

UPDATE

## Royal Court confirms 28 days means 28 days (mostly)

Update prepared by Christopher Edwards (Guernsey) and Sandra Duerden (Guernsey)

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Mourant is successful for the GFSC in resisting an out of time appeal, in a decision which confirms that 28 days means 28 days (mostly).

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Mourant has successfully defended an application brought against the Guernsey Financial Services Commission (GFSC) by a former director of a trust company who applied to extend time to file an appeal pursuant to section 11H of The Financial Services Commission (Bailiwick of Guernsey) Law, 1987. The GFSC opposed the application on the basis that the law set an appeal period of 28 days; and there was no discretion to extend that.

The Court noted, amongst other things, that the wording of the law is '*clear and unambiguous*', and that the States of Deliberation had chosen to fix a time limit of 28 days for an appeal to be served. If the States wished to confer a discretion on the Court to extend the time limit, it could have done so by specifically conferring such a power in the relevant statute.

The Royal Court considered the Supreme Court's judgment of *Pomiechowski v Poland [2012] UKSC 20* which stated that that statutory appeal time limits should be read down in accordance with the Human Rights Act 1998 to achieve compatibility with Article 6 of the Convention and the relevant jurisprudence. However, the Royal Court further noted how rare it may be for an appellant to convince the Court that his or her circumstances are exceptional. The scope for departure from the time limit is extremely narrow.

The Royal Court held that the Applicant had not shown any exceptional circumstances and dismissed the appeal.

The lesson to be learned is that those under investigation by the GFSC are well advised to instruct experienced Advocates, who are familiar with the Commission's enforcement process, to ensure proper engagement with allegations, and to avoid the need for out of time applications.

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