FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00MR/HNA/2023/0023
Property	**:**	67 Manners Road, Southsea, Hampshire, PO4 0BA
Applicant	**:**	Mr Iqbal Miah
Representative	**:**	Mr Haroon Khan, Knights PLC
Respondent	**:**	Portsmouth City Council
Representative	**:**	Ms Jelena Taylor, Housing Regulation Officer
Type of Application	**:**	Appeal against a financial penalty – Section 249A & Schedule 13A to the Housing Act 2004
Tribunal Member	**:**	Judge J Dobson Mrs A Clist MRICS Ms J Dalal
Date of Hearing	**:**	16th July 2024
Date of Decision	**:**	5th September 2024

DECISION

Summary of Decision

1. **The Tribunal determines that the Applicant did commit an offence of breach of the conditions of the HMO Licence for 67 Manners Road, Southsea, Hampshire, PO4 0BA pursuant to section 72(3) of the Housing Act 2004.**

2. **The Tribunal determined that the argued defence of reasonable excuse was not made out.**

3. **The Tribunal further determines that the fees paid by the Applicant to the Tribunal in respect of this application, shall be borne by the Applicant.**

Background Facts

4. The background facts are matters accepted by the parties in documents or in the hearing and which do not require any findings of fact by the Tribunal.

5. The address in question is 67 Manners Road, Southsea, Hampshire, PO4 0BA ("the Property"). The Property is arranged over four storeys with a room to the lower ground floor, bedrooms and a kitchen to the ground floor and further bedrooms to the upper floors. It is a House in Multiple Occupation ("HMO"), as defined- see below.

6. The Applicant is the licence holder for the Property. The Respondent is the local housing authority with responsibility for licensing of HMOs and other housing enforcement. The Respondent has issued a Private Sector Housing Enforcement Policy in respect of licensing and related matters. The 2022 version of that Enforcement Policy [181 - 230] provides for potential enforcement options in respect of various matters and those include HMO licensing offences, including the imposition of a financial penalties. A stated aim is that licence conditions are met. The policy includes at Annex A, a specific Financial Penalty Policy ("the FP Policy"). In broad terms, the policy identifies penalties for offences themselves and provides for aggravating features and mitigation.

7. The Applicant has or is involved in a property portfolio, with properties held in his own name and by two companies, Triple Eye Properties Limited ("Triple Eye") and Black Owl Estates Limited, of which he is a director. That includes a number of other HMOs and, as the Tribunal understands it, the Applicant holds other licences. It is one of the two companies, Triple Eye, which is the registered freehold owner of the Property.

8. The Applicant entered into an agreement with Elite Rooms Portsmouth Limited ("Elite Rooms")- a letting agent (and managing agent)- called a Guaranteed Rent Agreement and dated 5th October 2020 [42- 51]. The agreement entered into ("the Guaranteed Rent Agreement") was in

broad terms that Elite Rooms would find suitable tenants and would manage the Property, including meeting any legal requirements. The director of Elite was Mr Shahed Ahmed (and Mr Ahmed/ Elite Rooms are referred to below as "the Agent"). To clarify, the header to the Guaranteed Rent Agreement states that it is between the Applicant T/A Triple Eye Properties Limited and the Agent but then states the parties as simply the Applicant, giving his home address, and the Agent.

9. The Agreement provided for a guaranteed income for the Applicant of £1500.00 per month. Clause 3.1(iv) of the Guaranteed Rent Agreement obliged Elite Rooms to not do anything in relation to the Property which would cause the Applicant to be in breach of any licence or other consent and clause 3.1(iii) required Elite Rooms to ensure that nothing unlawful was done with respect to their management of the Property.

10. On 26th October 2020, the Applicant applied for a HMO Licence for the Property, signed by him [67- 75]. The Applicant said "Yes" to the question "Is the proposed Licence Holder the person who would be in day to day control of the HMO and be bound by any conditions that are attached to the licence, if granted?". He also answered "Yes" to the question of whether he used "the facilities of a manager/ Letting Agents to help maintain the conditions of the licence". He gave the details of Elite Rooms. The Applicant also stated that he is the owner of the Property (although is not obviously correct as the owner is Third Eye".

11. The application was for occupation by seven persons across seven rooms. A draft Licence and related documents were sent in May 2021 for occupation by, in the mid and long term, five persons [76- 85]. On 30th June 2021, the HMO Licence "the Licence" was issued and that was to the Applicant himself, again for five persons, one in each room [86- 95] for a period of five years and including five pages of conditions [91- 95]. The two basement rooms could be occupied in the short term for a limited further time in accordance with special conditions, (seeking to avoid eviction of the sitting tenants) by one person each.

12. Assured Shorthold Tenancy agreements were entered into with tenants of rooms in the Property. An Assured Shorthold Tenancy agreement was entered into for a tenancy of the ground floor middle floor room ("the Room")- although that description of the Room is of its location in order to avoid lack of clarity which might arise from other designations used- commencing on 4th May 2023 and with the fixed term ending on 3rd November 2023 ("the Tenancy Agreement") [137- 144]. The Tenancy Agreement stated the landlord to be "Triple Eye Properties Ltd T/A Elite Rooms Portsmouth Ltd". The Tenancy Agreement was signed by Mr Ahmed.

13. The occupation of that Room by Mr Dinesh Manickam and Mrs Megavathi Selvam ("the Tenants") and their daughter ("the Family") meant that there were seven occupiers of the Property, none of whom were then in the basement rooms, with three if those occupiers in the Room in particular.

14. There were therefore more occupiers than permitted by the Licence. Three of those occupied a room which was, by a fairly small margin, only suitable for occupation by one person, not two (and by a much greater margin not three).

15. The Applicant undertook works to the Property seeking to facilitate a licence for six occupiers in six rooms and, in particular, seeking to improve natural lighting to the basement level to enable one occupiable room there. There were various communications about the Respondent inspecting and related [116- 136]. An inspection of the basement was undertaken on 17th May 2023 by Ms Jelena Taylor and Mr Michael Conway of the Respondent. The Applicant was present.

16. On 30th June 2023, a further inspection was undertaken at the Property by Mr Conway. The Applicant was not present. Mr Ahmed was present. As Mr Conway was inspecting the communal areas on the ground floor, a female entered the communal kitchen going to the bathroom on the ground floor rear of the property. A child then entered the communal area following the female to the bathroom. The Agent's initial response when queried was that "they were visiting" one of the tenants in the Property. However, when Mr Conway approached the female and queried if she and the child were guests at the property, the female advised me that they lived in the Property, and they also shared the Room with her husband. The occupier had a tenancy agreement that she produced at the time of inspection. Further, the Room appeared to Mr Conway to be occupied by a family with a child. The Agent's response was untrue.

17. On 13th July 2023, the Respondent served a Notice of Intent to Issue a Financial Penalty [163- 170] to impose a civil penalty of £7500.00 for the commission by the Applicant of an offence under Section 72 of the Housing Act 2004 ("the Act") because of breach of Licence conditions. A calculation was provided. It was asserted that in addition to the breach itself, there was an aggravating feature of significant harm, which added a further £2500.00 to the £5000.00 per breach of conditions of the Licence. The Tribunal understands that the basis was that the Room was only suitable for one person (measuring 9.92 square metres, whereas a size of 10.22 square metre was the minimum size for say two persons) pursuant to Schedule 4 of the Act and the occupants included a vulnerable person, a child (such vulnerable person being defined in the Respondent's FP Policy and applying the Housing Health and Safety Rating System [207]).

18. On 7th August 2023, the Applicant made representations. He said that he had "no direct involvement in the day-to-day management or inspections of the property".

19. On 31st August 2023, the Respondent served a Final Notice to Issue a Financial Penalty [17- 21], citing an offence under section 72 of the Housing Act 2004 committed on 30th June 2023 and setting out the

provision in full. The Reasons given for imposing the financial penalty were that the Applicant "is the Licence holder and the person on whom the restrictions or obligations are imposed and the Authority are sure (satisfied beyond reasonable doubt) that Condition 3 of the HMO Licence dated 21st June 2021 was breached" and that was because the relevant Room was not to be occupied by more than one person aged 10 and above, whereas on 30th June 2023 it was occupied by two adults and a child.

20. The Final Notice imposed a financial penalty of £7,500.00 (£5,000.00 for the breach of licence and £2,500.00 for significant harm). It was said that the Applicant's representations had been considered. The relevant rights of appeal were provided.

21. The Respondent has also taken action against the Respondent's agent, serving a Final Notice and imposing a financial penalty of £4,875.00, having reduced that from £7,500.00 in the light of representations received from the Agent. Whilst that Notice was not contained in the hearing bundle, it was apparently known to the parties and it was known to the Tribunal because the agent has separately appealed, in an application which by chance had been picked up for directions to be given for progress of it just the day before this hearing.

22. Notably then, that Notice was the subject of a separate appeal and it could not be known what the outcome of that would prove to be in due course- and in some weeks' time- when it is heard.

The Licence

23. The Licence was granted to the Applicant. Various conditions were set out which provided for "the licence holder" to ensure requirements are met, although allowing as an alternative for "the property manager" to attend the Property "at frequent intervals" and "as may be reasonably necessary for the purposes of inspection by the Council".

24. Condition 3 of the Licence states:

"The following rooms are to be occupied for sleeping purposes by no more than the number of persons stated below:

Room number on plan	Occupancy level
1	One person aged over 10 years of age
2	One person aged over 10 years of age
3	One person aged over 10 years of age
4	One person aged over 10 years of age
5	One person aged over 10 years of age
6	One person aged over 10 years of age (SUBJECT TO SPECIAL CONDITION)
7	One person aged over 10 years of age (SUBJECT TO SPECIAL CONDITION)"

25. The special conditions relate to the basement rooms and are not directly relevant to this case.

Application and History of Case

26. The Applicant submitted an appeal against the financial penalty imposed by the Respondent in the Final Notice dated 26th September 2023 [7-15]. The Tribunal received the appeal on time. .

27. The Applicant appeals pursuant to section 249A of the Act. The Applicant's grounds for appeal were set out in the application [15].

28. Directions were given on February 2024 setting out a timetable for the exchange of documents between the parties and the preparation of the cases for hearing. The Directions provided for the Applicant to produce a bundle of documents relied on by the parties in relation to the issues for determination. The Applicant produced a PDF bundle amounting to 315 pages in advance of the final hearing. The hearing bundle included the Respondent's relevant Enforcement Policy, including the FP Policy, amongst other matters.

29. The production of the bundle was not without its problems and in the absence of the bundle being provided as required, the application was struck out. The Applicant sought re- instatement, which was granted with a revised date for the bundle. That was not received by the revised date and the application again struck out, but it was later realised that the reinstatement directions had not been sent out and so the revised date was not known to the Applicant. Hence, the application was again re- instated and a further date for the bundle provided for. That is all very unsatisfactory but, in the end, everything has been resolved and so there is nothing to be gained by dwelling further on the above. That said, the bundle provided suffered from duplicates of various documents, adding unnecessarily to the length and rendering it less simple to use than it could have been.

30. Whilst the Tribunal makes it clear that it has read the bundle, the Tribunal does not refer to all of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored them or left them out of account. Insofar as the Tribunal does refer to specific pages from the bundle, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF bundle page- numbering, wherever possible the numbering of the pages on which the given document first appears in the bundle.

The Applicable Law

31. The Tribunal must of course apply the relevant law, both statute and case law.

32. There is a fair amount of applicable law and of guidance as to how the local housing authority on the one hand and how the Tribunal on the other hand are to address matters.

33. Firstly, in terms of offence itself, the relevant law is contained in the Act and in particular sections 61 and 72.

34. Section 61 states:

> (1) Every HMO to which this Part applies must be licensed under this Part unless– (a) a temporary exemption notice is in force in relation to it under section 62, or (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.
> (2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

35. Section 72 provides that:

> (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
> (2) A person commits an offence if– (a) he is a person having control of or managing an HMO which is licensed under this Part, (b) he knowingly permits another person to occupy the house, and (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
> (3) A person commits an offence if– (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed n accordance with section 67 (5), and (b) he fails to comply with any conditions of the licence.
> .....
> (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
> (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
> (b) for permitting the person to occupy the house, or
> (c) for failing to comply with the condition,
> as the case may be.
> .....
> (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

36. It is section 72(3) and the defence at 72(5) which are the relevant sub-sections in respect of this application.

37. Section 254 includes the definition of an HMO.

38. Section 263 of the Act defines a “person having control” and “person managing” of a property and often it is relevant to identify the person as one or other. However, not in relation to offences pursuant to section 72(3).

39. By amendments to the Act, effected by Schedule 9 to the Housing and Planning Act 2016, the power for local housing authorities to impose a civil penalty as an alternative to prosecution was introduced.

40. Section 249A of the Act deals with the imposition of a financial penalty on the basis of commission of a relevant offence, in relation to which it states the following:

> (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
> (2) In this section "relevant housing offence" means an offence under—
> .....
> (b) section 72 (licensing of HMOs),
> .....
> (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
> (4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.
> (5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if— (a) the person has been convicted of the offence in respect of that conduct, or (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

41. Hence, if a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to a relevant housing offence, that person may not be convicted of an offence under the relevant section in respect of that conduct and only one penalty can be imposed in respect of the same offence.

42. Nevertheless, a financial penalty may only be imposed where it is determined that a person has committed a criminal offence. Consequently, the standard of proof applicable in respect of matters relevant to the commission of an offence is the criminal standard, being beyond reasonable doubt as identified in section 249A or, as often alternatively expressed, such that the local housing authority, and now the Tribunal, is sure.

43. Schedule 13A to the Act sets out the procedure to be followed by the local housing authority and the requirements of the Notices required to be served, including the requirement for a notice of intent within six months, the information to be contained and the right to make representations and then the requirement to decide whether to serve a final notice and the contents of that. As no issue arises as to the procedure adopted by the Respondent, it is not necessary to set out the requirements in full.

44. The entitlement to apply to the Tribunal is also provided for in Schedule 13A of the Act and specifically Paragraph 10. That states as follows:

> (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against
> (a) the decision to impose the penalty, or
> (b) the amount of the penalty.
> (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

Whilst the provision states a penalty "or" the level, it is clear that in practice both can be advanced as alternatives.

45. It is further explained that:

> (3) An appeal under this paragraph
> (a) is to be a re-hearing of the local housing authority's decision, but
> (b) may be determined having regard to matters of which the authority was unaware.

46. In terms of the powers of the Tribunal, it is added:

> (4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.
> (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

47. So, as set out above, the Tribunal re- hears the matter but does so including on the basis of matters of which the Respondent may have been unaware and the Tribunal may decide to leave the Final Notice in place as issued, may quash it entirely or may appropriately vary it. The Tribunal has the power to determine that there was or was not an offence for which a civil financial penalty may be imposed and, if so, to confirm or vary the level of any penalty.

48. There is no mental element to a licensing offence. It is, subject to there being a reasonable excuse, what is termed a strict liability offence. In the case of *Mohamed and Lahrie v London Borough of Waltham Forest* (2020) EWHC 1083 (Admin), it was said as follows:

> "48. For all these reasons we find that the prosecution is not required to prove that the relevant defendant knew that he had control of or managed a property which was a HMO, which therefore was required to be licensed. As noted above the absence of such knowledge may be relevant to the defence of reasonable excuse."

49. The same applies just as well to failure to comply with a condition of a licence.

50. It is, as quoted just above, a defence to the offence of failure to licence, that the person has a reasonable excuse for failure to licence.

51. The cases of *Thurrock Council v Daoudi* [2020] UKUT 209 (LC), *I R Management Services Limited v Salford Council* [2020] UKUT 81(LC) and *Nicholas Sutton (1) Faiths' Lane Apartments Limited (in administration) (2) v Norwich City Council* [2020] UKUT 90(LC) dealt with the question of reasonable excuse as a defence to the imposition of financial penalties under section 249A of the Act. The principles identified by the above authorities are as follows:

- The proper construction of section 72(1) of the 2004 Act is clear. There is no justification for ignoring the separation of the elements of the offence and the defence of reasonable excuse under section 95(4).
- The offence of failing to comply with section 72(1) is one of strict liability subject only to the statutory defence of reasonable excuse.
- The elements of the offence are set out comprehensively in section 72(1). Those elements do not refer to the absence of reasonable excuse which therefore does not form an ingredient of the offence and is not one of the matters which must be established by the local housing authority.
- The burden of proving a reasonable excuse falls on the landlord and need only be established on the balance of probabilities.
- The burden does not place excessive difficulties on the Landlord to establish a reasonable excuse. Only the Landlord can give evidence of his state of knowledge at the time. The other party, on the other hand, has no means of knowing the state of knowledge of the Landlord. It is very difficult for the other party to disprove a negative.
- Whether an excuse is reasonable or not is an objective question for the Tribunal to decide. Lack of knowledge or belief could be a relevant factor for a Tribunal to consider whether the Landlord had a reasonable excuse for the offence of no licence. If lack of knowledge is relied on it must be an honest belief (subjective test). Additionally, there have to be reasonable grounds for the holding of that belief (objective).
- In order for lack of knowledge to constitute a reasonable excuse as a defence to the offence of having no licence it must refer to the facts which caused the property to be licensed under section 72(1) of the Act. The well- known statement that ignorance of the law does not constitute a reasonable excuse applies although there is some subtlety that bald statement does not capture.
- Where the Landlord is unrepresented the Tribunal should consider the defence of reasonable excuse even if it is not specifically raised.

52. Whilst reference is made above to section 72(1) the Tribunal considers that there is again nothing which differs between treatment of that (and the defence) from the treatment of offences pursuant to section 72(3) (subject to a lack of reasonable excuse). It merits re-iterating that it is for the Applicant to therefore demonstrate a reasonable excuse, for which

the standard of proof in respect of any matters of fact is the balance of probabilities, so the lower civil standard than the standard for the Respondent to meet in demonstrating the offence subject to that excuse.

53. More recently, in *Marigold & Ors v Wells* [2023] UKUT 33 (LC) the Upper Tribunal (Lands Chamber) at paragraphs 45 to 49 provided guidance as to approach the question of whether a reasonable excuse exists- as follows:

> "(1) First, establish what facts the taxpayer (Applicant) asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer (Applicant) or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).
> (2) Second, decide which of those facts are proven.
> (3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?" (Paragraph 48 of the judgment quoting from a Tax and Chancery Chamber case of Perrin v HMRC [2018] UKUT 156)
> (4) In respect of "the much cited aphorism that "ignorance of the law is no excuse"... (i)t will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long. (Paragraph 49 of the judgment quoting from a Tax and Chancery Chamber case of Perrin v HMRC [2018] UKUT 156)"

54. The case involved a probably rare situation in which it was found that the property owner was specifically told by the relevant council that the property did not require a licence and that the council would tell the property owner when a licence was required.

55. The Applicant specifically relied upon- and the bundle included [304-315]- the judgment of the Court of Appeal in *Palmview Estates Ltd v Thurrock Council* [2021] EWCA Civ 1871. The specific point was that the reasonable excuse "must relate to the activity of controlling or managing the HMO". In that instance it was controlling or managing without a licence, although with again no suggestion that the point would not equally apply to breach of licence condition.

56. There is Government guidance in respect of the Act and the offences created. The Ministry of Housing, Communities and Local Government published non-statutory guidance in April 2018 entitled "Civil penalties under the Housing and Planning Act 2016 - Guidance to Local Authorities", ("the Guidance") [6-25]. Local authorities must, pursuant to paragraph 12 of Schedule 13A to the Act, have regard to the guidance

in respect of their functions in respect of civil penalties, as the Guidance itself repeats.

57. The Guidance states the Government's intention to crack down on a "small number of rogue or criminal landlords [who] knowingly rent out unsafe and substandard accommodation" and to disrupt their business model.

58. Paragraph 1.9 of the Guidance states that civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 and Housing and Planning Act 2016 listed in the Guidance.

59. Paragraph 3.5 of the Guidance addresses in some detail the factors that a local housing authority should consider when deciding on the level of a civil penalty, as follows:

> a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.
> b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
> c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
> d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
> e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
> f) **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
> g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

60. The Guidance also states that local housing authorities are expected to develop and document their own policy on when to impose a civil penalty and should decide which option to pursue on a case- by- case basis and also says that housing authorities "should develop their own policy on determining the appropriate level of civil penalty in a particular case" and, in line with that policy.

61. So, the local housing authority must have a policy to cover when a penalty should be imposed and how much that should be.

62. The approach to the Tribunal's consideration of local policies was summarised in the Upper Tribunal by Judge Cooke in *Marshall v Waltham Forest LBC* [2020] UKUT 35 (LC); [2020] 1 WLR 3187, which involved appeals against penalties imposed under section 249A of the Act. At para 54 the Judge stated:

> "The court [or Tribunal] is to start from the policy, and it must give proper consideration to arguments that it should depart from it. It is the appellant who has the burden of persuading it to do so. In considering reasons for doing so, it must look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed."

63. Judge Cooke also considered the weight to be attached to the local housing authority's decision in any appeal at para 62, stating as follows:

> "the court is to afford considerable weight to the local authority's decision but may vary it if it disagrees with the local authority's conclusion".

64. In *Sutton* it was said by the Upper Tribunal that:

> "It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities, and not by courts or tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred. The authority is well placed to formulate its policy and in *London Borough of Waltham Forest v Marshall* [2020] UKUT 35 (LC) the Tribunal (Judge Cooke) gave guidance on the respect that should be afforded to a local authority's policy by the FTT when hearing an appeal from a civil penalty imposed by the authority. As Wilkie J put it, concerning the approach which should be taken by magistrates, in *Darlington Borough Council v Kaye* [2004] EWHC 2836 (Admin): "The Justices … ought to have regard to the fact that the local authority has a policy and should not lightly reverse the local authority's decision or, to put it another way, the Justices may accept the policy and apply it as if it was standing in the shoes of the council considering the application.
> If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision."

65. Nevertheless, as explained in Marshall at paragraph 76:

> "... if a court or tribunal finds, for example, that there were mitigating or aggravating circumstances of which the original decision-maker was unaware, or of which it took insufficient account, it can substitute its own decision on that basis."

66. The policy of the local housing authority is therefore the starting point, although not the end point.

67. With regard to the amount of the penalty, the Tribunal's power to vary it includes a power to increase as much as it does to reduce it, subject to the maximum of £30,000.00.

68. It was also explained in Sutton as follows:

> "The ability to pay, or the means of the offender, is relevant to any financial punishment; although not mentioned specifically in the Secretary of State's Guidance, it is an important component of both punishment and deterrence.
>
> A corporate or individual appellant who wishes the Tribunal to have regard to their own financial standing when considering the appropriate financial penalty to impose, should provide up-to-date evidence of their assets and liabilities."

The Hearing

69. The Tribunal sat fully remotely, somewhat unusually now. The parties and representatives also all attended remotely by video.

70. The Applicant was represented by Mr Khan, solicitor, of Knights PLC. The Respondent was represented by Ms Taylor, Housing Regulation Officer, of the Respondent.

71. The Tribunal received written evidence from Mr Miah, the Applicant [15 (annexed to application form which form contained a statement of truth) and (repeated at) 35-36 (with a specific statement of truth]. (Although not in the Applicant's Statement of Case [30- 33], which was not signed by the Applicant.)

72. In addition, there was a Statement of Financial Means [53] dated 21st February 2024 completed by the Applicant and containing a statement of truth. Whilst in the event nothing turned on the specific means of the Applicant in terms of the level of the financial penalty which the Tribunal imposed, it was at least unclear that the contents were correct. The income included investment income of £2,400.00 per month, which certainly did not obviously reflect the level of rent for a portfolio of properties (not least where the guaranteed rent on the Property was £1,500.00 alone), although the Applicant said the companies were family ones and he was not the only director. Other figures, such as a very high travel to work cost and relatively speaking substantial sum for television/ satellite cast some doubt on the overall accuracy of the contents of the document.

73. The Tribunal received some information in respect of the income and other the financial situation of Triple Eye [257- 265], which revealed the net assets of the company as at 30th June 2022 to be £1,186,464, with retained earnings of only £7,880.00 within that total. That did not enable the Tribunal to identify the accuracy or otherwise of the sum said to be received by the Applicant. The Tribunal noted the directors' current accounts to contain £131,500.00 but there was no information as to directors' earnings or shareholders' dividends. The Tribunal also noted that the accounts gave two names of directors to approve the accounts, both names being given as I Miah. Other evidence provided by the Respondent [274-], being copies of records at Companies House showed the directors to be the Applicant and Iraque Miah, both at the same address.

74. Similarly, in relation to Black Owl Estates Limited, there were unaudited accounts [266- 273], with net liabilities of £80,695. The director's current accounts were shown to hold £35,000.00 but with no information as to directors' earnings or shareholders' dividends. The same position as with Triple Eye existed in terms of directors' names.

75. The Tribunal also received written evidence from Ms Taylor [56- 65] and Mr Michael Conway, Senior Housing Regulation Officer [279- 302]. The first dealt with most matters on behalf of the Respondent. The second dealt specifically with an inspection of the Property.

76. Oral evidence was also given by the Applicant and the two witnesses for the Respondent.

77. The Tribunal was also in receipt, in the bundle, of letters from Mr Ahmed at Elite Rooms dated 21st February 2024 [40] and from Megavathi Selvam dated 4th September 2023 [38], the relevant tenant. As the Tribunal observed, and Mr Khan accepted, neither of those was a witness statement signed with a statement of truth and further, neither signatory had attended the hearing so they could not be questioned on the contents of the letters and there was no explanation which provided any good reason for that lack of attendance, hence only limited weight could be placed on the contents.

78. Both Ms Taylor and Mr Khan also made closing comments.

79. The Tribunal is grateful to all of the above for their assistance with this application.

Consideration of the matters to determine

80. The three essential questions for the Tribunal to answer in cases such as these generally, assuming that issues about them are raised, are:

    1. Has the Respondent followed the correct procedure when imposing the financial penalty?

2. Has the relevant housing offence been proved to the correct standard and any defence not proved to the standard applicable to that?
3. Is the amount of penalty appropriate in the circumstances considered in the light of a local authority's policy?

81. There was in the event no issue about essential question 1. i.e., the decision- making process or the procedure followed by the Respondent in respect of the imposition of the financial penalty. It was not suggested by the Applicant that if an offence had been committed, nevertheless there ought to have been no enforcement action or the action taken ought to have been of a lesser nature. There was no suggestion of any failing in the decision to impose a financial penalty or in the approach taken with regard to that in itself. The Tribunal did not need to have regard to elements of the Respondent's Enforcement Policy/ FP Policy relevant to those matters because there was no dispute to determine to which they were relevant, although the Tribunal makes the passing observation that at first blush there was nothing especially unusual or notable about the contents of those policies. The imposition of a financial penalty for what was said to be a HMO licensing offence was provided for, although not the only potential option, and is far from unusual in itself.

82. There was also no argument against an offence having been committed unless there was a reasonable excuse. There was no argument about the Applicant being the licence holder and that there were conditions on the licence. The offence is, it was accepted, one of the housing management offences on the basis of which a civil financial penalty can be issued. There was no matter in relation to that which the Tribunal was asked to determine.

83. It was not argued on behalf of the Applicant that the level of penalty was not appropriate if the defence of a reasonable excuse was not made out and so the offence was committed. Consequently, the Respondent said only a limited amount about the level of penalty imposed beyond the contents of documents which had been sent to the Applicant. Nevertheless, the Tribunal asked some questions about that in the hearing and did think about whether it ought to consider the question, although in light of *Marshall*.

84. There was no dispute identified that the proper approach was for the Tribunal to apply the national guidance and the Respondent's FP Policy where those were applicable.

85. The issue at the heart of the case was therefore in relation to the second essential question, i.e., the commission of an offence, and related to the defence of reasonable excuse. That was the focus of the Applicant's appeal and hence inevitably also the focus of the Tribunal's consideration. The findings and determinations below therefore address the relevant part of this question.

86. This Decision seeks to focus solely on the key issues. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundle or at the hearing require any finding to be made for the purpose of deciding the relevant issues remaining in this application. The Decision is made on the basis of the evidence and arguments the parties presented, save where clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

87. Whilst the Tribunal appreciates that paragraph 10 (3) of Schedule 13A makes clear that the Tribunal is to re- hear and re- determine, not simply consider whether the Respondent's approach was justifiable, it does so on the matters presented. The Tribunal considers that in re- hearing the matter, it is not required to re- consider matters which have not been challenged by the Applicant- and indeed it could well be difficult to properly do so in the absence of such challenges and the advancement of points which might facilitate proper re- consideration of such matters.

Facts Found by the Tribunal

88. The Tribunal makes findings where matters were not agreed, or at least clearly agreed, by the parties and where relevant to determining the application. Those facts found add to the factual matrix set out in the Background which were accepted by the parties and so required no finding to be made, for example the fact that the Applicant was the holder of the HMO Licence.

89. The facts found related to the question of a reasonable excuse and it is re- iterated that the standard of proof was therefore the balance of probabilities. It is that standard which the Tribunal applied.

90. The Applicant did not in practice become involved in the day-to-day management of the tenancies of rooms at the Property and only directly addressed the building itself. That included efforts to have the Property licensable and licensed for more than five occupiers and included building work necessary for that purpose.

91. The Applicant relied on the Agent in relation to the tenancies.

92. If the Property had been/ become licensable for more than five persons, the Applicant would probably have sought to re- negotiate the Guaranteed Rent Agreement with the Agent. It is unlikely that the Applicant would have incurred expenditure in seeking to obtain six occupiable rooms rather than five without there being some benefit to him by way of increased rental income due from the Agent.

93. The Applicant did organise work to the basement floor of the Property once that was empty of occupiers, hence his engagement with the Respondent about that. That did not call into question his case that he

was not involved in other management, particularly day-to-day management of the tenancies.

94. The Applicant was not aware of the Family moving into the Property- the Applicant was credible about that and there was no contrary evidence. That was dealt with solely by the Agent. The Tribunal noted that the letter from the tenant referred to Mr Ahmed of the Agent but made no mention at all of the Applicant.

95. The Applicant was not a party to the Tenancy Agreement and although the "Landlord/ Agent" was described as "Triple Eye Properties Ltd T/A Elite Rooms Portsmouth Ltd", the Tribunal finds that the description was not correct. Neither party suggested that Elite Rooms is indeed a trading name of Triple Eye and there was no evidence that it is. Whilst the Respondent disputed the Tenancy Agreement being between the Agent and the Tenants, the Tribunal finds that it was.

96. The Applicant did not sign the Tenancy Agreement. The Agent did not send a copy of the Tenancy Agreement to the Applicant. The agent did not, the evidence indicated, inform the Applicant about the Family.

97. The circumstances of the Family moving into the Property were as asserted by the Applicant. That is to say that they planned to move into a flat and had dealt with the Agent in relation to that. The parents, or at least one of them, were students from India who were to study at the University of Portsmouth. A problem arose because the previous tenants had not moved out of that flat. The Agent provided the only vacant accommodation it had available, being the room in the Property. Whilst the Applicant could not give first hand evidence of anything beyond what he had been told, the Tribunal accepted the hearsay evidence regarding the circumstances, about which there was no challenge.

98. Nevertheless, the Tribunal preferred to make no positive finding that the arrangement was temporary as in short- term as the Agent suggested. In that regard the Tribunal noted that the (Assured Shorthold) Tenancy Agreement was for a term of six months, being a common term and not a short one. Nothing specific turns on the matter and so the Tribunal considers it can leave the point there.

99. The Applicant received no increase in income arising from the Tenancy. Whilst the Tribunal had queried the terms of the Guaranteed Rent Agreement between the Applicant and the Agent in the hearing, the Tribunal accepted that it was not only a Guaranteed Rent Agreement in the sense that the Applicant was guaranteed a level of rent per month but also there were no circumstances provided for in which the Applicant was entitled to receive more than the specific figure (so £1,500.00).

100. Hence, there was nothing from the income received by the Applicant or otherwise which alerted the Applicant to the Family occupying on the evidence presented.

101. That said, and no finding was needed because it was common ground, the occupation of the Property by the Family, did place the Applicant in breach of the conditions of the HMO licence.

102. The Applicant was content for the Respondent to attend at the Property in respect of the building works, being unaware that by doing so he might be found to be committing an offence. Indeed, he was keen for that to happen to facilitate a sixth room being occupiable as the various communications about the works and inspecting [116- 136] demonstrate. The Agent, in contrast, notably sought to deny that the family occupied when asked about that by Mr Conway, the Tribunal noted.

103. Whilst the Tribunal appreciated that it is not impossible that the Applicant could have known he committed an offence and taken the chance that the Respondent would attend but not find out, there was nothing to support him having taken that approach. The Tribunal finds it much more plausible- and correct in this instance- that the Applicant was not aware of anything which the Respondent could find out.

104. It was pure chance that the mother and child happened to be in the communal areas at the time of the Respondent's inspection of the building works to the basement and were seen. There was, insofar as relevant, no suggestion that they might have been told to keep out of the way and had ignored that. The Tribunal found that the Applicant had said no such thing, being unaware that an issue might arise.

105. The occupation of the particular room by the three- person Family caused risk of harm. That is both generally in the sense that there were more occupiers than the Property was suitable for at the time (and none occupying the space on the basement floor) and also more particularly. More particularly, because there were three persons occupying a space suitable only for one (and whilst the difference was quite marginal as compared to the minimum suitable for two persons, it was not marginal in the context of three persons), including a child.

106. Whilst the Guaranteed Rent Agreement at clause 2.2 states that the property was to be occupied by four persons, the Tribunal finds that was never the intention of either party to the contract in practice. The Property had been occupied by seven persons and was to continue to be occupied by five persons pursuant to the Licence (more in the short term) and six persons if the Applicant could satisfy the Respondent about the basement. The Applicant applied for a HMO licence on the basis of at least five occupiers and the Agent had let the Property to more than four persons (the tenancy to the Family was later), as the Applicant was well aware.

107. The Tribunal did not make any specific finding about the Applicant's financial position, including the contents of the Statement of Financial Means, because nothing turned on the financial information provided in

the event, notwithstanding the Tribunal's concern as to the accuracy of the information presented with regard to investment/ property income.

Application of the Facts found and determinations

108. For the sake of clarity and avoidance of doubt, the Tribunal was satisfied to the criminal standard that, subject to a reasonable excuse, the Applicant had committed the relevant HMO licensing offence as a person managing the Property on such information as it had received and the matters unchallenged by the Applicant.

109. The Tribunal was also satisfied that the Respondent had followed its FP Policy [203- 204 in particular] and that there was no clear reason for the Tribunal to not also do so. The Tribunal was satisfied that and that it would be appropriate to impose a financial penalty. The fact of there being risk of harm, both to the Family and to other occupiers, was relevant in that not only was there a breach of the licensing conditions but also there was the very pertinent exacerbating feature, and the overall situation amply justified the imposition of a financial penalty as opposed to lesser forms of enforcement action. Of course, the imposition of a penalty, or other action, is only relevant if the offence was made out and the defence at the heart of the arguments failed.

Was there a reasonable excuse?

110. The Tribunal determined that there was not a reasonable excuse.

111. The Tribunal gave careful consideration to the existence of the Guaranteed Rent Agreement and to the terms of the Guaranteed Rent Agreement. The Tribunal noted that those terms included contractual obligations placed on the Agent not to cause any breach of the HMO Licence or other legal obligations. That demonstrated some effort on behalf of the Applicant to ensure the management by the Agent was appropriate and situations such as this one did not arise.

112. However, that is as far as the Applicant had gone on his evidence. He did not even suggest that he had ever checked whether the Agent had complied with the provisions of the Agreement or that the requirements of the Licence were being met. His case effectively amounted to having entered into an agreement about management and then simply left matters there.

113. The Applicant had delegated day to day management to the agent, but he did not lack responsibility for management as the holder of the Licence, irrespective of other responsibilities, and the delegation of day-to- day matters did not absolve him of responsibility for ensuring that the tasks delegated were undertaken in an appropriate manner and fulfilled his obligations under the HMO Licence. His entry into the agreement in the particular terms which required the Agent to comply with the provisions of the Licence was a step taken but it was far from being a sufficient one where he retained responsibility under the Licence

as the holder of it- and insofar as it adds anything, he had applied for and been granted the Licence on the basis of exercising day- to- day control, albeit with the assistance of the Agent.

114. The Applicant argued in his written appeal, "As a landlord, my responsibility lies in entrusting the letting agent with the responsibilities of finding suitable tenants, maintaining the property, and ensuring compliance with all relevant regulations and standards" [11] and "any issues or penalties arising from the property's condition or management should be directed to Elite Rooms, who holds the ultimate responsibility for these matters" [15].

115. However, the Applicant is very definitely wrong in both of those statements. The Applicant's own responsibility- and the "ultimate responsibility", irrespective delegation to others, lay with ensuring compliance with all relevant regulations and standards, not merely with entrusting that to someone else, and especially the requirements of the Licence he sought and held. Any division of tasks was not a "division of responsibilities" as asserted [15], not in respect of the Licence in any event. The fact that Agent sought in its latter to "take full responsibility", did not mean that it had complete responsibility to the exclusion of the Applicant for these purposes.

116. The Applicant held the HMO Licence: the agent did not. The Agent could have held the Licence and indeed, as the person receiving the rack- rent, was arguably the more objectively obvious candidate for doing so. Indeed, the Licence indicated that. If the Agent had held the Licence, the situation would have been somewhat different.

117. So too would have been a situation in which the Property was not licensed and was never intended by the landlord to require a Licence. If there had say been four bedrooms, each intended to have one occupier, and there were no additional licensing regime in place, there would have been no need for a HMO Licence and so there would have been none. Conditions of a Licence would be irrelevant. Then if the Agent had allowed additional occupiers without the knowledge of the Applicant and so triggered the need for a Licence, the Tribunal would have been rather more likely to determine the Applicant to have a reasonable excuse, assuming other appropriate circumstances were found to exist. The landlord would never have applied for a Licence and then taken on the responsibilities of a Licence holder.

118. However, that was not the situation and there was a Licence. The Property was and was intended to be operated as a licensable HMO. Most fundamentally and significantly, the Applicant held the Licence. He took on the responsibilities which went along with that.

119. The wording of the Licence is clear that the holder of the Licence is responsible for ensuring compliance.

120. So, the responsibilities under the Licence were the Applicant's. The Applicant was, as he accepted in his application for the Licence, "the

person ..... bound by any conditions..... and the person who would have [and did have] this responsibility". It was insufficient to simply pass matters to the Agent and take no interest in the management of the tenancies and the letting of the Property against that background of holding the Licence and having obligations under that Licence. He was obliged to, but failed, to take appropriate steps to ensure that the Agent did in fact comply with the terms of the Guaranteed Rent Agreement and so that he, the Applicant, complied with the requirements of the Licence. Save for the written terms of the Guaranteed Rent Agreement, on evidence presented, he took no steps.

121. If the Applicant had required the Agent to keep him informed even only of specific significant matters such as new tenancies being entered into, he would have been more aware of the position at the Property and would have had at least some ability to provide oversight and comply with his obligations under the Licence. If he had taken other steps, such as actually checking the position from time to time, he may have been aware and may at least have done sufficient to become aware. The Applicant may, had he done enough, then have been able to be regarded as "diligent" as his Statement of Case asserted. In that event, it could have been that if a breach arose and the Applicant was still unaware of it, the Applicant could have had a reasonable excuse. As it was, the Tribunal repeats that save for the terms of the Agreement, the Applicant on his case did nothing to ensure that he was in fact in compliance with the terms of the Licence granted to him and under which the Applicant had obligations, including to ensure the conditions were met.

122. The Applicant had stated when applying for the Licence that he would be in day-to-day control. The Respondent was entitled to expect that to be correct. The Applicant plainly was not in control. Indeed, in practice he effectively engaged in no management at all.

123. The Tribunal determines that merely entering into an agreement with an agent, even one with a term which contractually requires the agent to comply, and then doing nothing more to manage the given property or to ensure compliance with the Licence held by the Applicant and which places specific obligations on him, and so creating his own lack of knowledge of whether he was in compliance with the conditions and other requirements of the Licence he held, does not amount to a reasonable excuse.

124. The Applicants purported reasonable excuse is that he was unaware of the breach of the conditions of the Licence he held, which the Tribunal accepts as factually correct in itself. However, as explained above, he was unaware because he allowed himself to be and did not put sufficient measures in place to enable himself to become aware where he was the Licence holder and had taken on responsibility for compliance.

125. For the avoidance of doubt, the fact that the Guaranteed Rent Agreement referred to four occupiers did not assist the Applicant where the hypothetical situation mentioned above of a property intended to be

occupied by four persons and not requiring licensing did not arise. It did not assist because, as found, the Applicant never intended a limit to four. In the Tribunal's experience, it is not so uncommon for agreements to refer to a maximum of four occupiers, including those let directly by a landlord to four tenants, which the Tribunal surmises to be with the aim of avoiding a situation arising in which a property has to be licensed, where a landlord does not intend that situation to arise. The Tribunal fully understands the logic of that in general but it has no relevance to this case specifically.

126. The Tribunal finds it convenient to also explain in this section, whilst not specifically regarding a reasonable excuse, that the lack of day-to-day management by the Applicant, particularly in the face of being the holder of the HMO Licence, was relevant to its consideration of whether the Respondent had appropriately applied its FP Policy in imposing a financial penalty and to whether the Tribunal should depart from that. The Tribunal did not consider that the lack of day-to-day management in the particular circumstances and the failing that involved did make another course of action the appropriate one.

What is the correct level of financial penalty?

127. The Tribunal deals relatively briefly with the level of financial penalty.

128. The Tribunal reminded itself that it was for the Applicant to argue, if considered appropriate, that the Tribunal should depart from the Respondent's policy, with the burden being on the Applicant to demonstrate such departure to be appropriate. The policy included the approach taken to the financial penalty. The Applicant did not, and indeed did not attempt to do so.

129. The Tribunal is mindful that there have been financial penalties imposed on both the Applicant and the Agent. However, even if the element had been argued by the Applicant, the Tribunal does not consider that it is in a position to consider the totality of culpability of the Applicant and his Agent, given that there are matters which will be determined in respect of the Agent in due course in the other Tribunal proceedings brought or that it needs to do so. In any event, there can be offences by more than one person and in considering the appropriateness of the action against and penalty against one offender, the fact of another offence being punished is not relevant.

130. Therefore, although the Tribunal asked questions which had the potential to be relevant to the level of penalty, in the event they were not. There was no reason for the Tribunal to consider whether it ought to depart from the Respondent's policy and application of that as to the level of penalty where it had not been asked by the Applicant to do so.

131. For the avoidance of doubt, the Tribunal does not seek to suggest whether it would have departed from the policy with regard to the level of penalty if it had been asked to. The Tribunal seeks only to make clear

that in the circumstances, it was not a matter raised by the Applicant and so was not a matter for the Tribunal to consider.

Conclusion

132. The Tribunal is satisfied beyond a reasonable doubt that the Applicant was committing an offence under section 72(3) of the Act, the Respondent having proved the Applicant to be in breach of the terms of the Licence and the Applicant having failed to demonstrate a reasonable excuse.

133. The Tribunal upholds the imposition of a financial penalty and in the unchallenged um of £7,500.00.

Fees

134. The Tribunal determines that as the Applicant has failed in the application to quash the financial penalty and there has been only a modest reduction in amount of the penalty itself, the fees paid by him should be borne by him and not repaid by the Respondent.

135. The most common outcome is that fees follow the event, so an unsuccessful party, as the Applicant essentially is having failed to have a financial penalty overturned, will not usually have its fees paid by the successful party. The Tribunal considers that to be appropriate in this case. The Applicant has been considered to have committed a criminal offence. The Applicant has achieved a modest reduction in the level of the financial penalty but no more than that. There is nothing which would support the Respondent having to bear the fees.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case and is to be sent 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.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.