UPPER TRIBUNAL

(ADMINISTRATIVE APPEALS CHAMBER)

APPLICATIONS FOR PERMISSION TO APPEAL TO THE UPPER TRIBUNAL FROM INTERIM DECISIONS OF THE FIRST-TIER TRIBUNAL

GUIDANCE FOR APPELLANTS

1. This guidance has been issued to explain to appellants (particularly litigants in person) the principles governing the determination of applications for permission to appeal to the Upper Tribunal (Administrative Appeals Chamber) from interim decisions of the First-tier Tribunal (FTT). The guidance applies with equal force to applications arising from proceedings in the equivalent devolved tribunals, i.e. the MHRT (Wales) and SENT(W).

2. Interim decisions are those taken by a tribunal during the course of proceedings before it determines (i.e. allows or dismisses) an appeal. They include (but are not limited to) case management decisions.

3. A relatively small number of applications for permission to appeal against interim decisions of the FTT consume a disproportionate amount of the Chamber's judicial, administrative and clerical resources, to the detriment of the many other cases awaiting decision in the Chamber across all its jurisdictions.

4. Parties have a statutory duty to help the FTT and Upper Tribunal to further the overriding objective and to co-operate with the Upper Tribunal generally (rule 2(4) of the Tribunal Procedure (Upper Tribunal) Rules 2008). This obligation applies to case management rulings as much as to the tribunal's substantive decision. It includes being realistic about the conduct of litigation. As Lord Roskill observed in *Ashmore v Corporation of Lloyd's* [1992] 1 WLR 446 at 448H:

> "… it is the trial judge who has control of the proceedings. It is part of his duty to identify the crucial issues and to see they are tried as expeditiously and as inexpensively as possible. It is the duty of the advisers of the parties to assist the trial judge in carrying out his duty. Litigants are not entitled to the uncontrolled use of a trial judge's time. Other litigants await their turn. Litigants are only entitled to so much of the trial judge's time as is necessary for the proper determination of the relevant issues."

5. Appellants are reminded that the Upper Tribunal exercises an error of law jurisdiction under section 11 of the Tribunals, Courts and Enforcement Act 2007. As such, the Upper Tribunal will only grant permission to appeal if there is an arguable error of law on the part of the FTT (the standard categories of error of law are summarised by the Court of Appeal in *R (Iran) v Secretary of State for the Home*

Department [2005] EWCA Civ 982 at paragraph [9] (available on Bailii: https://www.bailii.org/)) or there is some other good reason for doing so.

6. Although interim rulings are, in principle, subject to appeal to the Upper Tribunal, there is ample authority from the senior courts that appellate courts and tribunals, especially those whose jurisdiction is confined to errors of law, should not seek to 'micro-manage' cases on appeal. The senior courts have also repeatedly warned of the dangers of satellite litigation, which simply has the effect of deferring resolution of the substantive appeal and disrupting the proper case management of both the case in hand and other appeals.

7. Before starting an appeal in the Upper Tribunal against a case management decision, all appellants (whether or not legally represented) should keep in mind that tribunals have a broad discretion in their case management decisions and are best placed to decide how the case should be handled. It is no surprise that supposed errors of law often amount to no more than a difference of opinion over the way that the case is being handled. Indeed, it is usually only when a final decision has been made that it is possible to assess whether the alleged error of law was material to the outcome of the appeal (within the meaning of the test in *R (Iran)*). The limited circumstances in which permission to appeal is given against such decisions reflect their essential characteristics. That is why it is considered best practice for a tribunal to refuse permission to appeal and to continue with the proceedings rather than give permission or stay the proceedings pending a possible appeal.

8. In some jurisdictions, appellants may apply under the rules for an oral renewal of an application, if the Upper Tribunal has refused permission to appeal on the papers. However, the Upper Tribunal has power, where necessary and appropriate, to strike out applications as having no reasonable prospects of success and without any such hearing (rule 8(3)(c)).

9. Special considerations apply to rulings on recusal in respect of a judge who has been accused of actual or apparent bias. Although as a general rule challenges to interim decisions should be taken as part of an appeal against a final FTT decision, recusal is an important exception as bias should be raised at the earliest available opportunity. The test of apparent bias was set out in *Porter v Magill* [2002] AC 377, namely "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased." All too often, unparticularised allegations of bias prove on examination to be no more than a disagreement with the ruling the judge has made. It is important for appellants to set out as clearly as possible the way in which bias is said to arise. This will help them to state their case in accordance with the legal test and the Upper Tribunal to decide whether it has any substance. If it does not, the tribunal may refuse permission to appeal or strike out that part of the proceedings under rule 8.

DAME JUDITH FARBEY DBE

CHAMBER PRESIDENT

1 October 2020