FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/43UM/HNA/2024/0014
Property	**:**	Gables, Pembroke Road, Woking, Surrey, GU22 7DY
Applicant	**:**	Deoranee Boodia
Representative	**:**	
Respondent	**:**	Woking Borough Council
Representative	**:**	Ms Amanda Francis
Type of Application	**:**	Appeal against a financial penalty - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal Members	**:**	Judge J Dobson Mr P Cliffe- Roberts FRICS Ms T Wong
Date of Hearing	**:**	23rd April 2025
Date of Interim Decision	**:**	30th April 2025

INTERIM DECISION

Interim Decision

1. **The Tribunal does not vary the time for the Applicant to have applied to the Tribunal. The application was accordingly made out of time. The Tribunal therefore lacks jurisdiction in respect of the application, which is consequently dismissed pursuant to rule 9(2)(a) of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.**

Background

2. The Respondent issued a Final Notice of a Financial Penalty dated 3 June 2024. On 11 July 2024 the Tribunal received an appeal from the Applicant against a financial penalty made under section 249A of the Housing Act 2004 ("the 2004 Act"). The Tribunal sent a copy of the appeal to the Respondent as the Local Housing Authority ("LHA"). Directions were issued on 3 December 2024 setting out the background of the appeal and details of the time limits applicable for appeals against financial penalties made under section 249A of the Housing Act 2004.

3. The Directions identified that the application appeared to have been received out of time. The time limit, in the absence of one being prescribed in the Act, is provided for in The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"). The parties to make representations by 17 December 2024. It was identified that the Tribunal can decide to grant an extension of the time limit beyond 28 days in accordance with Rule 6 of the Rules and its overriding objective set down in Rule 3 but that if it is not satisfied that an extension it may move to dismiss the claim- more accurately the Tribunal would have to dismiss the application lacking the jurisdiction to determine it.

4. The Respondent made representations dated 10th December 2025, accompanied by other documents including case authorities, in a 28- page bundle. The Applicant made representations by an email dated 15 December 2024. Attached to the email was a copy of an email thread and the HMO Licence dated 26 April 2024. By an email dated 24 December 2024, the Respondent sought to respond.

5. The Tribunal determined that a preliminary hearing was necessary to decide whether the Tribunal should exercise its discretion to allow the application to appeal to proceed out of time (if indeed it was). The Tribunal listed a preliminary hearing to take place remotely by video on 4th March 2025, but difficulties arose such that the hearing had to be re-listed. It was re-listed for hearing today 23rd April 2025.

6. It merits noting that no provision had been made for witness evidence. That did not of itself mean that there might not be a need for witness evidence. However, neither party had applied for permission to rely upon any witness evidence or otherwise indicated any desire to do so.

The hearing

7. The hearing was conducted as video proceedings. The Applicant represented herself, accompanied by her daughter. The Respondent was represented by Ms Francis, solicitor with the Respondent. She was accompanied by Ms Woodward, a Housing Officer. The Tribunal is grateful to the above for their assistance in this case.

8. The hearing was due to commence at 10.00am but the Tribunal waited until 10.10am in case the Applicant, who was not in attendance at 10.00am, was experiencing difficulties in joining the hearing. The Applicant was still not in attendance at 10.10am.

9. The Tribunal therefore sought representations from the Respondent as to whether the Tribunal should proceed in the absence of the Applicant. The Tribunal was mindful that it is able to proceed in the absence of a party pursuant to rule 34 where it is satisfied that the party has been notified or reasonable steps have been taken to notify and the Tribunal considers it in the interests of justice to proceed with the hearing. Ms Francis submitted that the Respondent had copied in the Applicant to its email to the Tribunal as to who would attend the hearing. Further that there had been ample notice and that on the previous hearing date, the Applicant in response to problems joining the hearing had contacted the Tribunal office by telephone. Hence, she was aware of what to do if there were difficulties with joining. The Tribunal retired to consider the matter and determined that it was appropriate to proceed. The Tribunal therefore stated that and its reasons when the hearing resumed. In the event, there is no merit in repeating those.

10. The Tribunal therefore turned to the substance of the application and envisaged that not requiring much hearing time in the absence of the Applicant and provision of any additional information from her. The Tribunal sought submissions on behalf of the Respondent about the situation as appeared to be indicated in the Applicant's submission. The Tribunal noted the reference to medical matters in emails dated 25th July 2024 and 29th July 2024. Ms Francis was not aware of those. It was established that they had been sent to the Tribunal but not also to the Respondent.

11. However, at that point, at approximately 10.40am or perhaps a little earlier, the Applicant joined the hearing.

12. It was therefore necessary to explain the matters which had been addressed in the Applicant's absence and to effectively re- start the hearing. The Tribunal clarified that the Applicant had the Respondent's representations, so the 28- page bundle. The Applicant said that she did.

13. The Tribunal heard from the Applicant and from Ms Francis on behalf of the Respondent. Having done in respect of any matters they wished to raise and any matters the Tribunal wished to raise with either of them, the Tribunal explained the process with regard to its decision on the matter and the hearing concluded.

The relevant provisions

14. The 2004 Act covers various offences in respect of housing. At that point, an LHA could pursue a prosecution of persons meeting certain descriptions.

15. The Housing and Planning Act 2016 ("the 2016 Act") gave LHAs the power instead of prosecuting to impose a financial penalty, a civil penalty. The LHA must be satisfied to a criminal standard that the offence was committed. There is a process set out, including enabling the alleged offender to make representations, which culminates in a document called a Final Notice, that is to say of the imposition of a civil financial penalty. The recipient of a financial penalty is able to apply to the Tribunal against the imposition of and/ or amount of the penalty. The process is set out in Schedule 1 to the 2016 Act. That is a very brief synopsis but there is nothing identifiably contentious about it and no issue about the specific provisions arose in the hearing. As such, the Tribunal considers that the above will suffice.

16. In respect of that Final Notice, paragraph 6 provides as follows:

> "If the authority decides to impose a financial penalty on the person, it must give the person a notice ("a final notice") imposing that penalty."

17. Paragraph 10 (1) of Schedule 1 enables an appeal to the Tribunal and paragraph (2) states that:

> "An appeal under this paragraph must be brought within the period of 28 days beginning with the day after the date on which the final notice was sent".

18. That calculation of time appears to have been drafted to reflect provisions of the Rules. Rule 27 of the Rules states:

> "(1) This rule applies where no time limit for starting proceedings is prescribed by or under another enactment.
>
> (2) Where the notice of application relates to a right to appeal from any decision (including any notice, order or licence), the applicant must provide the notice of application to the Tribunal within 28 days after the date on which notice of the decision to which the appeal relates was sent to the applicant."

19. The period in paragraph 10 (2) is that same as it would have been under the Rules if that paragraph had not been included in the 2016 Act, although the precise wording is slightly different.

20. Rule 6 of the Rules says:

> "(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.
>
> (2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

(a) extend or shorten the time for complying with any rule, practice direction or direction, even if the application for an extension is not made until after the time limit has expired;"

21. Rule 3 of the Rules provides the following:

(1) The overriding objective of these rules is to enable the tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes

a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resource is of the parties and of the Tribunal;
(b) avoiding unnecessary formality and seeking flexibility in the proceedings
(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
(d) using any special expertise of the Tribunal effectively and
(e) avoiding delay as far as compatible with proper consideration of the issues

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

(a) Exercises any power under these rules; or
(b) interprets any rule or practice direction."

22. The Tribunal realises that it has started with the highest- numbered rule and worked backwards but trusts the logic of that will become apparent. In respect of the matters below, it is rule 6 and especially rule 6(3) which lies at the heart of the decision to be made should time be extended.

23. The Interpretation Act 1979 at section 7 states- essentially the same as the much earlier Interpretation Act 1889 did at section 26 (the section referred to in the Act below)- the following:

"**7 References to service by post.**

Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

24. Section 233 of the Local Government Act 1972 ("the 1972 Act"), specifically relevant to service by local authorities such as the Respondent provides:

"233. Service of notices by local authorities

Subject to subsection (8) below, subsection (2)-(5) below shall have effect in relation to any notice, order or other document required or authorised by or under

any enactment to be given to or served on any person by or on behalf of a local authority or by an officer of a local authority.

Any such document may be given to or served on the person in question either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

.....

For the purposes of this section and of section 26 of the Interpretation Act 1889 (service of documents by post) in its application to this section, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that— .....[not relevant]."

25. The Housing Act 2004 at section 246 provides as follows:

"(5) A document required or authorised by any of Parts 1 to 4 or this Part to be served on a person as—

(a)a person having control of premises,
(b)a person managing premises,
(c)a person having an estate or interest in premises, or
(d)a person who (but for an interim or final management order under Chapter 1 of Part 4) would fall within paragraph (a) or (b),

may, if it is not practicable after reasonable enquiry to ascertain the name or address of that person, be served in accordance with subsection (6).

(6)A person having such a connection with any premises as is mentioned in subsection (5)(a) to (d) is served in accordance with this subsection if—

(a)the document is addressed to him by describing his connection with the premises (naming them), and
(b)delivering the document to some person on the premises or, if there is no person on the premises to whom it can be delivered, by fixing it, or a copy of it, to some conspicuous part of the premises."

Consideration

26. The Tribunal does not recite the parties' cases at length ahead of considering the issues arising and making determinations about them. The Respondent's arguments are very much set out in the written submissions: the Applicant's case as to why time should be extended had not been and therefore needed to be explored insofar as appropriate in the hearing.

27. There are 3 specific elements addressed in this Decision (albeit the first two could arguably be combined), and the Tribunal takes each in turn, namely:

i) When, if at all, was the Respondent's final notice given to/ sent to the Applicant;
ii) Was the Applicants out of time for applying when she did so; and
iii) If the Applicant was out of time, should the time for applying to the Tribunal be extended to the date of the actual application?

28. Before doing so, the Tribunal should identify that the Applicant did not actually make an application for the Tribunal to exercise its discretion to extend time to allow their appeals to continue. Strictly, consideration could stop after answering question ii) whatever the outcome of that may be.

29. However, it has been implicit in the Tribunal's dealings with the application that it would also answer question iii) and the parties appear to have understood that. Hence, it would not be appropriate now to take any point about the lack of application by the Applicant. The answer might be different another time.

i) **When, if at all, was the Respondent's final decision sent to/ given to the individual Applicants?**

30. This element requires findings of fact to be made and applied. The element proved unexpectedly complicated in the hearing. The Tribunal particularly addressed this issue with the Respondent. In the event, this issue proved rather more complex than anticipated.

31. The Tribunal starts with what actually happened both in the situation itself and then at the hearing. The Tribunal then moves on to consider the requirements.

32. It is not in dispute that the Final Notices were placed (with other documents) through the letterbox at the Property: the question is whether that is sufficient.

33. The Respondent did not address this issue in writing at all beyond setting out the fact of the Final Notice being delivered. What that amounted to in terms of any relevant requirements in respect of the Notice being "given" was not mentioned. That was why the Tribunal needed more from the Respondent about this aspect. The Tribunal sought clarification as to service of the Final Notice, and in the first instance of the date of service of the Final Notice.

34. Miss Francis submitted that service took place when the notice was placed through the door of the Gables at 2:28 pm on the 3rd of June 2024. The Tribunal queried that. The Tribunal suggested that the usual understanding in respect of service, and indeed the approach taken in the Civil Procedure Rules which are much more specific about such matters than the Rules provide for, was that documents placed through a letterbox were treated as served the following day, so that service would be affected on the 4th of June 2024. The Respondent did not specifically accept that point in the hearing, although could not provide any basis for service occurring at the point of placing the documents through the letterbox.

35. The enquiry as to the date of service arose from the necessity for the notice to have been served as the Tribunal perceived the requirement to be. It is unfortunate with the benefit of hindsight that reference was made to service and the date of service. The Tribunal addresses the reason for that below.

36. The more significant matter was the Tribunal seeking clarification that the Respondent was able to serve, although it turns out that was not the relevant word specifically, its notice in the manner sought to do so. Ms Francis suggested that the Respondent had complied with the "service provisions". The Tribunal enquired as to what "service provisions" were referred to. Clarity was needed as to the nature of those asserted provisions and compliance with them.

37. Ms Francis first referred to section 246 of the 2004 Act. However, it was not apparent that those covered service in the manner sought to be affected. They did not refer to delivering a notice by way of putting it through a letterbox only. There was reference to hand it to a person or fixing it to a property. At first blush the provisions were a little hard to follow. Ms Francis conceded that service was not affected as set out in section 246.

38. Ms Francis then relied upon section 233 of the 1972 Act. She rightly identified that does provide for delivery to the property as being proper service. For clarity, no reference was made to the Interpretation Act and it is explained above that is included in this Decision simply because section 233 of the 1972 Act refers to an earlier version. That aside, the Interpretation Act adds nothing in practice.

39. The Applicant made no initial submission about the date or method of service. She asserted after the Tribunal's queries with the Respondent that she had not received the Final Notice. She said that she was in the Property all day, only going out to shops at the end of the afternoon/ early evening and so the Respondent's officer could have rung the doorbell and handed the communication to her. The Applicant subsequently backtracked somewhat, stating that she could not remember whether she received the Final Notice or not.

40. The odd position from consideration of Section 246 at some pace in the hearing and section 233 was that there appeared to be a divergence between the provisions. It was unclear why. The Tribunal speculated that section 246 may provide an additional means of service. The Tribunal now considers it clear, having had the opportunity to consider the provisions of section 246 of the 2004 Act that subsection (6) has to be read in the context of subsection (5) and in particular the lack of identification of person who is one of those listed in subsection (5). It does not relate to service more generally. Hence, any potential inconsistency with section 233 of the 1972 Act does not arise. There is simply an additional manner of service provided for in a specific situation. As it turns out, that has no relevance to this case in any event.

41. The Tribunal also noted following the hearing that whilst the 2004 Act provided for the relevant offences, it does not address civil financial penalties or service of Final Notices in relation to them. Such penalties were only introduced by the 2016 Act and so the 2004 Act had no need to address them. The Tribunal was not referred to any provisions related to service, or other appropriate term, within the 2016 Act.

42. Returning to why the Tribunal had referred to "service", that principally reflected the Respondent not having mentioned the provisions which were relevant and their contents. The particular wording of the 2016 Act was not before the Tribunal.

43. As will be noted from the provisions now quoted above, the 2016 Act makes no reference to service and a Notice being served. Rather, it refers to a Notice being "given" in paragraph 6. It refers to the Notice being "sent" in paragraph 10 (2). Strictly, there are no "service" provisions in the 2016 Act.

44. It will be identified that there is a difference between the wording used in the two provisions and the requirement in one for the Final Notice to be "given" and the provision in respect of calculation of time, which is calculated from the point at which the Final Notice is "sent". That renders matters potentially unhelpfully more complicated than they could perhaps usefully be.

45. The Tribunal is unaware as to whether there is authority from the Upper Tribunal about this point. That is to say whether there is in fact any distinction. However, the Tribunal is not specifically aware of any and was not referred to any. Hence the Tribunal adopts the premise that there is no such authority in the absence of being informed of one.

46. There are consequently two but at first blush potentially different elements. To re- iterate, the first is the need for the Notice to be "given", although the exact date of that is not then directly relevant. That is because of the second element giving a time limit for applying from the date on which the final decision is "sent". That is sent as opposed to received or anything else.

47. Taking the first element, plainly the Final Notice must be "given". The 2016 Act says so. If the Final Notice were "sent" (or indeed served) in some manner which did not also amount to it being "given", that would not comply with the requirements. The Tribunal comments below on whether the two words mean something different in this instance, but in the event this Decision does not rest on that.

48. Section 233 as quoted above makes it clear that the provisions do not only apply where a document is to be served but also where it is to be "given". Hence, it is clear that leaving the Notice at the proper address as termed- the Property in this instance- amounts to the Notice having been "given". The actual receipt of the Notice by the intended recipient is not required.

49. Whilst in the circumstances it strictly matters not, the Tribunal rejects as a matter of fact the Applicant not having received the Final Notice. It was not explained either how the Applicant would not have received an envelope addressed to her and placed through the front door of the Property at which she resided. The Tribunal finds as a fact on the balance of probabilities that the Applicant did receive the Notice.

50. The Tribunal is mindful that the parties were not asked to address the question of the notice being "given" in terms, because the Tribunal was unaware of that term applying. However, the Tribunal is confident having

heard from the parties that neither would have been at all likely to add anything of substance and which there is any measurable prospect would have altered the outcome of this Decision.

51. The Tribunal therefore turns to the questions of whether the Final Notice was "sent" and, if so, when it was "sent", from which the time limit for applying to the Tribunal is calculated. It should be clarified that the question of when the Notice was "sent" was specifically addressed in the hearing, although at the time the Tribunal in ignorance of the provision in the 2016 Act took that as arising from the Rules.

52. Ms Francis contended that the Tribunal should treat the delivery as meeting the requirement for the Notice to be "sent" but did not expand at all on that. However, firstly it was further clarified that the Notice had been emailed to the Applicant by Ms Francis on the 3rd of June 2024, at 1.31pm. The email was contained in the Respondent's submission bundle.

53. The email with the notice had been sent, electronically in the event. The Rules do not state, and neither party sought to argue otherwise, that sending must be by post or otherwise that sending by email is not acceptable.

54. The Tribunal determines that irrespective of whether delivery to the Property is encompassed by the word "sent", the email was encompassed. Hence the Notice being sent by email meant that it was also "sent" for the purpose of the 2016 Act.

55. The Tribunal considered it a little odd that there was the reference in the 2016 Act (or indeed more accurately at the time the Rules) to the date on which the decision was "sent". The particular paragraph of Schedule 1 makes no reference to handing over or to delivery. At first blush, the delivery of the Final Notice to the Property did not provide a date on which the notice was "sent" from which to calculate time, at least as the word "sent" would usually be understood. Placing a document through a letterbox would not in ordinary use of English amount to sending it.

56. However, and whilst not directly relevant in light of the above, the Tribunal considers that the Act cannot have intended "sent" to be construed restrictively. The wording would be likely to have been aimed at providing a clear time from which the 28 days could be calculated- the time of sending out to a single one and easily capable of being demonstrated, whereas the date of the Notice being served, for example, produces a number of possibilities.

57. However, it would be illogical for the Act to have intended to impose a requirement for something to be "sent" rather than otherwise "given" to a person where the time of that could also be easily demonstrated and there is no discernible reason for limiting the manner in which the relevant decision can be provided by one party to the other.

58. That is even more apparent, the Tribunal considers, from the fact that the same Schedule uses both the word "given" and the word "sent". The Tribunal

determines it would be nonsensical for the proper construction of the 2016 Act to be that Schedule 1 intends the two words to mean different things and for an LHA to potentially have to take two steps, one to comply with one provision and one to comply with the other.

59. The Tribunal determines that for these purposes, the word "given" and the word "sent" mean the same. Consequently, if the Tribunal had needed to determine whether placing through the letterbox amounted to "sent", the Tribunal would have determined that it did, which is to say that "sent" would have been construed to include "handed", "delivered" or other method which would be an acceptable way of the Notice being "given".

60. Hence the Tribunal found that the notice was "sent" to the Applicant at the time of the email.

ii) Was the Applicant out of time for applying when she did so?

61. This aspect is much simpler to deal with and so can be answered in short order. This element also requires findings of fact to be made and applied but rather fewer.

62. In the hearing, the Tribunal was inclined to the view that the last date for the application being made in time had been 2nd July 2024. That is the last day of a period of 28 days starting after the 4th June 2024. However, on reflection, given that the Act calculates time from when document is "sent" not from when it is served, the period of 28 days commences the first day after the 3rd June 2024, so on 4th June 2024, and the last day of the 28 days is the 1st July 2024.

63. Consequently, any application from the 2nd of July onwards was out of time. It can be added that if the first date for an application being out of time had been one day later, that would not have altered any of the Tribunal's determinations below except for the number of days being one different.

64. As identified above, the application to the Tribunal was made by the Applicant on 11th July 2024.

65. It necessarily follows that the application to the Tribunal was submitted more than 28 days from the Final Notice being sent to the Applicants and hence the Applicant was out of time in making her application. The Tribunal so finds. Consequently, unless the Applicant can succeed with the time for the appeal being extended, she may not appeal because she is out of time to do so and the Tribunal has no jurisdiction to determine any appeal.

iii) If the Applicant was out of time, should the time for applying to the Tribunal be extended to the date of the actual application in each instance?

66. The Tribunal turns to this question, which is in effect whether it is appropriate to vary the time for the Applicant to make the application to the Tribunal up to and including the date on which the Applicant sought to do

so. This element is concerned not so much with making findings of fact as very much involving the exercise of discretion in making a case management decision.

67. Although it was not put this way by either side in terms, the Tribunal considers that any application for time to be varied is akin to an application for relief from sanctions applied by the Rules. Hence any consideration by the Tribunal here of extending time is in effect consideration of whether to grant relief from sanctions. The particular sanction is that if the Rules are not complied with in respect of the time limit, the Applicants may not bring their applications.

68. The case authorities to which the Respondent did make reference were *Pearson v City of Bradford Metropolitan District Council* [2019] UKUT 291 (LC) and *Haziri & Qela v LB Havering* [2019] UKUT 330 (LC)

69. Pearson was a case relating to strike out of an application in respect of a financial penalty. The judgment refers to whether the Tribunal has a discretion to extend time, concluding it does, considers the explanation given and considers whether that is a "good reason" for the application out of time. The phrase "good reason" is mentioned twice within the judgment.

70. *Haziri* was related to an application in respect of a financial penalty also and again there had been a refusal to consider the late appeal. The judgment in that appeal addresses the approach to be taken in longer terms. It specifically refers to the Court of Appeal judgment in *Denton v T H White Limited* (and other cases) [2014] EWCA Civ 906 and in particular the judgment of the majority of the Court- the Master of the Rolls and Vos LJ- given in that.

71. *Denton* does not apply perfectly to this situation. It is a decision made applying the Civil Procedure Rules (the "CPR") and not the Rules i.e., of the Tribunal. That has relevance because comments made were directed towards the wording of the CPR and, rather inevitably, not towards the wording of the Rules. The decision is also directed towards a failure to comply with a requirement within the course of an ongoing case. It was not directed towards the time limit for instituting proceedings in the first place.

72. Nevertheless, the Tribunal accepts that the Upper Tribunal has made clear on a number of occasions that this Tribunal should apply the rationale in *Denton* by analogy. That includes the Land Chamber's decision in *Simpsons Malt v Jones* (and other cases) [2017] UKUT 460 (LC), an appeal from a decision of the Valuation Tribunal for England, which is a different Tribunal to this one but where the appellate tribunal is the same and the earliest such reference of which the Tribunal is aware. *Haziri* is of course another occasion and specific to an application to the Tribunal late in respect of a financial penalty, so it would be hard to find anything more directly on point.

73. *Haziri also refers* to a judgment of the Supreme Court in *Global Torch Ltd v Apex Global Management Ltd* (No 2) [2014] UKSC 64, in which it was said

that "the strength of a party's case on the ultimate merits …….. is generally irrelevant when it comes to case management issues".

74. In addition, in the Supreme Court in *BPP Holdings Limited v Commissioner for Her Majesty's Revenue and Customs* [2017] UKSC 55, it was said by Lord Neuberger, whilst acknowledging that the CPR did not apply to Tribunals:

"In a nutshell, the cases on time-limits and sanctions in the CPR did not apply directly, but the tribunals should generally follow a similar approach."

75. Hence, the Tribunal follows the case authorities and the approach in *Haziri* in particular and does apply the rationale in *Denton*, with some limited modification to reflect the Rules and the position in this particular set of proceedings.

76. The Tribunal does not directly apply *Pearson*. That was a much shorter decision- less than a page. Hence it rather inevitably could not address the appropriate test to be applied in detail. The Tribunals also considers that too much may have been read into the phrasing used since that decision. It is not uncommonly suggested to the Tribunal, as the Respondent has in this case, that the test is one of whether there was a "good reason".

77. However, nowhere else is such a test stated, whereas it is in contrast clear that the Tribunal should adopt an approach akin to that set out in *Denton*, where the test is not simply one of whether there was a good reason for any failure, much as the nature of the reason and the quality of it arises in stage 2 of the process *Denton* sets out, as explained below.

78. The Tribunal respectfully considers that the reference in *Pearson* to a "good reason" was something of a shorthand and especially in respect of stage 2, the Upper Tribunal looking at the reason advanced in *Pearson* and not finding it assisted the appellant. The Tribunal does not consider that *Pearson* sought to create a different and stand- alone test.

79. Just for completeness, if the Tribunal is wrong and *Pearson* did so seek, there would be an inconsistency between *Pearson* and *Haziri,* the Tribunal considers. The Tribunal prefers the approach in *Haziri* because of the consistency with other judgments and so would in any event have adopted that.

80. The Tribunal adds for completeness that it is also aware in broad terms of various judgments of the higher courts which have applied *Denton* to various situations, whether by the High Court at first instance or in appeals against decisions of the County Court. However, none were referred to by the parties and neither did the Tribunal refer the parties to any. Given that these proceedings relate to the Rules to be applied by this Tribunal and none of the Court decisions did, the Tribunal does not consider any could have added much to *Denton* itself for these purposes.

81. *Denton* explained that it "clarified and further explained" guidance previously given by the Court of Appeal in a previous judgment, *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, which had been the subject of some criticism for its effects and perceived harshness. It was considered in *Denton* that *Mitchell* had been "*misunderstood*" and was being "*misapplied*".

82. It was explained that a Judge, or here the Tribunal, should address an application for relief from sanctions in 3 stages. I adopt those 3 stages in applying Denton by analogy and take each stage separately.

The First Stage

83. In respect of the first stage of the test in *Denton*, the question is the seriousness and significance of the default in compliance with, in this instance the Rules.

84. The Respondent's written submissions referred to the extent of the delay. They referred to *Haziri* and in particular that the Upper Tribunal had stated that a failure to meet a 28- day deadline by 10 days was significant. In effect that was given that it represented a significant proportion of the time allowed to appeal. The Tribunal noted in the hearing and does so again now, that the judgment by the Upper Tribunal does not in fact state the above.

85. Accurately, what the Upper Tribunal determined was that the First Tier Tribunal was able to find in that case the period of 10 days lateness to be significant- which is the finding that the Tribunal had made. The Upper Tribunal did not say that the First- Tier Tribunal must find a period of 10 days to be significant- and that is unsurprising because it is for the First Tier Tribunal to make findings of fact in the context of the evidence before it and so for the Upper Tribunal to seek to proscribe what such a finding must be would go rather too far.

86. Nevertheless, the Tribunal agrees that the delay in this case in the making of the Applicants' applications was also serious and significant.

87. The period of delay was relatively high in proportion to the 28- day period in which the applications to the Tribunal were required to be sent or delivered.

88. That said the Tribunal considers that the 10- day period is not the most relevant point in relation to seriousness and significance. The 3- month delay in progress of the case between the Directions on 3rd December 2024 and the original hearing listed 4th March 2025 is of somewhat more relevance. The Tribunal considers it appropriate to ignore the several further weeks to the hearing 23rd April 2025 because that was an unfortunate matter which arose from difficulties with the previous hearing rather than for any other reason, much as the cumulative effect becomes an almost 5- month delay.

89. The Tribunal finds that but for the need to consider this preliminary issue, the final hearing would have been taking place by around and about 4th March 2025 and the case would have been concluded then or shortly after.

In contrast, if the application were now to proceed, the final hearing would be some months after the case would have been likely to otherwise finish.

90. The Tribunal finds that delay to be both serious and significant.

91. However, the Tribunal also consider that there is another at least equally relevant aspect.

92. The Tribunals consider that the serious and significance is primarily about the additional Tribunal administration and hearing time and other resources involved and about the additional resources and time for the parties. If the Applicant's application had been made in time, there would of course have been no need to consider whether the application should be permitted to proceed out of time and there would have been no requirement for written submissions on the matter by the Respondent or it should be said any steps to be taken about the issue by the Applicant.

93. Equally, the Respondent would not have been involved in any other work in relation to the application, including any preparation for the hearing and the advocacy undertaken. The scarce public resources of concern in Denton- and which have not noticeably improved since, indeed the opposite- are also relevant in the context of the local council Respondent.

94. Likewise, and even more significantly, the Tribunal would not have been required to devote precious hearing time to hearing the application and instead could have used that session for other matters requiring hearing. Judicial time would not have been required to hear the application across what turned out to be most of two hours, nor for preparation- in considering the written submissions, the application and the documents and the case law bearing on the approach to be taken for the hearing- nor in providing this Decision.

95. That is several hours of judicial time which have been required to be spent and which could otherwise have been utilised on other matters and need not have been spent on this task. The Tribunal accept, it should be added, that whilst the hearing itself was listed for 2 hours, that was generous. An hour may have sufficed. However, because the Applicant only joined in the event at approximately 10.40am when a hearing in her absence was almost concluded, the hour (or so) necessary to deal with a contested hearing could only commence at that time.

96. Having set out all the above it will come as no surprise that the Tribunal determines that the effect of the Applicant's default was serious and significant.

97. Whilst the judgement in Denton explains that if the breach was not serious or significant, any relief will usually be granted and it should not be necessary to move to stages 2 and 3, in the event it is necessary to move to those stages.

The Second Stage

98. At this stage, the Tribunal needs to consider the reason for the default. It needs to identify, in effect, whether that was a good reason or was not.

99. The Court of Appeal explained in *Denton* that this stage did not derive from the wording of the CPR as applicable in that case, although it said, "but it is nonetheless important particularly where the breach is serious or significant. The court should consider why the failure or default occurred". The nature of the reason is, per *Denton*, relevant to only a single stage of a 3- stage test.

100. Given that the Applicant had set out various matters in her written case but had not addressed specifically the reason for the late, as the Tribunal has found it to be, application, the Tribunal particularly sought clarification from the Applicant as to why the application had not been submitted on time.

101. The Applicant sought to repeat matters she had stated generally about the case. However, in focusing on the timing of the application in particular, the Applicant's position as expressed in the hearing, was that she had been depressed at the closure of her care home in the May- although the Tribunal understood that to be 2023 because she referred to renting out rooms from June and the Respondent had attended in the Autumn, so that could not be 2024, by which time the penalty had been imposed and the Applicant had applied.

102. The particular reason given was that the Applicant had not intended to go to the Tribunal and had been seeking to settle the matter with the Respondent. She hoped to achieve a lower penalty (she had referred to being unaware of the need for a HMO licence, having run a home for many years and not rented property out, that she had been shocked by the requirements, had apologised for not meeting them and had organised compliance as swiftly as she could albeit that the had been some weeks of unavoidable delay due to contractors for some appointments or works).

103. As the Tribunal characterised it in the hearing, in essence the Applicant's case was not that she could not have complied with the time limit but rather that she was hoping not to need to do so.

104. The other matter to which the Applicant referred was that she felt correspondence from the Respondence had been "heavy" and that there had been unreasonable pressure placed on her as opposed to support for her. The fact that the Applicant regarded herself as having made a mistake and seeking to correct that was plainly a significant element.

105. Ms Francis submitted that there had been little by way of explanation or supporting documents in the Applicant's representations. The Tribunal accepts that but considered it in the interests of justice to explore the Applicant's position, to which the Respondent was able to respond.

106. Effectively the Applicant's case was, or at least needed to be, that there was a good reason, or at least otherwise a reason which was not a bad one weighing against the Applicant.

107. The Tribunal did not find the reason to be one which assisted the Applicant.

108. The Tribunal understood that the Applicant might well not wish to have to engage in proceedings. It is plain that what the Applicant ought to have done is to apply and, having done so, to seek to reach a compromise with the Respondent. It is understandable that a party would not wish to and not easy to imagine parties having any pressing desire to engage in litigation which can be avoided. The Tribunal had no difficulty accepting that the Applicant had not applied late out of any desire to cause difficulty to the Tribunal or the Respondent or any other bad reason.

109. However, the Tribunal found the reason was not a particularly good one. If the Applicant had been prevented from applying, perhaps for a medical reason, that would be one thing. In the event medical conditions were not demonstrated to have prevented an application. Effectively, the Applicant had made a choice, the Tribunal found, and a choice which was objectively a poor one in the event.

110. Taking matters in the round, the Tribunal considered that the reason for the late application did not lend weight to the application being granted.

111. Consequently, the question becomes one of whether despite the Applicant's difficulties at stages 1 and 2, the wider consideration of matters in the Third Stage enables relief to be granted and time to be extended.

The Third Stage

112. The Tribunal considers that up to this point, the findings of fact and the determinations have been relatively simple. It now reaches the stage considering the other relevant factors and determining the impact of those on whether or not the time for the Applicants to apply to the Tribunal should be extended to include the date in which they did so. The Tribunal notes that in *Denton*, Judges- and so equally this Tribunal- are cautioned against both an unduly draconian approach and an unduly relaxed one which fosters a culture of non- compliance. Both are said to be unreasonable.

113. The Tribunal note that carefully and that a nuanced approach is required but also that a culture of compliance was aimed at, avoiding satellite litigation.

114. Neither party said much which is relevant to this stage. The Respondent's case made no reference to it directly. The Applicant mentioned medical conditions and/ or provided some evidence of them with an email in July 2024 but one which was not sent to the Respondent.

115. There were two matters said to be of "particular importance" at stage 3 of the test laid out in *Denton* and should be given "particular weight". Those are stated as "(a) the requirements that litigation should be conducted efficiently and at proportionate cost; and (b) the interests of justice in the

particular case". That said, in *Denton* it was explained that the two factors did not have the "paramount importance" stated in *Mitchell*. So, it was not the correct approach to give other factors very little weight but equally the fact that the two elements were singled out for mention in the CPR was significant.

116. It will be appreciated that those two matters are ones specifically identified in rule 3.9 the CPR and do not appear in the Rules. The Tribunal considers the matters are ones which ought to be given consideration within the wide circumstances of the case but that some caution is needed against giving them the specific particular importance which would apply under the CPR in which they are specifically mentioned.

117. That said, both are obviously relevant. The interests of justice in particular do not need stating as a factor for them to be at the heart of what the Courts and Tribunals do. It would be difficult to make a proper determination in this instance without having regard to the interests of justice.

118. Nevertheless, the Rules as quoted above states that the over-riding objective is to deal with cases "fairly and justly". That is in substance the exact same as considering the interests of justice. It is difficult to identify anything which is more obviously in the interests of justice than dealing fairly and justly. The Tribunal makes clear that it has given that very careful consideration.

119. The Rules have different provisions which do not state the exact words of (a) in the exact order. However, they amount to very much the same thing as might be expected.

120. In the over- riding objective expressed in rule 3, it is said, as quoted above, that dealing fairly and justly includes "dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resource is of the parties and of the Tribunal ..... and avoiding delay as far as compatible with proper consideration of the issues.

121. Consequently, the Tribunal determines that the Rules require it to give matters akin to factors (a) and (b) significance, although not "particular importance" as such.

122. It is abundantly clear from the fact of the additional hearing and all of the work related to it, that dealing with the appeals proportionately and avoiding delay and any other matter which is broadly equivalent to conducting litigation efficiently is not assisted by the need to make determinations such as these. Indeed, the whole need to consider applications to proceed out of time goes against promoting the proportionality of dealings and timely and cost- effective proceedings. It not only adds to time spent but also to timescale.

123. The effect of the breach is not just relevant at the First Stage but as identified in *Denton* is also relevant in the Third Stage. So, too the explanation. Having already explained those effects above, the Tribunal does not seek to repeat them. It will be appreciated that they weigh in the considerations at the Third Stage and firmly against extending time for the appeals.

124. The same can be said in relation to more widely encouraging compliance with the Rules. The Rules are very clear about the timescale in which applications may be submitted where is no provision by or under an enactment.

125. The Tribunal is mindful that if the Applicants cannot proceed with their appeals, there is arguably something of a windfall to the Respondent. The Respondent avoids any challenge that there may have been to the amounts of the penalties. The Tribunal expresses no view as to what the outcome of any challenge might have been, much as it has carefully noted the Applicant's situation and the circumstances which existed. However, given the nature of the situation, the Tribunal does not consider that the Respondent can be criticised as acting opportunistically for opposing these applications or that any advantage which may accrue to the Respondent ought to carry much weight in the context of the other considerations in this instance.

126. The obvious and substantial problem for the Applicant is not just such of the matters above as properly weigh against her- and as explained not all should be so weighed- it is that she has failed to identify any other considerations which go more than very modestly in its favour. If she had managed to identify such considerations, the weight might potentially have been in favour of the appeals being permitted to proceed, so by the time being extended. Without that, the weight is very much against it.

127. The Tribunal considers that the very modest matters in the Applicant's favour- essentially primarily that her reason for being late whilst not compelling was not a bad one as such- are significantly outweighed by the weight against arising from the importance of proceedings being able dealt with proportionately, cost- effectively and without delay. The Tribunal determines that at the Third Stage taken in isolation, the balance is against granting relief from the effect of the time limit in rule 27 and extending the time to apply.

Conclusion

128. That leaves not only the default which is serious and significant, and which was not for a good reason, but also a default where the relevant considerations at the Third Stage also weigh against it.

Decision

129. The Tribunal returns to the fact that the decision to be made is not specifically one in relation to relief from sanction as such. Rather, the

decision is about when time ran and expired and also, as the Tribunal has dealt with matters, whether to extent time for the making of an application to the Tribunal by each of the Applicants pursuant to rule 6(3).

130. The Tribunal finds that time to apply had expired.

131. The Tribunal applies the above findings and conclusions and determines that it is not appropriate to exercise discretion to extend time. The Tribunal refuses to exercise case management powers pursuant to rule 6 of the Rules to extend the time for complying with rule 27.

132. The Applicant may not pursue her application out of time.

133. There is therefore no appeal which the Tribunal is able to consider. The Tribunal has the jurisdiction specifically granted to it and no jurisdiction otherwise. There is no jurisdiction here. It necessarily follows that is the end of the appeal, which is dismissed.

134. The Applicant shall bear the fees for the application to the Tribunal, there being no basis for any other outcome of that.

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

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.