



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

Case Reference : **LON/00BE/HMF/2024/0246**

Property : **33 Millpond Estate, West Lane,
London
SE16 4LZ.**

Applicant : **Maggie Heppell-Joyce
Mia Harley
Liliana Szerszynska-Thompson**

Representative : **Jamie McGowan – Advocate for
Justice for Tenants**

Respondent : **Charlotte Anya Samantha Lemmer**

Representative : **Harry Dyson Counsel instructed by
Oglethorpe Sturton & Gillibrand LLP
Solicitors**

Type of Application : **Application for a rent repayment
order by tenant

Sections 40, 41, 43 & 44 of the
Housing and Planning Act 2016**

Tribunal Member(s) : **Judge Tildesley OBE
Mr S Wheeler MCIEH CEnvH**

**Date and venue of the
Hearing** : **14 May 2025
10 Alfred Place, London, WC1E 7LR**

Date of Decision : **17 June 2025**

DECISION

Senior President of Tribunals Practice Direction: Reasons for Decisions 4 June 2024

1. This Practice Direction states basic and important principles on the giving of written reasons for decisions in the First-tier Tribunal. It is of general application throughout the First-tier Tribunal. It relates to the whole range of substantive and procedural decision-making in the Tribunal, by both judges and non-legal members. Accordingly, it must always be read and applied having regard to the particular nature of the decision in question and the particular circumstances in which that decision is made (paragraph 1).
2. Where reasons are given, they must always be adequate, clear, appropriately concise, and focused upon the principal controversial issues on which the outcome of the case has turned. To be adequate, the reasons for a judicial decision must explain to the parties why they have won and lost. The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. They must always enable an appellate body to understand why the decision was reached, so that it is able to assess whether the decision involved the making of an error on a point of law. These fundamental principles apply to the tribunals as well as to the courts (paragraph 5).
3. Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resources of the Tribunal, but to the significance and complexity of the issues that have to be decided. Reasons need refer only to the main issues and evidence in dispute, and explain how those issues essential to the Tribunal's conclusion have been resolved (paragraph 6).
4. Stating reasons at any greater length than is necessary in the particular case is not in the interests of justice. To do so is an inefficient use of judicial time, does not assist either the parties or an appellate court or tribunal, and is therefore inconsistent with the overriding objective. Providing concise reasons is to be encouraged. Adequate reasons for a substantive decision may often be short. In some cases a few succinct paragraphs will suffice. For a procedural decision the reasons required will usually be shorter (Paragraph 7).

Application and Procedural History

5. The Application is for a rent repayment order (RRO) under section 41 of the Housing and Planning Act 2016 ("2016 Act) for the offence of having control of, or managing, an unlicensed HMO, under Part

2 of section 72(1) Housing Act 2004 which is an offence under s40(3) of the 2016 Act. The Applicants applied for repayment of rent in the sum of £21,150.00 for the period of 5 March 2022 to 4 March 2023.

6. The Application was made on 9 July 2024 which was within 12 months of the alleged offence of no HMO licence being committed (12 July 2023). The Respondent accepted that the Application had been made in time.
7. The Tribunal heard the Application on 14 May 2025. Mr McGowan of Justice for Tenants appeared for the Applicants. Mrs Heppell-Joyce and Miss Szerszynska-Thompson attended in person. The second Applicant, Ms Harley did not attend because of her work placement in Japan. Mr Harry Dyson of Counsel represented the Respondent who attended in person.
8. At the commencement of the hearing the Tribunal dealt with the following three Applications:

(1) The Applicant's Application for further evidence dated 1 May 2025. The further evidence comprised:

- Two voicemail messages (transcripts and proof of receipt) from the Respondent's agent on 15 May 2021 to Mrs Heppell-Joyce regarding discussions with the Respondent about the need for an HMO licence (original audio attached separately);
- Emails between the Applicants and the Respondent's agent in May 2021 regarding a third tenant.
- An email from the Respondent to the First Applicant on 20 September 2023 referring to the Third Respondent and "*your other flat mate*".
- Various messages on a WhatsApp group chat, including all three Applicants, between October 2021 to April 2023 referring to the Property as their home.
- Various WhatsApp messages between the Second Applicant and the Third Applicant referring to the Property as their home.
- Emails from the Respondent's agent in December 2023 explaining that deposit protection was "*the responsibility of the landlord*" plus associated bank statement.

(2) The Applicant's Application for further evidence dated 9 May 2025, which consisted of various documents and

WhatsApp messages to show that the second Applicant, Ms Harley, occupied the Property.

(3) The Respondent's Application dated 14 May 2025 to play the audio recording (Exhibit MH2 of Applicant's case).

9. The parties agreed that the Application of 9 May 2025 was effectively redundant in view of the Respondent's admission that the Property during the relevant period was occupied by three persons. The Tribunal admitted the evidence.
10. The Applicants did not object to the Respondent's application dated 14 May 2025. The Tribunal permitted the Respondent to play the audio recording at the hearing and for Counsel to read out the accompanying messages.
11. The Respondent objected to the Application dated 1 May 2025. The Respondent's principal objection was that the evidence was always in their possession and that the Applicants had failed to offer up a plausible explanation why this evidence was not disclosed earlier. The Respondent also contended that the audio recordings that took place between the Respondent's agent and the Applicants were crucial evidence and prejudicial to the Respondent's case.
12. The Applicants contended that the further evidence was of significant probative value in respect of the Respondent's knowledge of the purported agreement to allow occupation of the Property by three persons and the Respondent's conduct concerning the protection of the tenancy deposit. The Applicant's apologised for the late production of evidence which was due to personal circumstances but pointed out that the prejudice to the Respondent was minimal. The Applicants argued that the further evidence did not materially alter the case which the Respondent had to answer. Further although the evidence was late the Respondent still had sufficient time (14 days) in which to provide rebuttal evidence.
13. The Tribunal concluded that the probative value of the further evidence outweighed any potential prejudice by its admission to the Respondent. Further the Tribunal agreed that the Respondent had had sufficient time to call rebuttal evidence. Having regard to the overriding objective the Tribunal decided to admit the additional evidence. The Tribunal observes that following the announcement of its decision on the Application, the Respondent did not ask for an adjournment to call rebuttal evidence.
14. In reaching its decision the Tribunal took account of the relevant details in the Application, the directions, the oral testimony of the first and third Applicants and their witness statements, the witness statement of the second applicant, the oral testimony of the Respondent and her witness statement and the documents in the

parties' hearing bundles including the additional evidence comprising documents and audio recordings.

15. The Representatives supplied the Tribunal with skeletons. The Tribunal applied the law as set out in sections 40 to 47 of the 2016 Act, and took account of the following authorities: *Marigold v Ors* [2023] UKUT 33 (LC); *Aytan v Moore* [2022] UKUT 27 (LC) at [52]); *Irvine v Metcalfe* [2023] UKUT 283; *Kumar v Kolev* [2024] UKUT 255; *Acheampong v Roman and others* [2022] UKUT 239 (LC); *Williams v Parmar* [2021] UKUT 244 (LC); *Daff v Gyulai* [2023] UKUT 134 (LC); and *Newell v Abbott and other* [2024] UKUT 181 (LC).
16. The Tribunal placed no weight on Mr McGowan's submission about the potential effect of a current Parliamentary Bill which he said would reverse parts of the Upper Tribunal decision in *Kumar*.

Decision

17. **The Tribunal orders the Respondent to pay to the Applicants the sum of £10,575.00, and to reimburse the Applicants with the application and hearing fees in the sum of £330.00 within 28 days from the date of this decision.**

The Issues

18. The principal issue in dispute was whether the Respondent had knowledge of the Property being occupied by three persons which had arisen from an arrangement suggested by the Respondent's agent and agreed to by the Applicants. The arrangement was that the three Applicants could live at the Property but only two of them would sign the tenancy agreement in order to circumvent the requirement to licence the Property as an HMO. The Applicants' case was that the Respondent knew about the arrangement to allow the three of them to occupy the Property in contravention of the HMO licensing requirement. The Respondent contended that she had no knowledge whatsoever of the arrangement and that there was no evidence to substantiate such a serious allegation against her. The Respondent maintained that she had a reasonable excuse which provided her with a complete defence to the alleged offence of controlling an HMO without a licence.
19. The remaining issue in dispute which would depend upon whether the Respondent had a reasonable excuse was the amount of the RRO.

The Agreed Facts

20. The following facts were agreed or were not in dispute:

- i. The Property was a three-bedroom self-contained flat on the first floor of a block of flats arranged over four storeys. The block was owned and managed by London Borough of Southwark. The Property had a shared bathroom, kitchen and a living room which was relatively large containing two small sofas, TV, coffee table and a dining table with four chairs.
- ii. The three Applicants occupied the Property from 30 June 2021 to 13 July 2023 as their main residence. Mrs Heppell-Joyce and Ms Szerszynska-Thompson starting living there from 5 June 2021. Ms Harley moved into the Property on 30 June 2021 but paid her contribution to the rent from 5 June 2021. The Applicants were not related to each other and lived in the Property as two or more separate households.
- iii. During the occupation of Property by the Applicants, there were two assured shorthold tenancy agreements. The first was granted on 5 June 2021 for a period of 12 months expiring on 4 June 2022 in return for a rent of £1,650 per calendar month. The second was for a period of 12 months commencing 5 June 2022 to 4 June 2023 in return for a rent of £1,800 per calendar month. On 9 May 2023 the Respondent issued a section 21 Notice requiring the Applicants to leave the Property by 12 midnight on 13 July 2023. The Applicants complied with the request to leave which they did on 13 July 2023.
- iv. The tenancy agreements named Mrs Heppell-Joyce and Ms Szerszynska-Thompson as the tenants. The agreements did not refer to the occupation of the Property by Ms Harley. Mrs Heppell Joyce paid the rent each month to the Respondent's agent, and recovered contributions to the rent from Ms Szerszynska-Thompson and Ms Harley.
- v. The Respondent withdrew her challenge to put the Applicants to proof on whether the three Applicants occupied the Property during the tenancy. At the hearing Counsel on behalf of the Respondent made a formal admission that the Property was occupied throughout the tenancy by the three Applicants.
- vi. The Tribunal finds that the Property met the conditions of the self-contained flat test in section 254 of the 2004 Act, and was, therefore, a house in multiple occupation.
- vii. The Respondent, Ms Charlotte Anya Samantha Lemmer, was named as the landlord in the tenancy agreement and is registered as the proprietor with absolute title of the

long leasehold interest in the Property at HM Land Registry under title number TGL108673.

- viii. The Respondent has resided in Barcelona since January 2016. The Respondent engaged Truepenny's of London Ltd, professional letting management agent, to manage the Property and collect the rent on her behalf. The Respondent's contract with Truepenny was dated 29 August 2018.
- ix. The Tribunal is satisfied that the Respondent was the person having control of and managing the Property.
- x. On 28 October 2021 the London Borough of Southwark exercised its powers under section 56 of the 2004 Act to designate HMOs occupied by three or more persons comprising two or more households for additional licensing. The designation order applied to the whole area of the district of the London Borough of Southwark and came into force on 1 March 2022. The designation order ceases to have effect on 1 March 2027. The Property is situated in the district of the London Borough of Southwark.
- xi. The Tribunal understands that London Borough of Southwark had operated Additional Licensing Schemes under section 56 of the 2004 Act prior to the coming into force of the present scheme.
- xii. The Respondent has made no application for an HMO licence for the Property. The Respondent did not have an HMO licence for the Property throughout the Applicants' occupation of the Property from 30 June 2021 to 13 July 2023.

Reasonable Excuse

- 21. The Respondent argued that she had a reasonable excuse for not having an HMO licence. The Respondent contended that she had let the Property to two persons, namely, Mrs Heppell-Joyce and Ms Szerszynska-Thompson, and that she had no knowledge of the occupation of the Property by Ms Harley.
- 22. The Tribunal observes that the Respondent has both the evidential and persuasive burden of proof to establish a reasonable excuse on the balance of probabilities. Martin Rodger KC, Deputy Chamber President, in *Marigold and others v Wells* [2023] UKUT 33 (LC) provided guidance on how the Tribunal should approach the defence of reasonable excuse. The Deputy Chamber President proposed a three stage approach derived from the decision of the

Upper Tribunal, Tax and Chancery Chamber, in *Perrin v HMRC* [2018] UKUT 156 (TCC), namely:

- 1) Establish what facts *the landlord (Tribunal italics)* asserts give rise to a reasonable excuse.
 - 2) Decide which of those facts are true.
 - 3) 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.
23. The Tribunal commences the factual enquiry with the Applicants' evidence on the Respondent's state of knowledge.
24. Mrs Heppell-Joyce stated that the Applicants had been searching for three bedroom apartments for sharers in London in April and May 2021. Mrs Heppell-Joyce said that they had viewed several apartments but were struggling to find anything within their modest budget that felt homely and in a location that worked for their respective jobs. Mrs Heppell-Joyce stated in May 2021 they found the Property on Zoopla and Rightmove which was advertised as a spacious three-bedroom apartment ideal for sharers. According to Mrs Heppell-Joyce, the Property had been listed for some time and the rent had been reduced. Mrs Heppell-Joyce said they arranged a viewing of the Property on 14 May 2021 which was attended by the three Applicants and the letting agent, Truepenny's. Although the Applicants had reservations about the state of cleanliness of the Property, they liked the feel of the estate and its location and decided to put an offer in writing¹ on the Property which was dated 15 May 2021 and named the three Applicants as prospective tenants. The offer was verified by Olivia Whalley of Truepenny's.
25. Following the receipt of the Applicants' offer, Olivia of Truepenny's, phoned Mrs Heppell-Joyce without making contact but left two voicemails on 15 May 2021. The transcripts of which were as follows:
- "Hi Maggie it's Olivia calling you back from Truepenny's here. I'm just about to send your offer to the landlord. I just wanted to check, are you guys three friends moving in? Umm, cos we might need a HMO licence for that in that case which I don't think we possibly have. But call me back anyway and we can have a catch up about it. Speak soon, bye."
(15:10 on 15 May 2021).
- "Hi Maggie it's Olivia calling here from Truepenny's, I hope you're good, I've just spoken to the landlord, she thinks there might be a way around the HMO licensing. Umm she's sure that she received an exemption card but she's going to email that over to me. Umm I'm going to leave now for some viewings so it may have to be resolved on

¹ Exhibited at page 24 of the bundle.

Monday, I'll try my best to resolve it as soon as I can for you because I know you guys are waiting and you're keen to move in soon. Umm so yeah we'll have to pick it up on Monday and yeah enjoy the rest of your weekend and I will speak to you then. Take care, bye." (17.03 on 15 May 2021).

26. On 16 May 2021 (Sunday) Mrs Heppell-Joyce emailed Olivia at Truepenny's thanking her for working on the possible tenancy and informing Olivia that she had received the voicemail about the HMO licence. Mrs Heppell-Joyce indicated that she would catch up with Olivia tomorrow about the HMO licence, and expressed the hope that it could all be sorted.
27. Mrs Heppell-Joyce said that Olivia contacted her on Monday and stated that the landlord was happy for the three Applicants to live at the Property provided only two of them signed the tenancy agreement. Mrs Heppell-Joyce asserted that Olivia said that the only people who would be aware of this arrangement would be them, and as they (Truepenny's) had suggested it the Applicants would not get into any bother.
28. Following the telephone conversation with Olivia, Mrs Heppell-Joyce discussed the offer with the other Applicants. Mrs Heppell-Joyce explained to them that Olivia confirmed that the Property required an HMO licence but that the landlord was not prepared to licence the Property because it would cost her around £2,000. Mrs Heppell-Joyce then told them that Olivia had suggested it was open to them to live at the Property provided only two of them signed the tenancy agreement, and the other would have to supply a different address. Mrs Heppell-Joyce expressed her reservations about the offer, and that it was perhaps a sign that they should look elsewhere for a Property. Ms Harley, however, stated that she did not mind if she was not on the tenancy and that she could give her mother's address in Kent for any official purposes. The Applicants decided to go ahead with the tenancy on the basis suggested by Olivia of Truepenny's. The tenancy was due to start on 5 June 2021.
29. Mrs Heppell-Joyce stated that Truepenny's sent the tenancy agreement a day before the tenancy was due to start, and discovered that the agreement included a clause to the effect that they would be liable for any costs to the landlord that could potentially arise from breaches of HMO licensing.
30. Mrs Heppell-Joyce stated that the Applicants were very concerned with the clause. They considered that when Truepenny's had made the offer that the three of them could live at the Property that any potential breach of HMO licencing would be a small and negligible risk which would be shared between the landlord and them. However, they viewed the clause as posing serious risks for them if it was discovered that the HMO Licensing laws had been breached

and that the landlord and Truepenny's would escape the consequences of their actions.

31. Mrs Heppell-Joyce said they felt misled by the insertion of this clause in the tenancy agreement and asked Truepenny's to remove it. Truepenny's refused to do this because they insisted it was a standard clause in all their rental agreements. Truepenny's added that the clause was for the landlord's peace of mind and that the Applicants would not have to go to court because no-one would find out.
32. The Applicants stated that they had been backed into a corner and had no choice but to sign the agreement because they had nowhere else to live. Mrs Heppell-Joyce said it felt like Truepenny's and the landlord had all the power because they ultimately controlled whether the Applicants had a home or not.
33. Mrs Heppell-Joyce gave evidence that the Applicants decided that Ms Harley would be copied into all emails with Truepenny's to remind Truepenny's of Ms Harley's occupation of the Property despite not being named on the tenancy agreement. The Tribunal found that Ms Harley had been copied in to some of the emails with Truepenny's but not all. The Tribunal noted a chain of emails between Sam El Jani of Truepenny's and Ms Harley dated 13 July 2022 and 20 July 2022 regarding the repayment of monies paid by Ms Harley to replace the washing machine in the Property.
34. Mrs Heppell-Joyce and Ms Szerszynska-Thompson signed a new 12 month tenancy agreement for the Property with an increase in rent from £1,650 per month to £1,800 per calendar month on 23 June 2022.
35. Following the end of the tenancy on 13 July 2023 Mrs Heppell-Joyce emailed Truepenny's on 13 August 2023 regarding the return of the deposit in the sum of £1,903. Mrs Heppell-Joyce was surprised when she received a bank transfer in the sum of £1,261.40 direct from the landlord. Mrs Heppell-Joyce explained that in her previous tenancies deposits had been released after a process through the TDS scheme which prompted her to look back through previous emails to check whether a TDS certificate had been issued to protect the deposit. Mrs Heppell-Joyce discovered that no such certificate had been given for the Property and as a result she made enquiries of Truepenny's. Valencia of Truepenny's responded by supplying "proof" comprising two screenshots that the deposit was held in a Tenancy Deposit scheme. Mrs Heppell-Joyce disagreed with Valencia's assertion, pointing out that the entry on the website showed that the Tenancy Deposit Certificate was issued on 22 August 2023 which was more than two years after the commencement of the tenancy. Mrs Heppell-Joyce advised Valencia that the Applicants had taken legal advice and would be seeking compensation. In the meantime, Mrs Heppell-Joyce

requested re-imbursement of the balance of the deposit in the sum of £641.40.

36. The Respondent then decided to get involved and contacted Mrs Heppell-Joyce by phone without success. This was the first time that the Applicants had had direct contact with the Respondent. At 19:40 hours on 20 September 2023 Mrs Heppell-Joyce emailed the Respondent² stating that she did not wish to speak to her on the phone. Mrs Heppell-Joyce pointed out to the Respondent that she had not provided proof that the deposit had been protected on receipt of it in 2021. Further the Respondent had kept £641.40 of the Applicants' deposit, which in Mrs Heppell-Joyce's opinion, amounted to "stealing", and had provided no evidence of what the retained monies had been spent on.
37. At 8:21:38pm (20:21 hours) on 20 September 2023 the Respondent emailed Mrs Heppell-Joyce³ asserting that she had given a Deposit Certificate in 2021, and that she had to renew the Deposit Protection in August because the Applicants stayed longer than the 12 month term given in the tenancy agreement. The Respondent maintained that she had sent Mrs Heppell-Joyce the invoices for cleaning the flat, the costs of which had been deducted from the deposit. The Respondent said that she was upset that she had been accused of "stealing", particularly as she had been fair as possible with the deductions from the deposit. The Respondent offered to enter into dialogue with Mrs Heppell-Joyce about the deductions. Finally the Respondent enquired about the identity of Mia Harley because she did not know who this was, and that she seemed to be copying the same email to her.
38. At 20:43 hours on 20 September 2023 Mrs Heppell-Joyce replied by email⁴ emphasising this was not personal and that she was not threatening anyone. Mrs Heppell-Joyce repeated her belief that the Respondent had not fulfilled her legal responsibility as a landlord and that they would be seeking compensation through the legal system. Mrs Heppell-Joyce stated that she would not be discussing the protection of the deposit any further, and if the Respondent could not provide any further evidence her solicitor would be in contact. Mrs Heppell-Joyce stated that "*Mia Hartley was the third tenant who you (the Respondent) had asked to live in the Property without being on the tenancy as you (the Respondent) didn't want to obtain a HMO licence*".
39. At 21:39 hours on 20 September 2023 the Respondent emailed Mrs Heppell-Joyce⁵ repeating again her upset of being called a thief

² Exhibited at page 77 of the Applicant's statement of the case

³ Exhibited at page 76 of the Applicant's statement of the case

⁴ Exhibited at page 75 of the Applicant's statement of the case

⁵ Exhibited at page 10 of the Applicant's application for additional evidence. This letter is also exhibited at page 96 of the Applicant's statement of case which gives timing of 7:39pm on 20

and expressing her lack of understanding of why Mrs Heppell-Joyce was insisting that the deposit was not protected. The Respondent said that she had left a message for Liliana (Ms Szerszynska-Thompson) and requested Mrs Heppell-Joyce to send her details of the other flat mate, as she would be happy to speak with her as well.

40. At 13:44 hours on 21 September 2023 the Respondent emailed Ms Harley⁶ stating that she would like to establish her involvement in the matter as she did not know who Ms Harley was. The Respondent said that she had a suspicion that Ms Harley may have been living at the Property illegally and that subletting a Property without the landlord's consent was illegal. The Respondent stated that she would be getting her lawyers to look into this matter.
41. At 04:42 hours on 22 September 2022 the Respondent concluded the email correspondence on the deposit saying that she was saddened that they (the Applicants) had not wanted to resolve the matter amicably and that she would be instructing her lawyers to prosecute Mrs Heppell-Joyce and Ms Szerszynska-Thompson for illegally sub-letting the Property.
42. The Tribunal now refers to the Respondent's evidence on her state of knowledge on the number of occupants at the Property.
43. The Respondent worked as an holistic health coach and has lived in Barcelona since 2016. The Respondent is an experienced landlord, and has been letting Property since 2012. The Respondent has a portfolio of four properties: the subject flat which was her home for 14 years before moving to Barcelona, another flat on the Millpond Estate, and two properties in Kent, one of which was a family home. The Tribunal believed that the Respondent currently was letting out three properties.
44. Since moving to Barcelona the Respondent has engaged professional letting agents to manage the flats on the Millpond Estate. Truepenny's have been responsible for letting and managing the flats since 29 August 2018 under a contract which included the option of "Property Management Service". The Respondent said that she was not involved in the day to day management of her Properties on the Millpond Estate. The Tribunal understands that the Respondent has recently replaced Truepenny's for another agent
45. When the Respondent moved to Barcelona she did not want to take out an HMO licence for the Property because at the time she was unsure how long she would remain in Spain. The Pandemic then

September 2023. The Tribunal has decided to adopt the timing of 21:39 hours as set out in the copy in the additional evidence

⁶ Exhibited at page 74 of the Applicants' statement of case

happened causing a change in her plans. With hindsight the Respondent regretted not getting an HMO licence. In her view the licence was not expensive, and she would have been able to charge substantially more rent and recover her costs of the HMO licence in less than three months.

46. The Respondent was seriously affected by the Pandemic and required the assistance of a therapist in 2020 after being in confinement for four months on her own. Around May 2021 the Respondent suffered other health problems which required further tests and appointments with a consultant. The Respondent's treatment was delayed because she was hospitalised for Covid on 12 July 2021.
47. The Respondent stated that when the Property became empty she asked Truepenny's to advertise it to let on Rightmove. Under normal circumstances she would have checked the advert but was unable to do so because of her hospital appointments. The Respondent has attempted without success to obtain a copy of the original advert but she has received assurance from Truepenny's that the advert would have stated it was not an HMO Property.
48. The Respondent said in May 2021 Truepenny's contacted her about some potential tenants. The Respondent recalled Truepenny's mentioning that three people were interested. The Respondent said that she explained to Truepenny's the requirements regarding HMO licensing but the agent she spoke to did not seem clued up on this. On 15 May 2021 she emailed Tyler at Truepenny's to pass on the link about the HMO requirements to Olivia who she had spoken to about the possible letting of the Property that day.
49. On 1 June 2021 Truepenny's emailed the Respondent references for Mrs Heppell-Joyce and Ms Szerszynska-Thompson. On 4 June 2021 the Respondent signed the tenancy agreement naming Mrs Heppell-Joyce and Ms Szerszynska-Thompson as the tenants.
50. The Respondent referred to the following clauses of the tenancy agreement:
 - i. Clause 2.82 states that the Tenants are "not to assign, sublet, charge, share, grant a licence in respect of, or part with possession occupation of the Property or any part of them".
 - ii. Clause 2.83 states that the Tenants are to pay any costs incurred by the Landlord if, contrary to the terms of this Agreement, the Tenant permits the Property to be occupied as a House in Multiple Occupation under the Housing Act 2004 or contrary to the terms of this Agreement use the Property in such a way as to require it to be licensed. This will usually happen if the Tenant

permits additional people of any age to live in the Property. Those allowed to live in the Property are specific in the particulars”.

51. The Respondent added that the above clauses had been in all her earlier tenancy agreements and asserted that they had not been added specifically to the agreements with the Applicants.
52. On 10 September 2021 the Respondent chased Truepenny’s for a breakdown of the invoices relating to the Property.
53. On the 19 December 2021 the Respondent received an email from one of her neighbours on the Millpond Estate telling her that the “girls in her flat seem to be having regular loud parties, and the last one did not end to 5ish in the morning”. The neighbour added they had met the girls in the flat and that they were “nice girls”.
54. On 4 December 2022 the Respondent received another email from the neighbour which had pictures attached of the windows in the Property displaying signs of bad condensation. The Respondent asked the neighbour about whether the condensation was due to a fault with the windows or whether “the tenants are doing something crazy”. The neighbour then gained access to the flat after being let in by one of the “girls”, and informed the Respondent that the condensation was in the flat and not inside the double glazing.
55. Around May 2022 the Respondent agreed a new 12 month tenancy with Mrs Heppell-Joyce and Ms Szerszynska-Thompson which incorporated clauses 2.82 and 2.83 as in the previous agreement. The Respondent insisted that she had no knowledge of there being a third occupant in the flat at the time of the grant of the new tenancy.
56. Towards the end of the second tenancy agreement Truepenny’s asked the Applicants if they wanted to stay and that there would be a rent increase in line with the market rent. Mrs Heppell-Joyce indicated that they wished to stay but they would not agree to the new rent. Mrs Heppell-Joyce sent Truepenny’s a link to another Property as evidence of lower rent. The Respondent pointed out that this other Property contained a warning: “Due to Southwark licensing requirements the Property cannot be rented to three people”.
57. In view of the lack of agreement over the new rent, the Respondent decided to advertise the Property for let and serve a section 21 Notice in the names of Mrs Heppell-Joyce and Ms Szerszynska-Thompson for them to vacate the Property on 13 July 2023.
58. Around July 2023 the Respondent asked Valencia of Truepenny’s to prepare the statement of deductions from the deposit. Valencia told the Respondent that she was holding the deposit. At first the

Respondent did not believe her because it was contrary to the terms of the tenancy agreement. The Respondent, however, following investigation of her bank account discovered that the deposit had been sent to her. The Respondent then decided to register herself the deposit with the Tenancy Deposit Protection Scheme in the names of Mrs Heppell-Joyce and Ms Szerszynska-Thompson.

59. The Respondent engaged directly with Mrs Heppell-Joyce about the deposit. The Respondent said she was alarmed by Mrs Heppell-Joyce's statement that "Mia Harley was the third tenant who you (the Respondent) had asked to live in the Property without being on the tenancy as you (the Respondent) didn't want to obtain a HMO licence".
60. The Respondent asserted that she did not believe the statement to be true after the false allegations of theft and profiteering landlord brought by Mrs Heppell-Joyce about her. The Respondent said that she responded to the statement by asking for details of the "other flatmate" so she could make further investigations on whether Mrs Heppell-Joyce and Ms Szerszynska-Thompson had been sub-letting the Property. The Respondent contacted Ms Harley direct but received no response.
61. The Respondent insisted that she did not benefit from the Property being occupied by three persons. The Respondent asked Truepenny's how much she could have marketed the Property for three occupants in 2024. The branch manager found on Rightmove details of a Property on the Millpond Estate which had three bedrooms and a bathroom with an HMO licence advertised for rent at £2,750.00 per calendar month as November 2024. The Respondent pointed out that the advertised rent was some £600 more than the monthly rent paid by the Applicants.
62. The Respondent stated that she was not satisfied with the services provided by Truepenny's and had raised complaints about them. Also she said that her solicitors had requested a copy of Truepenny's file on the Property which had not yet been received.
63. The Tribunal finds the following facts on the Respondent's knowledge about the occupation of the Property by the three Applicants. The Tribunal starts with the role played by the Respondent's agent, Truepenny's:
 - i. The Property throughout the tenancy was occupied by the three Applicants.
 - ii. When the Applicants were looking for a place to rent, the Property was advertised for rent with three bedrooms ideal for sharers. The Tribunal was not convinced with the Respondent's evidence that the advert mentioned that the

Property required an HMO licence for more than two persons.

- iii. The Applicants' offer for the tenancy was in the names of the three Applicants.
- iv. The Respondent's Agent, Truepenny's, knew that the Property required an HMO licence if it accepted the Applicant's offer. Similarly it was Truepenny's not the Applicants who suggested a way around the HMO licensing. This was that two of the Applicants would sign the tenancy agreement, and that Truepenny's would turn a blind eye to the remaining Applicant living there. This is supported by the Applicants' witness statements, the voicemail from Olivia of Truepenny's and Mrs Heppell-Joyce's worries about going down this route as revealed by the voice recordings submitted in evidence.
- v. The Applicants decided to accept the tenancy on the basis of the offer suggested by Truepenny's even when it became apparent from the terms of the tenancy agreement that they were exposed to significant risk if matters went awry. The Applicants' principal motivation for accepting the tenancy on the said terms was that they needed a place to live.
- vi. Truepenny's knew that the Property was occupied by the three Applicants throughout the time they lived there. This is supported by those emails with the Applicants which included Ms Harley as recipient. There was also a direct email chain between Truepenny's and Ms Harley regarding the reimbursement of monies to her for the purchase of a washing machine for the flat.
- vii. The Respondent did not challenge the Applicant's account of the role played by her agent in allowing the three Applicants to live at the Property. The Respondent did not call witnesses from Truepenny's to rebut the Applicant's evidence. The Respondent when questioned was unable to throw any light of why her solicitor had not received a copy of Truepenny's file for the Property.

64. The Tribunal turns now to its findings on whether the Respondent had actual knowledge of the fact that the three Applicants were living at the Property without an HMO licence.

- i. The Tribunal accepts the Respondent's evidence of the adverse impact of the Pandemic upon her well-being and that around the timing of the first tenancy agreement she had been diagnosed with a serious medical condition that required treatment. The Tribunal's acknowledgement of

the state of the Respondent's wellbeing and health, however, has to be balanced against the evidence which showed that the Respondent despite her personal difficulties took an active role in exercising her responsibilities as a landlord and in managing her Property portfolio throughout the years 2021, 2022 and 2023 .

- ii. The Respondent accepted that in May 2021 that she knew that three persons were interested in taking out a tenancy of the Property.
- iii. The Respondent accepted in an email to Tyler of Truepenny's that she had spoken to Olivia on 15 May 2021 and that their conversation was about HMO licensing. This corroborated Olivia's voicemail of 15 May 2021 that she had been having a conversation with the Respondent about the Applicants' offer for the Property and that their offer engaged HMO licensing.
- iv. The Respondent denied that she had said to Olivia that she thought there might be a way round the HMO licensing. The Respondent's denial was that Olivia had no understanding of HMO licensing. The Tribunal considered that the contents of Olivia's first voice mail on 15 May 2021 showed that Olivia understood the HMO requirements relating to the Applicants' offer. When this was put to the Respondent she simply dismissed it and said that her conversations were with the partners of the business and not with Olivia. The Tribunal was not impressed with the Respondent's denial, and was satisfied that she had said to Olivia that there might be a way round the HMO licensing.
- v. Although the Respondent's contract with Truepenny's included property management, the Tribunal finds that the Respondent took an active role overseeing the management of the Property. Throughout the Applicants' tenancy Truepenny's involved the Respondent in all significant decisions with the Property which included advertising the Property for let, the viewing of references for prospective tenants, the approval of expenditure of £250 or more, setting the rent for each tenancy agreement, and sanctioning the issue of section 21 Notices. The Respondent not Truepenny's dealt with the Applicants' dispute with the deposit. Given these circumstances the Tribunal finds it implausible that Truepenny's would have gone ahead with the proposal to the Applicants that they could live at the Property provided that only two of them sign the tenancy

agreement without obtaining first the Respondent's approval.

- vi. The Respondent also had retained a network within the Estate to keep her informed of happenings with her Property. The Respondent produced two emails from a neighbour on the estate who had met "the girls", and who had been inside the Property to view the condensation to windows. The Tribunal considers it probable that the neighbour would have known that the Property was occupied by the three Applicants, and would have communicated that fact to the Respondent, if she had not already known about it.
- vii. The Applicants' representative relied on the Respondent's use of the phrase "other flat mate" in her correspondence on the deposit to indicate that she knew of the occupation of the Property by the three Applicants. The Respondent's explanation for the use of "the other flat mate" was to enable her to make further investigations on whether Mrs Heppell-Joyce and Ms Szerszynska-Thompson had sub-let the Property. The Tribunal was not impressed with the Respondent's explanation. In the Tribunal's view, the Respondent did not have to make further investigations because Mrs Heppell-Joyce in her preceding email at 20:43 hours had admitted the fact of Ms Harley living at the Property without being on the tenancy agreement. The Tribunal was also surprised that the Respondent did not immediately refute Mrs Heppell-Joyce's accusation about allowing Ms Harley to live at the Property if the Respondent knew that to be false, particularly in light of her reactions to Mrs Heppell-Joyce allegations of "theft" in relation to the deposit. The Tribunal finds that the Respondent's use of the phrase "other flat mate" and her failure to refute straightaway the accusation that she allowed Ms Harley to live at the property provided added support of her knowledge of the occupation of the Property by the three Applicants.
- viii. The Tribunal finds that the two tenancy agreements which named Mrs Heppell-Joyce and Ms Szerszynska-Thompson as the sole tenants reflected the agreement made between the parties that the three Applicants could live at the Property but only two should be named on the tenancy agreements. The Tribunal accepts that the clauses in the agreements dealing with sub-letting and costs in connection with HMO licensing breaches had been used in previous tenancy agreements granted by the Respondent and were not specifically inserted in the agreements with the Applicants. The Tribunal, however,

finds as fact that the clauses gave the Respondent “peace of mind” and protection in the event of enquiries made by third parties about the occupational arrangements at the Property.

- ix. The Tribunal places no weight on the fact that the section 21 Notice did not name Ms Harley. Counsel said this was significant because the Respondent would have been serving a notice she knew was not valid if the Applicants were correct about the Respondent’s allowing the three of them to live at the Property. The Tribunal considers the Respondent took a calculated risk that the Applicants would not challenge the validity of the section 21 notice. The Applicants had not agreed a new rent for the Property at the expiry of the second tenancy agreement and knew they would have to leave the Property. The Applicants received a letter from Truepenny’s with a section 21 Notice attached which told them they had to vacate the Property on 13 July 2023. The Applicants complied with the instructions in the letter.
- x. The Tribunal is not convinced by Counsel’s assertion that it was highly unlikely that the Respondent would have agreed to the three Applicants living at the Property where she was only recovering rent in line with there being two occupants. Counsel’s assertion is derived from an email from Truepenny’s dated 21 August 2024 in which the branch manager supplied information of an asking rent of £2,750 on Rightmove for a three bedroom Property with an HMO licence on the Millpond Estate. The Tribunal observes that the Respondent supplied no rental evidence for three bedroom properties at the time the two tenancy agreements were made. Further the only evidence given of the state of the rental market at the time of the first tenancy agreement was Mrs Heppell-Joyce’s testimony that “the Property had been listed online for quite some time and the rent had been reduced”, which was not challenged by the Respondent.

- 65. In summary the Tribunal is satisfied that the Respondent and her agent, Truepenny’s initiated the arrangement with the Applicants that they could live at the Property provided that only two of them signed the tenancy agreement, and that they both knew that the Property was occupied by the three Applicants throughout their tenancy with no HMO licence in place for the Property.
- 66. An offence under section 72 (1) of the 2004 Act is one of strict liability. The Applicants have the burden of proving beyond reasonable doubt that (1) the Property met the criteria to be licensed under the Additional licensing scheme as an HMO; (2) the Applicants were tenants of the Property in return for the payment

of rent; (3) the Respondent was the person having control of and managing the Property, and (4) that the Property was not licensed. The Tribunal has set out at paragraph 20 the agreed facts which demonstrate that the Applicants have discharged their burden in respect of the elements of the offence under section 72(1) of the 2004 Act.

- 67. The issue of the Respondent's knowledge of the occupation of the Property by three persons is only relevant to the defence of reasonable excuse. In this instance it is not for the Applicants to prove that the Respondent was aware of the occupancy by three persons. Rather it is the Respondent who bears both the evidential and persuasive burden of proof on the balance of probabilities that she was not aware of the occupancy by three persons.
- 68. Counsel's submission that the Respondent's case was almost completely in line with the Upper Tribunal decision in *Kumar v Kolev* [2024] UKUT 255 at paragraph 51 falls apart as a result of the Tribunal's findings on the Respondent's knowledge
- 69. In view of the Tribunal's findings summarised at paragraph 65 the Tribunal holds that the Respondent did not establish on the balance of probabilities that she had a reasonable excuse for failing to licence the Property as an HMO from 30 June 2021 to 13 July 2023.
- 70. The Tribunal is satisfied beyond reasonable doubt from the findings above that the Respondent had committed the specified offence of control or management of an unlicensed HMO contrary to section 72(1) of the 2004 Act from 30 June 2021 to 13 July 2023 in respect of the Property and that she did not have a defence of reasonable excuse.

Should the Tribunal make a RRO?

- 71. In view of its finding that the Respondent had committed the offence of no HMO licence the Tribunal decides to exercise its discretion to make an RRO.

What is the Amount of the RRO?

What is the whole of the rent for the Relevant Period?

- 72. The Applicants have adopted the relevant period of 5 March 2022 to 4 March 2023 for the period of their claim for the RRO. The Respondent did not dispute that rent of £21,150.00 was paid during the relevant period. The Applicants were not in receipt of Universal Credit during that time.
- 73. The Tribunal decides that the total amount of rent paid during the relevant period was £21,150.00

Should there be any deduction for any element of the rent that represents payment for utilities?

74. The Tribunal finds that the Applicants were liable to pay all charges in relation to the supply and use of utilities at the Property. The Tribunal decides that there should be no deduction from the total amount of rent paid during the relevant period.

What is the Seriousness of the Offence?

75. The offence of no HMO licence falls in the less serious category of offences covered by section 40(3) of the 2016 Act.
76. The Tribunal finds the following in relation to the spectrum of seriousness for no HMO licences:
- i. The Respondent was an experienced landlord who was aware of the licensing requirements for HMOs.
 - ii. The Respondent's commission of the offence was deliberate, and that the offending continued throughout the period of occupation by the Applicants which was in excess of two years.
 - iii. The Respondent had no prior history of commission of HMO license offences
 - iv. The Applicants expressed concerns about the condition of the Property, the most serious of which was the incidence of black mould, and that the appliances in the Property were old and malfunctioning. The Applicants stated that the letting agent was slow to address issues which had been reported to them. The Respondent said that she took the issue of mould and condensation very seriously. She approved a full repaint of the bathroom which was carried out in August 2022 and obtained a damp survey of the flat which identified that the cause of the mould was condensation occurring on the cold external walls. The Report noted that some of the condensation arose from the tenants drying their clothes in the living room. The Respondent was also in communication with Southwark Council about the replacement of the windows as part of a major works on the estate. The Respondent believed that the state of the old windows may have been contributing to the condensation in the Property. The Respondent said that she had authorised the replacement of the washing machine, microwave and the broken shelf in the fridge. The Respondent exhibited the check out report for the Property which also included the narrative on the state of the Property when it was let to the Applicants. Mrs

Heppell-Joyce agreed with Counsel's description of the Property having "fair wear and tear". The Tribunal concluded on balance that the Property posed no significant risks to the health and safety of the occupants, and that on the whole, the Respondent and the letting agent were responsive to the Applicants' concerns about the condition of the Property and the state of the appliances.

- v. The Applicants expressed their enjoyment of aspects of living together in the Flat despite their frustrations about the condition of the Property. They found the estate to be friendly and safe, liked the proximity to the river, and considered the location very convenient. The Tribunal formed the view that they would have taken out another tenancy on the Flat if they had been able to negotiate an affordable rent.

77. The Tribunal turns to its assessment of the seriousness of the offence. In the Upper Tribunal decision of *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC) at paragraph 57, Martin Rodger KC, Deputy Chamber President, summarised the principles governing the level of RROs in licensing offences:

"This brief review of recent decisions of this Tribunal in appeals involving licensing offences illustrates that the level of rent repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services). are not unknown but are not the norm. Factors which have tended to result in higher penalties include that the offence was committed deliberately, or by a commercial landlord or an individual with a larger Property portfolio, or where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, Property in good condition such that a licence would have been granted without additional work being required, and mitigating factors which go some way to explaining the offence, without excusing it, such as the failure of a letting agent to warn of the need for a licence, or personal incapacity due to poor health".

78. The Tribunal finds in this case that (1) the Respondent was an experienced landlord; (2) the Respondent had deliberately committed the offence which had persisted for over two years; (3) the Respondent had no prior history of committing HMO licensing offences; (4) the Property was in reasonable condition posing no significant health and safety risks; and (5) that on the whole the Applicants were happy living at the Property and would have stayed there for a third year if the new rent had been affordable. The Tribunal is satisfied that (1) and (2) are aggravating features raising the level of seriousness to the upper limits for HMO Offences, whilst (3), (4) and (5) operate to mitigate the assessment of

seriousness away from the upper limit. The Tribunal decides that the facts found on the seriousness of the HMO offence would justify an order of 70 per cent of the rent paid.

Whether Adjustments should be made in the light of the factors identified in Section 44(4) of the 2016 Act?

79. Counsel contended that the RRO provisions were designed to protect those tenants who were unaware that the Property required an HMO licence. Counsel submitted that this was not the case here the Applicants knew full well that the Property was not licensed, and they willingly agreed to the arrangement proposed by the Respondent and her agent to get round the HMO licensing requirements. According to Counsel, they did this to obtain the Property at a rent which was significantly below the market value for three occupants. Counsel referred to the audio recording of the three applicants discussing the offer which showed that they had other options if they decided not to go ahead with the Property. Mrs Heppell-Joyce is recorded as saying "... perhaps it is sign and we should go for Dunnell". Counsel argued that the Applicants' complicity with commission of the offence of no HMO licence was relevant conduct when determining the amount of the RRO. In Counsel's opinion it was wholly unjust for the Applicants to benefit from their complicity and that any award should be reduced to nil.
80. The Applicants' representative invited the Tribunal to accept their evidence that they entered into the arrangement reluctantly and not with the intention of causing trouble for the Respondent. The representative pointed to Mrs Heppell-Joyce's email of 17 May 2021 where she suggested some form of staggered tenancy as means of helping the Respondent to overcome the licensing problem. The Representative submitted that Parliament saw fit to make managing and having control of an unlicensed Property a criminal offence. The Applicants did not commit an offence for knowingly occupying an HMO without a licence. In the representative's view the responsibility and culpability for the offence lied squarely with the Respondent and that the Applicants should not be punished for simply acquiescing to the Respondent's request.
81. The Tribunal agrees with Counsel's submission that the Applicants' complicity with the Respondent's commission of the offence is relevant conduct when assessing the amount of the RRO. The Tribunal accepts that it would be contrary to principles of fairness and justice if such conduct was disregarded. The Tribunal disagrees with Counsel's contention that the Applicants went along with the arrangements to obtain a financial benefit for themselves. As previously found the Respondent adduced no compelling evidence that the rent they paid was significantly below the market rent for a Property with three occupants at the time of letting. The Tribunal believes their primary motivation was that they liked the flat and wanted the opportunity to live there. The Tribunal considers that

when assessing the impact of Applicants' conduct on the amount of the RRO it should be weighed against the Respondent's culpability and responsibility for the offence. In short it would not be appropriate to make a nil award because it would enable the Respondent to escape all liability for her actions. The Tribunal decides that the Applicants' complicity with the offence justifies a reduction of the 70 per starting point for the seriousness of the offence to 50 per cent of the rent paid (20 per cent reduction).

82. The Tribunal has considered the elements of the Respondent's conduct when deciding on the seriousness of the offence. There is one aspect, which, however, was not considered, and that is the Respondent's failure to protect the tenancy deposit at the time the tenancy agreement was taken out. The Respondent maintains that this arose from a genuine misunderstanding on her part because she believed that Truepenny's had registered the deposit which had been paid to them by the Applicants in accordance with the tenancy agreement. The Respondent said that she only discovered the error when she was about to return the balance of the deposit to the Applicants. The Respondent then attempted to put the matters right by registering the deposit with the Tenancy Protection Scheme on the 22 August 2023 which she said allowed the Applicants to challenge the deductions made against the deposit.
83. The Tribunal holds reservations about the Respondent's account because the agreement with Truepenny's states that it is the responsibility of the Landlord to register the deposit with the scheme unless the landlord pays an additional fee to the agent for registering the deposit. Further the particulars of the tenancy agreements with the Applicants places the obligation on the landlord to lodge the deposit in full with the Tenancy Deposit Scheme. The Respondent has also made conflicting statements on the deposit. The email from Valencia Josephs to Mrs Heppell-Joyce dated 22 August 2023 contains a note from the Respondent that she had used the insured scheme under which as Landlord she holds the deposit and returns it to the Tenants⁷. In her email to Mrs Heppell-Joyce dated 20 September 2023 at 8.21pm the Respondent said that she had provided the Applicants with a copy of the Deposit Protection Scheme in 2021 and that she renewed the Deposit Protection in August 2023 because the Applicants stayed longer than the 12 month tenancy agreement.
84. The Tribunal is not in a position to resolve the conflicts in the evidence regarding the deposit because they were not explored in detail at the hearing. The Tribunal is reluctant to make findings adverse to the Respondent when she was not given an opportunity to comment upon them. The Tribunal is also mindful that the Applicants had the right to bring proceedings in the County Court in respect of the Respondent's alleged failure to comply the

⁷ Page 31 of the Applicant's statement of the case.

statutory requirements for tenancy deposits, and it is not clear to the Tribunal why the Applicants did not embark upon this course of action, particularly as Mrs Heppell-Joyce indicated in her emails that she had instructed solicitors on this topic. In all the circumstances the Tribunal has decided not to take account of the Respondent's handling of the tenancy deposits when determining the quantum of the RRO.

85. The Respondent provided no evidence of her financial circumstances. The Tribunal is entitled to proceed on the basis that the Respondent has the financial wherewithal to pay a RRO.

Decision

86. **The Tribunal decides that the amount of the RRO should be 50 per cent of the total rent claimed during the relevant period which is £10,575.00 (50 per cent of £21,150.00).**

Reimbursement of Fees

87. Under rule 13(1) of the Tribunal Procedure Rules 2013 the Tribunal has a discretion to make an order requiring a party to reimburse the other party the whole or part of the fees. The Tribunal took the view that the Applicants had been on the whole successful. **The Tribunal decides that the Respondent should reimburse the Applicants with the application and hearing fee totalling £330.**

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.
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.