

Time Limits in Fitness to Practise Appeals & Statutory Appeals

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***Guy Micklewright:** A practical guide for appellants on time limits in fitness to practise appeals & how to avoid missing them*

Time limits

All of the statutory healthcare regulators – the GMC, GDC, GPhC, GOC, GCC, GOsC, HCPC, NMC – as well as SWE have a time limit for filing appeals of 28 days. Those appeals lie to the High Court. Only two of those have any provision within their legislation permitting an extension of the time limit for filing an appeal. The GPhC's legislation contains a provision permitting the Court to extend the time limit for filing an appeal.

The GDC's legislation does not provide any power to the Court to extend time; rather, it grants the Registrar of the GDC a discretion to extend time, but only where notice of the outcome of the hearing

was served by post and the registrant can demonstrate that they did not receive the decision within 14 days of the date of the decision. None of the other regulators' legislation grant either the Court or any other decision-maker the power to extend time and so, if you do not file in time, then you are unable to bring your appeal. Indeed, this is true of any statutory appeal where the legislation providing the right to appeal does not grant the Court the power to extend time outside of the professional regulatory context.

Stuewe: Exceptional Circumstances

There is one exception to this, in respect of which the Court of Appeal recently provided guidance in the leading case of *Stuewe v Health and Care Professions Council* [2022] EWCA 1605. If you can establish that "exceptional circumstances" exist such that the very essence of the right to an appeal is impaired, then the Court may grant an extension to the minimum extent necessary to ensure compliance with your Article 6 ECHR right to a fair trial. If an appellant has not done all they personally could to bring an appeal in time, then they are unlikely to be able to establish that the "exceptional circumstances" test has been met.

In practice, however, those circumstances genuinely have to be truly exceptional. To illustrate this, there has never been a successful application to date to extend time in fitness to practise appeals. The threshold the Courts are looking for are circumstances such as where due to the fault of the regulator you never received notice of the fact of or the outcome of a hearing, or where shortly after the hearing you became so ill that you were intensive care for a prolonged period. In those examples, once you are sufficiently well again or once informed of the hearing you were unaware of, you are expected to act with all due expedition to file your appeal, which could only mean a couple of days or so.

The takeaway point, therefore, is that in nearly all cases an appellant must file their appeal in time in order to be able to take their appeal to court. Litigants in person or those who do not have the benefit of ongoing legal representation following the conclusion of their fitness to practise case are particularly at risk of falling foul of the strict time limit.

The following are not "exceptional reasons" for missing the deadline:

- attempting to secure legal representation/advice;
- attempting to secure adequate funds to bring the appeal;

not paying the Court fee at the time of filing the Appellant's Notice;
not fully understanding the process;
sending the Appellant's Notice to the wrong email address, or in the wrong format, or with the wrong information (Mr Stuewe had filed in time but had not included in the Appellant's Notice an address for service in the UK nor made any application for permission to use an address in Gibraltar);
being abroad or on holiday;
delays caused by attempting to obtain information or documents e.g. transcripts from the regulator.

So what can you do to ensure you file your appeal properly and in time?

Bearing in mind the following points should help ensure you do not fall foul of the time limits:

aim to get everything done in good time rather than file right at the end of the time limit. Some regulators' rules are not very clear about when a determination is deemed "served" and you may find yourself arguing whether you are in time or not, having potentially missed the deadline by one day;
remember that it's possible to apply to amend your Grounds of Appeal, extend time for serving your Grounds on the Respondent, deal with late provision of the appeal bundle and/or skeleton argument, and manage all the other matters that may tempt you to delay filing your appeal because you are not yet ready to do so. You have no prospects whatsoever of remedying those shortcomings if you file out of time;
if you intend on taking legal advice (assuming you do not already have representation) then get it swiftly. Lawyers will need time to get up to speed with your case, take instructions, review the materials, advise on whether you should appeal and, if so, draft grounds of appeal; it is not recommended to pursue an appeal without legal advice, as losing an appeal can be a very expensive exercise, and getting good legal advice early can mitigate those risks;
if, in order to avoid missing the time limit, you file an appeal which is not properly prepared because, for example, you had not by that stage managed to secure legal advice, it is always open to you to withdraw your appeal. While it is open to the regulator in those circumstances to seek an order for costs against you for its legal cost up until that point, you can often

negotiate with the regulator to either persuade it not to pursue that right or, at the very least, to come to an agreement over the amount of costs.

Conclusion

Stuewe was not a watershed moment for regulators or registrants and, for all practical purposes, the principles that the Court will apply are the same they have been applying for some considerable time now. “Exceptional circumstances” really does mean exceptional, and the 28 day time limit for filing appeals needs to be adhered to.

Guy Micklewright represented the **HCPC** at the Court of Appeal in the case of *Lars Stuewe v HCPC* [2022] EWCA Civ 1605, where the Court clarified the correct approach to be adopted when considering whether or not there is jurisdiction to extend time for a statutory appeal filed outside of the statutory time limit. The Court also considered whether, for the purpose of service under CPR 6.3, Gibraltar can properly be considered part of the U.K.

Guy is a specialist fitness to practise, disciplinary and regulatory barrister, having practised in the area for 15 years, acting for both regulators and registrants. Guy has particular experience of complex disciplinary cases before a variety of healthcare, accountancy, legal, and engineering regulators. He regularly instructed by regulators and individuals in appeals and judicial review proceedings.