

## Kazi v. Bradford MDC [2023] UKUT 128 (LC)

Appeals against the imposition of financial penalties under  
s.249A Housing Act 2004

Extensions of time when appeals are submitted late



**Mathew McDermott**

### FACTS

Mr Kazi was the freeholder of a house in multiple occupation in Bradford. On 23rd June 2022 Bradford Metropolitan District Council issued a final notice of a penalty against him in the sum of £13,250 alleging that he was a person managing the house and that he had failed to comply in a number of respects with The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007.

The power to impose the financial penalty is found in s.249A of the Housing Act 2004 ("the 2004 Act"), enabling a local housing authority to do so as an alternative to a prosecution for the offence.

In turn, Schedule 13A of the 2004 Act enables a person to whom a final notice of a financial penalty is given to appeal to the First-tier Tribunal ("FTT") against the penalty or the amount.

As a result of Rule 27 of the Tribunal Procedure (First-tier Tribunal) (Property

Chamber) Rules 2013 Mr Kazi had 28 days after Bradford MDC sent him notice of the penalty to provide the FTT with his appeal.

According to the decision of the Upper Tribunal ("UT"), given by Judge Elizabeth Cooke, Mr Kazi said that the notice had come to his attention on 27th June 2022 [8], and the notice itself was dated 23rd June 2022 [9].

Mr Kazi, who was 73-years-old, did not submit his appeal to the FTT until 19th August 2022.

By way of a covering letter he acknowledged he was out of time and asked for an extension. He asserted that the penalty notice came to his attention on 27th June 2022 and that he was ill in the middle of July, tested positive for Covid on 7th August and had not been well enough to make the application earlier.

## THE DECISION OF THE FTT

On 16th September 2022 the application for an extension was refused by the FTT and Mr Kazi's appeal against the imposition of the penalty struck out as a result. Whilst noting that it had the power to extend time if satisfied that there was a good reason for the delay (see, e.g. *Person v. Bradford MDC* [2019] UKUT 291 (LC), [5] [6]), the reasoning was brief:

*"The applicant provided written representations in relation to the lateness of the appeal which was received by the Tribunal on 22 August 2022. The Tribunal has considered those representations but concludes that the Applicant has failed to provide a satisfactory explanation as to why he was unable to follow the guidance issued and make his appeal within the time allowed. The final notice is dated 23 June 2022 and the Tribunal did not receive the appeal until 22 August 2022, almost two months later, which is a significant delay. The reasons given are insufficient to explain or justify a delay of this magnitude."*

Mr Kazi appealed with permission given by the UT.

## THE UPPER TRIBUNAL'S DECISION

Mr Kazi's appeal was determined by Judge Elizabeth Cooke under the UT's written representations procedure; her written decision is short.

It is fair to say that Judge Cooke was not impressed by the paucity of reasons given for refusing to allow the appeal out of time and, in particular, a general failure by the FTT to grapple with or

assess the reasons behind the delay as advanced by Mr Kazi.

Amongst other things, Judge Cooke noted that the FTT failed to engage with the fact that Mr Kazi was elderly and, within around two weeks of receiving the penalty notice, he contracted Covid, which can cause exhaustion. Unlike the FTT – who described the delay as 'significant' along with a reference to 'a delay of this magnitude' – Judge Cooke said the delay was less than a month and was commensurate with the length of time for which Mr Kazi said he was ill.

Ultimately, the appeal was allowed because of a failure to take into account a relevant consideration and a failure to explain why the explanation advanced by Mr Kazi was inadequate.

## COMMENT

It is important to note that FTT's decision to refuse the extension was set aside and Mr Kazi's appeal against the financial penalty was reinstated; the FTT's decision was not quashed with a direction for them to reconsider.

At first glance, a delay of just less than four weeks when the initial time limit in which the appeal was to be brought was itself four weeks may seem like a substantial delay requiring a persuasive explanation. In *Haziri v. London Borough of Havering* [2019] UKUT 330 (LC) Martin Rodger QC, Deputy President of the UT, had observed at [28] that a delay of 10 days in doing something which is required to be done in 28 days is capable

of being regarded as significant – but that ultimately it is a matter of assessment for the FTT and, of course, each case rests on its own facts.

However, the FTT’s discretion to permit such an extension is broad and clearly Judge Cooke was of the view that the FTT simply failed to properly wrestle with the reasons behind that delay – rendering it somewhat unfair to class the delay as ‘significant’ ([9]).

Moreover, it is hard to disagree with Judge Cooke’s conclusion that the reasons given by the FTT for refusing the extension of time were inadequate and, generally speaking, poor. She also observed that the FTT may have been concerned with the lack of medical evidence, but if that was a problem it failed to say so [11].

Fundamentally, a key lesson from this appeal is that the FTT ought as a minimum to be identifying the reasons for the delay, assessing those reasons and then giving an explanation as to whether or not they are viewed as adequate.



**Mathew McDermott**

Mathew is a through-and-through landlord and tenant specialist.

In simple terms, if the matter is of relevance to either a landlord or a tenant, in whatever guise they appear -- residential or commercial -- or whatever Court or Tribunal in which they find themselves, Mathew will be able to assist.

Above everything Mathew gives direct, concise, no-nonsense and honest advice that cuts through the irrelevancies and focuses solely on what matters to the client. One solicitor has said that “Mathew has the knack of still seeing the wood despite there being many trees in the way”