



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AT/HNA/2023/0033**

**HMCTS code  
(paper, video,  
audio)** : **V: CVPREMOTE**

**Property** : **114B Chiswick High Road, Chiswick,  
London W4 1PU**

**Applicant** : **Mr Mukund Patel**

**Representative** : **Mr Horne – Counsel instructed by SCS  
Law**

**Respondent** : **London Borough of Hounslow**

**Representative** : **Mr Lederman – Counsel with Ms Pat  
Gilmore – Regulatory Manager**

**Type of application** : **Appeal against a financial penalty under  
s249A Housing Act 2004 (Preliminary  
Issue)**

**Tribunal  
member(s)** : **Judge Dutton  
Mr A Fonka FCIEH CEnvH**

**Venue** : **Remote hearing on 31 May 2023**

**Date of decision** : **1 June 2023**

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**DECISION**

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This has been a remote video hearing which has been arranged to which the parties consented. The form of remote hearing was V: CVPEREMOTE. A face-to-face hearing was not held as a result of train strikes. The documents that the Tribunal were referred to are in bundles of some 80+ pages, the contents of which have been noted.

## DECISION

**The tribunal determines that it will not extend the time limit for the appeal by Mr Patel against the imposition of a Financial Penalty (FP) by the London Borough of Hounslow for the reasons set out below.**

### BACKGROUND

1. On the 8 June 2020 the London Borough of Hounslow (the Council) served on Mr Patel a Final Notice of a Financial Penalty under the provisions of s249A of the Housing Act 2002 (the Act). The FP was in the sum of £18,500 and related to the property First and Second floor maisonette at 114 Chiswick High Road, Hounslow, London W4 1PU (the Property). It was alleged that Mr Patel had breached Ss 72 and 234 of the Act.
2. On 17 April 2023 Mr Patel appealed to the FTT against the FP and the matter was listed for a preliminary hearing to determine whether the tribunal should exercise its discretion and allow the appeal out of time.
3. Between the date of issue of FP and the application to the tribunal the Council had obtained a judgment in respect of the sum sought, it would seem on or about 8 August 2022. Mr Patel sought to have the judgment set aside, unsuccessfully, by an application dated 10 November 2022. In the witness statement which accompanied the application to set aside the judgment Mr Patel stated that he became aware of the same on 5 September 2022.

### DOCUMENTATION

4. Prior to the hearing we were provided with Mr Patel's grounds of appeal which accompanied the application, the documents produced for the application to set aside the judgment in the County Court and a witness statement produced in response to a statement from Ms Pat Gilmore on behalf of the Council. In addition, Mr Lederman produced a skeleton argument. We have noted the contents of these documents.
5. We received little in the way of direct oral evidence and instead had helpful submissions by both Mr Horne and Mr Lederman.
6. For Mr Patel, Mr Horne confirmed, which is agreed, that there is no statutory time limit for lodging an appeal against the imposition of a FP. Instead, one needs to consider rule 27 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules). This rule applies where there are no other time limits for starting proceedings prescribed under any other enactment. By rule 27(2) where the notice of application relates to a right to appeal from any decision (including any notice, order or licence) the applicant must provide the notice of application to the Tribunal within 28 days after the date on which notice of the decision to which the appeal relates was sent to the applicant.

7. This time scale is not disputed. It is said however, that the tribunal has unfettered discretion to extend the time limit. In this regard the UT case of *Pearson v Bradford [2019]UKUT 291* is relied upon by both parties.
8. In his submission to us Mr Horne drew our attention to the Grounds of Appeal, Conclusion heading, at paragraphs 31 to 36. It is asserted by Mr Patel that the issue of a FP was a “mistake” and he had contacted the Council immediately after receipt of the FP, but he said, they did not reply. Further he relied on assertions that he was not the owner of the Property, but his cousin Bhavesh Patel, who had apparently received a Notice of Intent. Further, he had been informed by a Council officer (Mr Marusic) that the Property did not need to be licensed, following a planned visit. It would appear that there was no further communication between Mr Patel and Council until he received notice of the Judgment in the County Court.
9. The Grounds of Appeal also sets out the four matters which Mr Patel says are in dispute and would form the basis of his appeal if we granted permission to appeal out of time. We have noted same.
10. Mr Horne reminded us of the Overriding Objectives set out at Rule 3 which requires us to give effect to these overriding objectives when we exercise any power under the rules or interprets any rule or practice direction. It was he said fair and just to grant Mr Patel permission to appeal out of time.
11. In addition, he referred to then FP itself, which he suggested was potentially misleading, referring as it did to not only the appeal to the FTT but also seeking advice from the Council and also from Citizens Advice Bureau, Housing Aid Centre, Law Centre or solicitor.
12. For the Council we had Mr Lederman’s skeleton argument, which Mr Horne had seen on the morning of the hearing but was content to deal with. The more so as we confirmed that the preliminary issue before us related only to the question as to whether we should exercise discretion and allow Mr Patel to appeal out of time.
13. We were referred to the Supreme Court case of *BPP Holdings Limited v Revenue and Customs Commissioners [2017]UKSC 55* and the Court of Appeal case of *Regina (Hysaj) v Secretary of State for the Home Department and others [2014] EWCA Civ 1633*.
14. Mr Lederman submitted that the failure to appeal in time was, in this case a serious and significant breach, which did not seem to be disputed by Mr Horne. He took us to what the Council considered were the reasons for the delay on the part of Mr Patel. There was reference to the mistake, which appeared in the Grounds of Appeal and in this regard, we were taken to Mr Patel’s email of 9 June 2020 exhibited to Ms Gilmore’s statement under exhibit PG3. This set out a number of issues, including his assertion that there were only three tenants at the Property and therefore a licence was not required. That they would give notice to some of the tenants and that they intended to sell the Property and did not want to licence it. Reference is made to his cousin and his problems, and he asks for a meeting with Mr

Razak. Mr Patel says he received no reply, and this is partly a reason that he assumed the matter was going no further.

15. Annexed to Ms Gilmore's statement, again at exhibit 3, is what the Council says was the response sent by Mr Nadeem Razak, the regulatory officer having the conduct of this case. This email is dated 10 June 2020 and refers to a voice message and the email but states that the FP has been issued and that the Council "*will not engage in dialogue to withdraw the Notices*" It goes on to confirm Mr Patel's right of appeal to the FTT.
16. Mr Lederman suggested that Mr Patel had the assistance of legal representation at the time of applying to set aside the judgment, but this was not accepted and there is no hard proof that this was the case. Indeed, Mr Patel denied he had legal representation.
17. In addition to the above Mr Lederman posed the question as to why there was delay in seeking to set aside the judgment, from early September to November 2022 and subsequently to lodge the application with then FTT.
18. Mr Patel was, it was said by Mr Lederman, an experienced landlord/manager who had access to legal advice. Further to grant permission to appeal out of time would impact on other tribunal users and utilise tribunal resources which would be unfair and unjust to other tribunal users. Accordingly, we should not exercise our discretion.
19. Mr Patel had been present throughout and we considered it reasonable to ask if he had any comments. He had little to add although did say that he had no knowledge of his cousin's position and there was certainly nothing from him within the papers before us.

## **FINDINGS**

20. It is agreed between the parties that by reference to rule 27 the time limit for appealing the imposition of the FP is 28 days. It is also accepted by reference to the Pearson case in the UT that we have unfettered discretion.
21. However, in exercising that discretion we must have regard to the Supreme Court case of BPP, and the cited authorities, the Court of Appeal case of Hsai, the UT case of Pearson. We are invited by Mr Lederman at least, although we could not ascertain any divergence with this approach from Mr Horne, to take a structured approach.
22. The first would be whether there was a serious and significant failure to adhere to the time limits. It is difficult to see a more serious failure than to wait nearly 3 years before making an appeal to us. Mr Horne did not seek to argue this view was wrong.
23. Consideration should be given as to why the default occurred. Mr Patel's position appears to be that it was a mistake, the Council, he says, did not respond to his request for a review/meeting made on 9 June 2020. To do nothing when a FP has been served upon and you believe you have a

defence defies logic. Further, it is understood that he was handling this Property for his cousin. Where is his part in this? The FP is quite clear in the steps he should take to protect himself and to rely on the view that it was all a mistake, and it will go away is wholly unrealistic. We see no confusion in the FP itself. The advice as to whom you could contact for assistance hardly constitutes a reason to ignore it.

24. The next step is to evaluate the circumstances of the case to enable us to deal justly with the application. Mr Patel says he was not liable for the FP for a number of reasons, including not being the owner/manager, that the Property did not require to be licensed having regard to the number of tenants and that he was told by a Council employee, Mr Marusic, that it did not require a licence. Whilst these matters may be relevant had Mr Patel brought his appeal on time, we are now nearly 3 years down the line when memories fade.
25. However, it does not seem to us that we need to consider the merits of the case. Indeed, it would be impossible for us to do so on the evidence currently before us. Further Mr Razak has now left the Council's employ, in March this year, but has apparently prepared a witness statement, which we have not seen. Mr Patel says he has witness statements to support his case, again we have not seen them. The overriding objectives work both ways. Mr Razak's departure from the Council does not assist them and the delay does nothing for the provisions of rule 3(2)(e).
26. We find that there is really no proper explanation for the delay. The FP is dated 8 June 2020. Apart from the email the following day there does not appear to have been any contact with the Council, it is suggested because he had no responsibility for the Property. It is only when he hears of the money judgment against him that he reacts and even then, he waits two months before making an application to set the judgment aside. The case of Pearson was based on a delay of around 70 days, not nearly three years. In the circumstances of this case, we decline to exercise our discretion to allow Mr Patel to appeal out of time and his application is rejected.

Judge Dutton

Date 1 June 2023

### **Extracts from the Rules**

#### **Overriding objective and parties' obligation to co-operate with the Tribunal**

3.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must—

- (a) help the Tribunal to further the overriding objective; and
- (b) co-operate with the Tribunal generally.

#### **Time limits**

**27.**—(1) This rule applies where no time limit for starting proceedings is prescribed by or under another enactment.

(2) Where the notice of application relates to a right to appeal from any decision (including any notice, order or licence), the applicant must provide the notice of application to the Tribunal within 28 days after the date on which notice of the decision to which the appeal relates was sent to the applicant.

### **ANNEX – RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.