



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

Case Reference : CHI/00HE/HNA/2022/0028

Property : 22 Trevail Way, St Austell Cornwall.PL25
4QT

Applicant : Robert O' Halloran

Representative : Julian Hunt of Counsel

Respondent : The Cornwall Council

Representative : David Kevin Hill
Solicitor/Advocate

Type of Application : Application to a reverse deemed
withdrawal of appeal against a financial
penalty; section 249A Housing Act 2004

Tribunal Member(s) : Mr W H Gater FRICS
Regional Surveyor

Date of Hearing : 30 November 2023

Date of Decision : 12 December 2023

DECISION

Background

1. The Tribunal received an appeal from the Applicant against the imposition of a financial penalty of £15,000 imposed by the Respondent by a notice dated 28 November 2022.
2. That application was received by the Tribunal on 19 December 2022.
3. On 30 December 2022 the Tribunal responded to the Applicant's application for help with fees stating that it was unable to assist, in the matter of fees, for the reasons stated. The Tribunal pointed out that if payment is not received in 14 days the application will be deemed withdrawn under Rule 11(3) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (The Rules). There would be no further notification.
4. On 28 February 2023 the Tribunal informed the Applicant that the application was now deemed withdrawn under Rule 11.
5. On 13 October 2023 the Tribunal received an application from the Applicants advisor seeking an Order to reinstate the application deemed to be withdrawn.
6. On 25 October 2023 the Respondents submitted an application opposing the requested reinstatement.
7. On 13 November 2023 Regional Judge Whitney issued a case management order. The matter was set down for hearing at Truro Combined Court on 30 November 2023.

The Hearing

8. In attendance were the Applicant, Mr Robert O'Halloran with Mr Julian Hunt of Counsel. Also present was Mr O'Halloran's carer Ms Humpah as an observer.
9. The hearing was recorded.
10. For the Respondents, Mr David Kevin Hill represented Cornwall Council as Solicitor/ Advocate.
11. The Tribunal is grateful to them for their submissions and assistance.
12. The Tribunal established that, whilst some documents had been issued late in the proceedings, both parties had had time to consider them and were content to have them admitted. On that basis the Tribunal admitted all documents submitted.

13. Having noted that the Applicant had health issues, the Tribunal made clear that if breaks or other measures were needed during the proceedings the Applicant would be allowed these.
14. As a preliminary issue the Tribunal found that the original appeal against the Financial Penalty had been received on 19 December 2022, within the prescribed 28 days since the Final Notice had been served on 28 November 2022. This accordingly disposed of the question of the appeal being in time.
15. Applications to reinstate must generally be made within 28 days of the strike out or deemed withdrawal.
16. The matter before the Tribunal was therefore whether the Tribunal should use its discretion under Tribunal Rules to reinstate the appeal which was deemed withdrawn.

The Evidence

17. The Applicant: The applicant seeks directions which in effect reinstate the appeal deemed to be withdrawn, invoking The Rules, variously Rules 6(2), 6(3)(a), Rule 8(2) or Rule 22.
18. Mr Hunt referred the Tribunal to case law, in particular *Silba v London Borough of Barnet* [2021] UKUT 206 (LC) and *Denton v T H White Ltd* [2014] EWCA Civ 906,
19. He submitted that the Upper Tribunal held that the Tribunal has wide discretion and would only interfere with the Tribunal decisions where they cannot be justified.
20. The guiding principle is the overriding objective to deal with cases fairly and justly under the Rules. He referred to *Ipolotas Naujokas v Fenland District Council* LC-2023-11 which states at para 42:-

42. In considering whether to exercise the power to extend time the guiding principle is found in rule 3 which describes the FTT's overriding objective to deal with cases fairly and justly. When a significant sum is in issue, as in this case, and when the issue of fact on which the right to appeal may turn depends on the credibility of the evidence of the recipient of a notice about the time he received it, it may be difficult for the FTT to reach a fair and just decision without giving the recipient the opportunity to give oral evidence.
21. In *Silba v London Borough of Barnet* [2021] UKUT 206 (LC) Judge Cooke said, "The decision to refuse relief from sanctions is a discretionary one, and the [Upper] Tribunal will not interfere with such a decision unless serious error can be shown."

22. Mr Hunt submitted that the Tribunal should apply a test similar to that in *Denton v T H White Ltd* [2014] EWCA Civ 906, namely: -
- 1) identify and assess the seriousness of the failure to comply
 - 2) consider why the default occurred
 - 3) evaluate all circumstances of the case to enable the court to deal with the application justly.
23. Using the Denton criteria as a guide Mr Hunt submitted:
24. It is not doubted the breach is serious as it was non-payment of a fee causing the matter to be at the very least delayed.
25. The Applicant was in person and did not know about the matter until July when he wrote to the Tribunal the email having been in his junk box.
26. The Applicant will maintain that the default occurred as he believed in good faith he was entitled to remission. He is not a sophisticated litigant but trying his best to navigate the system – and failing. He has on instructions now made a formal legal application to the Tribunal.
27. Clearly an application could have been made in July / August, but the Applicant delayed this waiting for a response.
28. In all circumstances there is no prejudice to the Council whose case is set down in writing. The prejudice will be to the Applicant who will face, it is submitted, the consequence of being unable to defend at all a £15000 penalty notice or put forward to an independent tribunal arguments or submissions.
29. He referred to *BPP Holdings Limited v Commissioner for Her Majesty's Revenue and Customs* [2017] UKSC 55.
30. “An appellate Judge should not interfere with case management decisions by a Judge who has applied the correct principles and who has taken into account matters that should be taken into account and left out of account matters which are irrelevant, unless the court is satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the Judge.”
31. “In other words, before they can interfere, appellate Judges must not merely disagree with the decision. They must consider that it is unjustifiable”.
32. Mr Hunt suggested that with discretion the Tribunal can blend the Denton approach with Rules such as the Overriding Objective in making a case management decision. In particular, the Tribunal

could apply this objective in Rule 3 to challenge the Council acting as judge and jury when exercising these rules.

33. He referred to rule 8 and 11 stating that the Tribunal has the power to do what is just in the circumstances.
34. In conclusion Mr Hunt pointed to the wide discretion of the Tribunal, the need to do what is just under rule 8 and the need to consider the Denton tests and Overriding objective.
35. The Applicant had indeed been rude to the process server when served the Notice of Intent and had been upset when the Final notice was served. But the matter involves a lot of money, and the Applicant was not legally represented.
36. Mr Hunt said that the Applicant did not sit back and do nothing. He made enquiries and sent emails to the Tribunal and received an automatic reply on the 4 August 2023. Regrettably there was no record of the originating email.
37. On 27 July 2023 the Applicant sent an email asking about missing papers. It is not possible to say if this was received as it was noted that the address rp7@justice.uk is not a Tribunal address and it also lacks the letters gov.
38. Nothing was heard from the Tribunal albeit that one email from the Applicant may have been misaddressed.
39. The Applicant instructed Mr Hunt in 6/7 October 2023. As to why not earlier, he suggested that he may have been waiting for the Tribunal reply. A year over time limit is excessive but 3 months is not too long.
40. The Tribunal has a range of facts to consider. This is an old man and fee remission was an issue. He did engage with the litigation properly at first and did his best to stay on top of the rules.
41. If relief is not granted, then a fine of £15000 will be imposed without hearing. The Applicant and his son face criminal proceedings in the Magistrates Court in January 2024. If relief is not granted the Council can apply for a bad character notice before the trial. Without relief there is no oversight by the Tribunal.
42. The Tribunal then heard cross examination of the Applicant by Mr Hill for the Respondent.
43. Mr Hunt raised the point that there had been no directions to this effect but would not demur. The Tribunal directed that in the ordinary course of such a case, with the Applicant present, it was expected. See Naujokas at para 20 above, referred to by Mr Hunt, where the Upper Tribunal said it may be difficult for the FTT to

reach a fair and just decision without giving the recipient the opportunity to give oral evidence.

44. Before doing so the Applicant confirmed that the various statements submitted were true and were his evidence.
45. Answering questions, the Applicant said that he did not own the portfolio, but he does manage it. It comprises six properties, let to tenants. The Applicant's statement indicates that the title owner of the properties in the portfolio is his son Richard O'Halloran.
46. Asked about preparing tenancy agreements and eviction notices he said that 9 out of 10 have no tenancy agreement and that notices are not served, the tenants simply leave.
47. Asked if he was experienced in running tenancies since 2014, he replied that he had been running them since then. As to Housing Law he said he knew nothing until now. Mr Hill put it to the Applicant that he is very experienced in housing matters. The applicant replied that he is not experienced in law or the Housing Act.
48. Mr Hill referred the Applicant to the Council's letter of 7 January 2014, a partial photograph of which had been submitted by him in evidence, with the lower part obscured. That part contained warnings about regulatory rules and penalties. Mr Hill put it to the Applicant that that the letter shows that he did have dealings with the Council on Housing matters and that in that letter he was warned of the Housing Act rules.
49. Asked if it was a fact that he knew what the rules are but does not engage with the issue, the Applicant said that he had taken telephone advice from a firm of solicitors who said that he should not make statements whilst under caution.
50. Asked what happened after 30 December 2022 the Applicant said that he had no memory or clue. His heart condition leads to limited blood supply to the brain which affects his memory.
51. At this point the Applicant indicated that he did not wish to continue, citing his health condition. The Tribunal adjourned and gave counsel an opportunity to seek instructions. After a break, the Applicant returned to be cross examined further.
52. In response to questions the Applicant said that when help for fees was refused, he tried to find out why. He cannot remember the timeline but also called the Tribunal questioning the deemed withdrawal. By telephone he was told to email the Tribunal and the matter would be put before a Tribunal Judge. No email was submitted in evidence.

53. Mr Hill pointed out that in his misaddressed email of 27 July 2023 the Applicant did not refer to this earlier call and email. There was an automatic reply from the Tribunal on 4 August 2023, but the originating email has not been produced.
54. Referring to the timeline Mr Hill said that on 12 May 2023 the Applicant appeared in the Magistrates Court on another matter. On 25 September 2023 there was a bad character application. The suggestion is that this application to reinstate on 13 October was triggered by these events.
55. Asked why, given that he was managing 6 properties and collecting rent, the Applicant did not get advice or help, he replied that he had called a local solicitor but that none wish to deal with HMOs or Legal Aid cases. When the Tribunal email was found in a spam folder in the Spring of 2023, three or four calls had been made to the Tribunal.
56. The Applicant stated that he was selling the portfolio of properties but then corrected that to say that his son Richard O'Halloran was selling them.
57. In answer to Tribunal questions the Applicant said that his son Richard, a former marine had returned from Australia before Christmas 2022 and was on hand since that time. Asked why he had not availed himself of his help in July 2023 he said that he just did not.
58. Regarding management duties, rent was paid by direct debit, and he simply checked bank statements to see that rent was paid.
59. Referring to the Applicants statement at 7 where he says that, around May or June 2023, he was advised by an assistant at the Tribunal to write an email but got no reply, the Applicant said that he had sent a letter by post but had not kept a copy.
60. Asked why, given there was no reply did he not attempt to contact the Tribunal until 27 July 2023, he replied that he did not know. He had called a Devon firm of solicitors but had heard nothing. He found remembering or collating difficult.
61. For the Respondents Mr Hill submitted that the delays in engaging with the Council were excessive. It appears that the Applicant only reacts to events after they have happened such as the court order for payment and the bad character application.
62. He agreed with the Applicants counsel that the key authority is Denton and that the Tribunal rules are important in this decision.
63. The applicant has failed to engage throughout the penalty process. He has given the respondent differing addresses for his residence

and e-mail addresses. He has never confirmed his address and nor has he provided a different email address than the one that the Council uses. They were able to confirm his address due to his receipt of housing benefit at 12 Trelevan Close.

64. He claims to be unfit and did not understand the process, but this does not appear to prevent him from managing a property portfolio, entering into tenancy agreements, and having a power of attorney for Richard O'Halloran.
65. His application makes no mention of service of the final notice and the reasons why he attempts to appeal out of time.
66. The Applicant has failed to properly address why it took him, on his own account from the 24th of July 2023 to the 13th of October 2023 to make this application. Having been put on notice that his application had been withdrawn in February 2023 he should have expedited his application to appeal from at least the 27th of July 2023.
67. Dealing with the reasons and excuses proffered by the Applicant he said: -
68. It is not clear how the Applicants health condition impacted on non-payment of a fine. He referred to *Pearson v City of Bradford Metropolitan District Council* [2019] UKUT 291 at para 6 where loss of a parent and surgery were insufficient reasons for delay.
69. Managing 6 or 7 properties involves dealing with problems and the Applicant has been doing this since 2014. It cannot be said that he is too frail and not aware of the housing system. He must surely know HMO matters and the relevant areas of law. The notices from the Council were issued professionally and were not aggressive. They did however include the necessary warnings.
70. Dealing with case law submitted by the Applicant's counsel he said that the *Naujokas* case was different as there was uncertainty as to whether the final notice had been served. The *Silba* case is distinguished as it involved a solicitor's error over a much shorter delay.
71. In May/June 2023, or possibly as early as February 2023, the Applicant found the Tribunal email in a spam folder, yet it was not until 13 October 2023 that an application to reinstate was made. This was entirely the fault of the Applicant.
72. The financial burden on the Applicant is not a relevant factor in a case management application such as this where the appeal is out of time. See *Hizari v London Borough of Havering* [2019] UKUT 330 (LC) para 26 and *Global Torch Ltd v Apex Global management Ltd(No 2)*[2014] UKSC64 at para 29. The proper focus of the

Tribunal's decision is not on the underlying merits of the disputed notice but the serious failure to comply or respond to notices. It was not possible to go back to Stage one.

- 73. Until he engaged Mr Hunt the Applicant had disregarded the process. There was an inexcusable delay without real reason.
- 74. In a short response Mr Hunt said that the Silba case was important here as the Tribunal had not lost a hearing slot. There is no prejudice to the council. Only the Applicant will be prejudiced if he loses his appeal right. He has not covered himself in glory but given the lack of available legal advice he should be granted the extension.

Findings of fact

- 75. On 28 November 2022 Final notice was served on the Applicant. That notice made clear the seriousness of the offence, the penalty, and the rights of appeal. It gave information about obtaining independent advice.
- 76. On 19 December 2022 the Tribunal received the appeal application from the Applicant which was in time.
- 77. Tribunal emails were issued to the Applicant's given email address on 30 December 2022 stating that no help with fees was available and warned that the matter would be withdrawn if payment not received in 14 days.
- 78. On 28 February 2023 the Tribunal sent an email to the Applicant advising that the matter is withdrawn.
- 79. The latest the Applicant became aware of the fact that the application had been deemed withdrawn by the Tribunal was in May /June of 2023 when his wife [according to his written statement] or his carer [according to his verbal evidence] suggested he check his email spam folder.
- 80. The Applicant's purported email of 27 July 2023 was not capable of being received by the Tribunal as it was incorrectly addressed.
- 81. No evidence of other emails or what the Tribunal's automatic reply was in response to has been produced. In effect there was no contact or follow up from the Applicant between the application to appeal on 19 December 2022 and 13 October 2023.

Discussion

- 82. The Tribunal finds that the Applicant's evidence is implausible and cannot be accepted on face value without corroboration from

documents or others statements. Even allowing for age and health issues, the evidence from the Applicant is unconvincing.

83. He states that his role encompasses most of the portfolio's needs including the management of daily operations, and tenancy relations yet asks the Tribunal to accept that he is incapable of dealing effectively with this matter or seeking help on responding.
84. The Tribunal notes the evidence of the Applicant's health issues in the bundle which date from 2019 to 2021. This situation has therefore pertained for years whilst the Applicant was still managing a significant property portfolio in the manner described by him. That being the case, a simple line of communication with the Tribunal and Respondent would have been well within the Applicant's capability.
85. At the very latest the Applicant knew or ought to have known that the appeal had been deemed withdrawn in May / June 2023 and yet did not pursue effective communication with the Tribunal until October 2023. A person used to dealing with a portfolio as described will be used to responding to official communication. The seriousness of the matter demanded prompt action.
86. The Tribunal accepts the evidence of the Respondent that several warnings were given to the Applicant. It finds that communication was inhibited by the Applicant's lack of cooperation on addresses and service of notices. The Tribunal is satisfied that sufficient information was received by the Applicant to emphasise the seriousness of the matter and the limited time for an appeal.
87. The Applicant's son Richard O'Halloran, the owner of the portfolio, also subject to proceedings by the Council, returned from Australia at the end of 2022. Had health been preventing the Applicant engaging with the process, it would be reasonable to assume that assistance from Richard O'Halloran might be sought. But no evidence on this has been produced other than to confirm that the Applicant did not seek his help.
88. The Applicant's evidence as to steps taken to obtain advice is so vague that the Tribunal must conclude that no serious attempt to obtain advice was made until October 2023. The Applicant has no answer as to why nothing was done between July and October 2023.
89. The fact that his Appeal was made in time suggests that he did know what was happening, was capable of engaging with the process but subsequently chose to ignore warnings. His evidence was that his son had advised him to do so at the outset.

90. Notice of Intent was served on 17 October 2022 and a Final notice was served on 28 November 2022. The purpose and seriousness of those documents was clear.
91. He states , at 7 in his witness statement, that after he submitted his appeal he could not understand why he was receiving penalty notices.
92. On 18 January 2023 the Respondent sent a reminder letter to the Applicant warning that non-payment would lead to an application to the County Court for an order to pay. That letter was sufficient to put the Applicant on notice that he needed to take action. Yet nothing was done.
93. The Applicant says that he called the Tribunal when he found that there was no help on fees and queried the deemed withdrawal. He produces no evidence to prove this and no date. The only suggestion of an attempt to contact the Tribunal was a wrongly addressed email on 27 July 2023. Even then there is no mention of the deemed withdrawal or alleged telephone conversation. He states that around May or June of 2023 he found the Tribunal's request for a fee and subsequent deemed withdrawal and yet does not raise this in his purported email in July. The Tribunal finds this implausible.
94. On balance of probabilities the Tribunal prefers the evidence of the Respondent that this application was triggered by other events which broke a pattern of non-engagement whereby correspondence, notices and warnings were ignored over a period of time.
95. The Tribunal has taken account of the principles in Denton and applied them. Accordingly, it finds: -
96. Failure to comply. The failure to comply consists of
- i) a failure to properly engage with the council in providing confirmation of addresses both residential and email.
 - ii) a failure to pursue the appeal in a diligent matter in not questioning why he had not received an acknowledgement of the appeal from the Tribunal.
 - iii) a failure to respond in January 2023 to the Respondents warning of 18 January regarding County Court recovery proceedings. This should have triggered an immediate enquiry to the Tribunal as to the status of the appeal.
 - iv) a failure to engage with the Tribunal between the Appeal application in December 2022 and October 2023 despite, by his own evidence being aware of the deemed withdrawal in May/June 2023.
97. The failures are serious for the Applicant in that they are fatal to the continuance of the appeal and render the process void.

98. For the Respondent, the Applicant's failure to engage with the council and respond in a proper manner frustrates the lawful duty of the council to regulate housing matters in its area. For standards to be maintained there must be effective regulatory processes.
99. Why the default occurred. The Tribunal finds that the fault occurred through neglect or oversight on the part of the Applicant. The evidence provided by the Applicant is vague and inconsistent. The Tribunal finds that the Respondent's explanation that notices were ignored until action such as the Court Order is a more plausible reason.
100. Evaluation of the circumstances of the case.
101. The circumstances of the case are that whilst health is potentially an issue there were other remedies such as taking professional advice or engaging the help of the property owner, to assist the Applicant in responding to the notice and engaging with the Tribunal. The Applicant inexplicably did not do so.
102. The fact that if relief is not granted the fine will be imposed without a hearing is a natural consequence of the non-payment of a Tribunal fee and a failure to engage with the matter despite strong written warnings. The law was drafted in the knowledge that this would be such a consequence. It is for parties to adhere to the Tribunal Rules, and this applies equally to Litigants in Person and represented parties.
103. The circumstances of the case centre also on the Cornwall Council's ability to regulate housing in its area in an effective way. This is not just a matter of non-payment of a Tribunal fee leading to deemed withdrawal. It goes to the administration of justice in both the Tribunal and the Respondent Council.
104. Discretion. The Tribunal has considered whether, in the interests of justice it should exercise discretion and grant an extension of time. In doing so it has taken account of the facts noted above.
105. In Rule 3 the overriding objective requires that the Tribunal deals with cases fairly and justly and that applies to the Respondent and Applicant equally. Given the inconsistent evidence from the Applicant and the lack of cogent explanation for the delay in acting, it would not be fair or just to prevent the Respondent performing its regulatory function by the Tribunal exercising discretion and reinstating the appeal after such a long time.
106. Rule 3 also requires that parties must help the Tribunal to further the overriding objective; and co-operate with the Tribunal generally.

107. The Applicant knew around May or June 2023 that the Tribunal had deemed the application withdrawn and yet failed to engage with the Tribunal until October 2023. In the interim, the Respondent Council had taken court proceedings for the fine and obtained an Order in July 2023. No cogent explanation has been given for the extraordinary delay and lack of action.
108. The Tribunal can find that no good reason has been given as to why an application to reinstate was not made until October 2023. Even taking the Applicant's case at his highest, he knew by May /June of 2023 that his application was deemed withdrawn and that he would need to take steps if he wished to continue with his appeal. The wrongly addressed email of 27 July 2023 is insufficient to discharge the duty to pursue the matter diligently.
109. The Tribunal is satisfied that on the facts of this case it should not exercise its discretion to agree to extend time. Accordingly, the Tribunal declines to exercise its discretion under Tribunal rules referred to and dismisses the application to reinstate.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.