby barred or unchallenged re-banding notifications become the baseline for future re-banding notifications with little relevance to the officially stated 1991 valuation date for impacted properties.

### Appellant's Submissions

[18] The Appellant accepted the chronology provided by the Respondents. The Royal Mail Tracking system was silent on whether the assessor had received the Respondents' proposal. However, the assessor did in fact receive the proposal by post on 5 April 2023. The Respondents had no reasonable excuse for the delay in lodging their appeal with the FTS. There were no exceptional circumstances to permit a late appeal. With reference to the four criteria identified by Lord Drummond Young in *HMRC, Petitioners* 2005 SLT 1061:

[19] (1) The Respondents had no reasonable belief for thinking their proposal had to be served on the assessor by post or by hand delivery and therefore assuming their proposal had not been served on the assessor until 20 April 2023. The assessor had provided the Respondents with a link to the Scottish Assessors' Association website which made it plain a proposal could be submitted online. The assessor had acknowledged receipt of the proposal by email on 5 April 2023. The assessor accepted the formal confirmation letter dated 19 April 2023 did not contain the date the



proposal was received due to a drafting error. However, it was clear from the assessor's email to the Respondents on 5 April 2023 that the assessor had received the proposal on that date.

[20] (2) The Respondents had no satisfactory explanation for not lodging their appeal with the FTS either within or soon after expiry of the time limit. They used that time corresponding with the assessor and informing the assessor they intended to appeal on 4 July 2023. They provided no explanation for the further four days' delay in lodging their appeal with the FTS.

[21] (3) The assessor had retained the appeal papers and could respond to the appeal. However, in the absence of a reasonable excuse for the late lodging of the appeal, the assessor would be prejudiced by having to defend the integrity of the valuation list in such circumstances.

[22] (4) The assessor did not accept he had misled the Respondents in any way or had failed to supply complete information to them. The public interest would not be served by lightly disregarding statutory time limits.

### Supplementary Submissions

[23] The Respondents lodged supplementary submissions to correct errors in the Appellant's submissions and, in turn, the Appellant responded to those submissions by a further set of written submissions. Neither of these additional written submissions were ordered by the UTS, but I found them useful. I am grateful to parties for taking the time to lodge those additional submissions and I have taken them into account in reaching my Decision.

[24] The Respondents referred to errors in paragraph 7 of the Appellant's original submissions whereby, *first*, the Appellant had referred to an email dated 10 January 2023, in response to the Respondents' FOI request, from Neil Brown (Technician) which contained a link to the SAA's



website. In referencing the information available on the SAA website in its original submissions, the Appellant had used the current version of the website and not the version available on 10 January 2023 which did not include a video or hyperlinks to additional information.

[25] *Secondly*, paragraph 7 of the Appellant’s original submissions was silent on the email of the same day from Mr Brown’s superior Linda Williamson (Assistant Assessor) which contained a formal letter and enclosed the “Proposal to alter the Valuation List” form.

[26] The Respondents highlighted that as of 10 January 2023 they had not indicated to the assessor that they wished to enter the appeals process but were merely enquiring on the progress of their FOI request, dated 3 December 2022, for the evidential basis of their council tax re-banding.

[27] The Respondents provided the UTS with a copy of the letter sent to them by Linda Williamson by way of attachment to her email to the Respondents dated 10 January 2023. This letter referred to the requirement for the Respondents to make a valid proposal under the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 and enclosed the relevant form in that regard. The letter further advised the Respondents of the time limits for making a proposal.

[28] The Appellant accepted in his supplementary submissions that the relevant SAA website did not contain “the instruction video” on 10 January 2023. He explained that the video did not appear on the SAA website until September 2023 and unreservedly apologised for that error.

[29] However, even by omitting reference to the instruction video from the Appellant’s submissions, it was clear from the information on the SAA’s website that a proposal could be submitted online in digital format. This correction had no impact on the Assessor’s position. The Appellant provided screenshots from Archive.org of the relevant SAA website around the time



the email of 10 January 2023 was sent to the Respondents. The first page showed the relevant SAA website on 27 November 2022 and the second page showed the website on 15 March 2023. There was no change between the two dates. It was clear from the website that the proposal could be submitted in digital format.

[30] I have examined these screenshots and agree they clearly state a proposal could be submitted online.

Decision

[31] Firstly, I accept the Appellant did not intend to mislead the UTS by referring to the instruction video in its original submissions. It is clear from the website at the time, however, that the public in general was informed they could submit proposals online.

[32] The Appellant's submission at paragraphs 6 and 7 of their original submissions, read together, is essentially to the effect that the Respondents could have no reasonable basis for their belief that their proposal had to be submitted by post, as the Appellant had referred the Respondents to the SAA website in their email dated 10 January 2023, which clearly indicated that a proposal could be submitted online.

[33] I accept that the Appellant's mistaken reference to the instruction video has no material bearing on this submission. The mistaken reference to the instruction video was not intended to mislead the Respondents or the UTS and it has no relevance to the issues which now fall to be determined by the UTS.

[34] Turning now to consider those issues, I firstly observe that the four criteria identified by Lord Drummond Young in *HMRC, Petitioners* 2005 SLT 1061 were not intended by him to be the



only considerations to be considered by a tribunal in determining whether to extend time for a statutory appeal or to be applied as though they constituted strict legislative criteria.

[35] However, those considerations provide a useful framework within which to consider those issues.

[36] (1) Was there a reasonable excuse for the Respondents not observing the time limit? Their submissions under this consideration fall into two parts.

[37] First, they submitted they strongly believed their proposal had to be submitted by post and therefore they made endeavours to do so. They submitted this belief arose from the instructions within the official form which referred to their proposal being submitted to the assessor at the address shown on the letter. From this, they understood that a physically signed hard copy was the requirement for a proposal. The Appellant submits in response, however, that there was no reasonable basis for this belief as Neil Brown's email to the Respondents dated 10 January 2023 contained a link to the SAA website and that website clearly refers to the possibility of making a proposal online.

[38] The second aspect of the Respondents' "reasonable excuse" submission relates to the timeline in question. They visited their Post Office on 3 April 2023 to post their proposal to the Appellant. The Royal Mail website never indicated that their letter was delivered to the Appellant. Concerned by this, they then took the step of driving to Perth to hand deliver their proposal to the Appellant. They obtained a delivery receipt on 20 April 2023. On 21 April 2023, they coincidentally received a letter from the Assessor, dated 19 April 2023, formally acknowledging receipt of their proposal.



[39] The Appellant's position is he had informally acknowledged receipt of the proposal by email on 5 April 2023. However, this email also informed the Respondents that formal confirmation of receipt of their proposal would follow in due course. The Appellant accepts the formal confirmation letter dated 19 April 2023 did not contain the date the proposal was received due to a drafting error. However, it was clear from the assessor's email to the Respondents on 5 April 2023 that the assessor had received the proposal on that date.

[40] Having considered these submissions, I consider there was a reasonable excuse for the Respondents not observing the time limit for the following reasons.

[41] First, the Appellant specifically informed the Respondents in the email to them dated 5 April 2023 that formal confirmation would follow in due course. That formal confirmation followed in the Appellant's letter to the Respondents dated 19 April 2023. The Appellant accepts this formal confirmation letter failed to refer to the date of receipt of the Respondents' proposal. Under regulation 7(2) of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993, the Appellant was required to specify the date of receipt of the proposal in this formal letter. The Respondent therefore failed to comply with regulation 7(2) of the 1993 Regulations.

[42] Given the assessor's failure to comply with regulation 7(2) of the 1993 Regulations, the Respondents were unable to deduce from the assessor's communications with them that 5 April 2023 was to be considered as the start date for the lodging of their appeal with the FTS.

[43] Secondly, although the Respondents were referred to the possibility of submitting their proposal online in the email dated 10 January 2023, over two months had passed before they submitted their proposal. I accept the Appellants were at the stage of making enquiries only in



January 2023. By the time they received and completed the proposal form, informing them of an address to submit the proposal to, they believed in the necessity of submitting the proposal form by post. I see no reason to doubt that belief, albeit it was a mistaken belief. They would not have worried that their proposal had not been received and gone to the effort of hand delivering their proposal on 20 April 2023 had this not been the case.

[44] The Respondents received a written acknowledgement of receipt of their proposal from the Appellant on 20 April 2023, and, by post on 21 April 2023, the Appellant's formal letter dated 19 April 2023 acknowledging their proposal.

[45] They were anxious the Appellant had not received their proposal because they had received no acknowledgement of delivery from Royal Mail. They took the step of hand delivering their proposal to the Appellant on 20 April 2023. Excusably, they would have been unaware of section 7 of the Interpretation Act 1978, under which they could have presumed the Appellant received their proposal on 5 April 2023 (two days after posting, which period would in the ordinary course of posting their proposal to the Appellant). The Appellant failed to comply with regulation 7(2) of the 1993 Regulations by informing the Respondents the actual date of receipt of their proposal was, in fact, 5 April 2023.

[46] In all these circumstances, the Respondents formed the mistaken but reasonable belief that time for their appeal to the FTS began to run on either 19 or 20 April 2023. They would, on that understanding, have had until 10 or 11 July 2023 to lodge their appeal with the FTS. They lodged their appeal with the FTS on 8 July 2023. This amounts to a reasonable excuse for not observing the actual time limit, calculated from 5 April 2023.



[47] (2) That once the excuse has ceased to operate, had matters proceeded with reasonable expedition? Given the nature of their mistaken belief and reasonable excuse for not observing the actual time limit, there was nothing else the Respondents could have done to act with reasonable expedition.

[48] The Appellant criticises the Respondents, however, for using time to correspond with him after notifying him of their intention to appeal on 4 July 2023. However, the Respondents were entitled to lodge their appeal at any time within a statutory time limit. Their mistaken belief as to the expiry of that time limit, in part influenced by the Appellant's failure to comply with regulation 7(2) of the 1993 Regulations, does not fairly open them up to criticism on this ground.

[49] In the foregoing circumstances, I therefore accept the Respondents acted with reasonable expedition in lodging their appeal with the FTS after the (actual) time limit had expired.

[50] (3) Is there prejudice to either party if a late appeal were allowed to proceed, or if it were refused? There would clearly be prejudice to the Respondents as they would lose the right to have the FTS consider their appeal in a matter of significant financial concern to them. The Appellant accepts that no actual prejudice would be caused to him if the Respondents' appeal to the FTS were permitted to proceed out of time. I do not accept the Appellant's submission that the integrity of the appeal process would be damaged by allowing the Respondents' appeal to proceed late.

[51] (4) Are there considerations affecting the public interest if the appeal were allowed to proceed, or if permission were refused? While time limits are not to be lightly disregarded, the appeal was ultimately out of time by 12 days and no prejudice in practical terms has been caused to the assessor by the delay in lodging the appeal. It is in the interests of justice the Respondents



have the substance of their appeal determined by the FTS. The public interest will be served by ensuring an assessor complies with regulation 7(2) of the 1993 Regulations.

[52] The calculation of time for an appeal to the FTS begins with the date the assessor receives the proposal; accordingly, it was crucial for the Respondents to be made aware of the date of receipt of their proposal by the assessor so they could calculate the time limit for their appeal.

### Conclusion

[53] For the foregoing reasons, I am satisfied, in all the circumstances, that extending time for the appeal would be the just course of action. I accordingly allow the appeal and remit the case to the FTS for further procedure and the determination of the appeal on its merits.

### Further Appeal

[54] A party aggrieved by this decision may apply in writing to the UTS for permission to appeal to the Court of Session on a point of law within 30 days of the date on which this decision was sent to that party. Any such written application must: (a) identify the decision of the UTS to which it relates; (b) identify the alleged error or errors of law in this decision; and (c) in terms of section 50(4) of Tribunals (Scotland) Act 2014, state the important point of principle or practice that would be raised in the further appeal or any other compelling reason for allowing a further appeal to proceed.

George Jamieson  
Sheriff of North Strathclyde  
Judicial Member of the Upper Tribunal for Scotland

