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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CH1/21UD/LIS/2013/0095**
Property	:	**Flat 1, 10 Cornwallis Gardens, Hastings, East Sussex TN34 1LP**
Applicants	:	**Mr Geoffrey David Nichols and Mr Patrick Stephen Bowles**
Representative	:	**Mr Nichols**
Respondents	:	**Mr David Donaldson and Mrs Barbara Donaldson**
Representative	:	**Mr Donaldson**
Type of Application	:	**Determination of service charges under Section 27A Landlord and Tenant Act 1985 ("the Act")**
Tribunal Members	:	**Judge E Morrison (Chairman)** **Mr B H R Simms FRICS MCI Arb (Surveyor Member)** **Mr T W Sennett MA FCIEH (Professional Member)**
Date and venue of Hearing	:	**14 November 2013 at Horntye Park, Hastings**
Date of decision	:	**26 November 2013**

DECISION

The Applications

1. By an application dated 28 August 2013 the Applicant lessees of Flat 1 applied under section 27A (and 19) of the Act for a determination of their liability to pay service charges for service charge years 2004-2012 inclusive. The Respondents are the joint freeholders/lessors of 10 Cornwallis Gardens.

2. The Applicants also applied under section 20C of the Act for an order that the Respondents' costs of these proceedings should not be recoverable through future service charges.

3. The Respondents sought a costs order against the Applicants.

Summary of Decision

4. The service charges recoverable by the Respondents from the Applicants are as follows:

Year (1 April – 31 March)	**£**
2004-05	Nil
2005 -06	As previously demanded
2006-07	As previously demanded
2007-08	As previously demanded
2008-09	As previously demanded
2009-10	As previously demanded
2010-11	As previously demanded
2011-12	As previously demanded less £173.80 (20% of 869.00)
2012-13	Nil, as no lease-compliant demand has yet been made

5. No order is made under section 20C of the Act, and there is no other order for costs.

The Lease

6. The Tribunal had before it a copy of the lease for Flat 1 which is dated 27 June 1974 and is for a term of 99 years at a yearly ground rent of £15.00. The relevant provisions in the lease may be summarised as follows:

   (a) By clause 2(3)(i) the lessee covenants with the lessor to pay a service charge equal to one-fifth of the expenses of various matters, including the repair and maintenance of the main structure of the building, the common areas, insurance of the building and "the costs and expenses incurred by the Lessors in employing Managing

Agents to manage the building and a firm of Chartered Accountants to prepare a management account".

(b) By clause 2(3)(ii) the amount of the service charge is to be "ascertained and certified by a certificate ... signed by the Lessors auditors or accountants (at the discretion of the Lessor)... annually and so soon after the end of the Lessor's financial year as may be practicable ...". A copy of the certificate for each year is to be supplied by the Lessor to the Lessee and "shall contain a summary of the Lessor's said expenses and outgoings incurred by the Lessor during the Lessor's financial year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge ...".

(c) The service charge may include reasonable provision for a reserve towards future expenditure.

(d) The sum of £12.50 is payable on each 25 March and 29 September "in advance and on account of the service charge".

(e) "As soon as practicable after the signature of the certificate the Lessor shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question due credit being given for all interim payments made by the Lessee in respect of the said year ..." (clause 2(3)(ii)(g)).

The Inspection

7. The Tribunal inspected the subject property on the morning of the hearing, accompanied by Mr Donaldson and Mr Nichols. 10 Cornwallis Gardens is a semi-detached Victorian house with cement rendered elevations under a pitched, concrete-tiled roof. The plot is on sloping ground. Accommodation is arranged on the basement/lower ground floor, ground floor and 3 upper floors. The house has been converted into 5 flats with the main entrance at the front approached from a flight of steps. There is an area at the front with sloping paving and at the side of the house a passage with two short flights of steps leading to the rear garden.

8. The Tribunal inspected the exterior and gardens and a small part of Flat 1 which is on the lower ground floor and has its entrance from the side passage. There is an entrance hall and to the left a partitioned area forming a small room and to the right a cloakroom with W.C. Neither the remainder of the interior of Flat 1 or any other parts of the interior of the building were inspected.

9. In the rear garden the Tribunal was directed to the extreme rear (east) wall of the rear garden which is of brick construction and is about 1 metre high to the boundary of No. 10. The wall itself is much taller, being a retaining wall to the property behind to the east but this was

not visible from within No. 10. This wall is leaning and bowing outwards and has a central crack. The north and south rear garden flank walls are broken down and dilapidated with random fencing panels erected to roughly mark the boundary.

The Law and Jurisdiction

10. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable.

11. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

12. Section 20B provides that costs incurred more than 18 months before a demand is made for their payment will not be recoverable unless within that period the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

13. Under section 20C a tenant may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

14. Under section 21B of the Act a demand for payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The wording of the summary is prescribed. A tenant may withhold payment of a service charge if the summary is not provided.

15. Section 48 of the Landlord and Tenant Act 1987 states that a landlord of a dwelling shall furnish by notice the tenant with an address within England and Wales at which notices may be served on him by the tenant. If this is not done, any service charge otherwise due is to be treated as not due until the landlord has complied.

Representation and Evidence at the Hearing

16. Mr Nichols attended and represented himself and Mr Bowles. The Applicants had submitted a written statement of case in accordance with the Tribunal's Directions dated 3 September 2013.

17. Mr Donaldson attended and represented himself and his wife, who are jointly the lessors of Flat 1. They had also submitted a written statement of case. The Applicants' written evidence included witness statements from Mrs J Gierus and Mr C Hassall, and a report from Mr H Conlin, a surveyor. All three attended the hearing. Mr Hassell gave very brief oral evidence.

Background

18. Mr Donaldson and Mr Hassall acquired the freehold of 10 Cornwallis Gardens and the leases of Flats 4 and 5 in 1997. Mr Hassall already held the lease of Flat 3. The Applicants acquired the lease of Flat 1 in December 1998. In recent years Mrs Donaldson has replaced Mr Hassall as joint lessor and lessee of Flats 4 & 5. Mr and Mrs Donaldson have also, with a third party, acquired the lease of Flat 2.

19. The following issues were identified and agreed as those to be determined by the Tribunal:

    (i) Compliance with statute: Whether the recoverable service charges for all years should be Nil because none of the demands complied with either s 48 of the Landlord and Tenant Act 1987 or s 21B of the 1985 Act.

    (ii) Compliance with the lease: Whether the recoverable service charges for all years should be Nil because the provisions of the lease as regards ascertainment and collection of the service charge had not been complied with.

    (iii) Payability: whether the management fee of £869.00 charged 2011-12 and the HMO license fee of £919.20 demanded in 2012-13 are payable as service charges under the lease. (Mr Nichols confirmed that, subject to the general issues in (i) and (ii), he was not disputing any other specific items of service charge expenditure.)

Compliance with Statute

20. The Applicants contended that no section 48 Notice had been served until they received a letter dated 7 March 2013 from the Respondents' solicitors, providing an address for service.

21. They also contended that no section 21B Summary of Rights and Obligations had ever accompanied a demand until 2011. However it was accepted that the demands had recently been re-served along with with s 21B Summaries.

22. Mr Donaldson argued that any previous omission had been remedied with regard to both s 48 and s 21B, and he relied on the decision in

Johnson v County Bideford. He also produced a demand dated 25 March 1999 which included notice of the landlords' address for service, and he submitted (although there was no underlying documentary proof) that when his wife became joint lessor in place of Mr Hassall in 2009 a further notice was sent at that time.

Discussion and determination

23. The failure to comply with s 21B of the Act and s 48 of the Landlord and Tenant Act 1987 when a demand is served means that the service charges demanded are not payable at that time. However the non-compliance can be remedied with retrospective effect. In the case of s 21B the demands must be re-issued with an accompanying Summary. In the case of section 48 service of the required Notice is all that is needed. There is no time-limit for the remedy so long as the original demand is otherwise valid and not time-barred under s 20B: *Johnson v County Bideford* [2012] UKUT 457 (LC), *Brent LBC v Shulem B Association Ltd* [2011] EWHC 1663 (Ch).

24. In this case it is accepted that any non-compliance has been remedied and therefore the statutory defects do not affect recoverability. For the future the lessors should ensure that all statutory requirements (including s 47 Landlord and tenant Act 1987) are complied with.

Compliance with the Lease

25. Before considering the parties' submissions, it is necessary to consider the way in which service charges have been calculated and demanded during the relevant period.

26. The lease provides, in summary, that the service charges shall be ascertained and certified by a certificate from either accountants or auditors at the end of the financial year. The lessor can select the period of his financial year. The certificate must contain a summary of the service charge expenses, and the lessor must then send the lessee both a copy of the certificate and a service charge account for the year in question showing what has been paid and what remains due. As regards service charge payments on account, the lease provides only that £12.50 must be paid by the lessee every rent day (25 March and 29 September). There is no other provision for payment on account of the service charge.

27. Mr Donaldson accepted that the lessors have never obtained a certificate as required. The evidence shows that here have been no accounts prepared on an annual basis. Instead, twice a year, usually at some point in the spring and autumn, the lessors have written to the lessees with details of expenditure incurred since the last demand and requested monies to cover this and, sometimes, monies towards a

reserve or towards specific planned future expenditure. On occasion monies have been requested at other times of the year.

28. The precise way in which the lessors have given the lessees details of service charge expenditure has changed over time. From the evidence available to the Tribunal, it appears that up to about September 2006, a document entitled "Half yearly Freehold account" was prepared by the lessors, which itemised all expenditure (including ground rent), noted any amount already paid by the lessees or taken from the reserve, and requested a sum to cover any deficiency and (sometimes) to replenish the reserve. On most occasions, a letter accompanied the account, which provided more information about the expenditure incurred and notified the lessees of any planned expenditure.

29. On 28 March 2007 the lessors wrote to the lessees stating they were now "doing the accounts using a new system that would be more transparent". From this point onwards the half-yearly demands took the form of a letter setting out the lessees' one-fifth share of the expenditure, usually with a narrative, and the amount due from the lessees. The letter was accompanied by a copy of a running ledger in spreadsheet format which noted all monies credited (for all 5 flats) on one side and all monies paid out on the other. Effectively it was a ledger reflecting all transactions relating to the running the building as a whole. The lessees were sent that portion of the ledger which covered the period in question.

30. The Applicants' case was that the service charge for all years should be nil because the provisions in the lease had never been complied with, citing the decision of *Akorita v Marina Heights (St Leonards) Ltd.* [2011] UKUT 255 (LC) in support.

31. The Respondents' answer to this was that the Applicants had agreed to waive the requirement for an accountants' or auditors' certificate and had also agreed to the way the accounts were produced. This was, according to Mr Donaldson, first agreed verbally in 1999. Then on 6 May 2005, following a meeting at which various matters had been discussed, Mr Nichols wrote to Mr Donaldson as follows:

"... We also confirm that we do not require an audit of your accounts nor that you issue notices regarding the due date of ground rent.

We are quite happy with the way your accounts are presented although obviously we retain the right to dispute any item that we are not happy with.

The concessions made in this letter are only to you and Colin as Freeholders and in the event that you sell the Freehold at any time in the future do not pass on to any new Freeholder".

The Respondents also produced letters or emails from Mr Nichols dated 22 September 2006, 11 May 2008, 9 April 2009, 22 October

2010, 12 April 2011, 24 October 2011 and 30 April 2012. All of these confirmed that "we" did not require the accounts to be audited.

32. On 20 July 2012 Mr Nichols wrote again and stated "*...As a result of your actions we require the Service Charge to [sic] managed strictly in accordance with the Lease and advise now that any considerations that we may have given you in the past are withdrawn*".

33. The Respondents' case before the Tribunal was that until 20 July 2012, the Applicants had, by virtue of their concessions, waived compliance with the relevant clauses of the lease and therefore the service charges remained payable. The concessions had been made openly and in full knowledge.

34. Mr Nichols explained that Mr Bowles lives in Thailand and is a sleeping partner, and confirmed that he dealt with all matters relating to the property on behalf of Mr Bowles. He accepted that until 2012 he had been happy with the way that the accounts were dealt with, and he felt the amount of the service charge was acceptable. Mr Nichols had trusted Mr Donaldson but that trust had gone when a solicitors' letter was received in June 2012 regarding alleged breaches of covenant and other matters. Mr Nichols had taken legal advice and been told that he could challenge the service charges. Mr Nichols also accepted that he had written the various letters produced by the Respondents, but said he had done this, not with the provisions of the lease in mind ("I didn't even know I needed a certificate"), but because he thought a new statutory provision required all service charge accounts to be audited.

35. Mr Nichols told the Tribunal that he and Mr Bowles own 5 investment properties. Flat 1 was the third property that they acquired. They now also own some freeholds and Mr Nichols has formed his own management company, which manages 3 properties. He accepted that he knew that service charge demands must comply with the lease because otherwise the charges can be challenged, just as he was doing in this case.

36. The Tribunal asked Mr Donaldson to identify a financial year for service charge account purposes. He said he was content for the Tribunal to use a period of 1 April - 31 March.

Discussion and determination

37. It is plain, and it is accepted by the Respondents, that the provisions of the lease – specifically clauses 3(ii) (a)(c)(d) and (g) – have not been complied with by the lessors. Aside from any issue of estoppel, such non-compliance would prevent recovery of the service charge because compliance, at least in respect of the certificate, is a condition precedent to recovery: *Akorita v Marina Heights (St Leonards) Ltd.* [2011] UKUT 255 (LC).

38. The issue in this case is whether the Applicants are estopped from asserting that there has been a breach of those lease provisions. The Tribunal has jurisdiction to consider a defence of estoppel: *Swanston Grange (Luton), Management Limited v Eileen Langley-Essen* (Lands Tribunal LRX/12/2007), *Havering v Smith* [2012]UKUT 295 (LC).

39. The doctrine of promissory estoppel (which is closely associated with the doctrine of waiver) has been described as follows:

When one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced.

(Halsbury's Laws of England : Estoppel Vol 16(2) Re-issue Para. 1082)

Like waiver, a concession giving rise to the ... doctrine of promissory estoppel will generally only suspend the strict legal rights of the party granting it; and he may revert to these rights for the future upon giving reasonable notice of his intention to the other party ...

(Ibid. at Para. 1035)

40. As the Upper Tribunal held in the *Swanston Grange* case, for the Applicants to be prevented by waiver or promissory estoppel from relying on the relevant covenants the Respondents need to point to an unambiguous promise or representation whereby they were led to suppose that the Applicants would not insist on their legal rights under the relevant covenants. The Respondents would also need to establish that they altered their position to their detriment on the strength of such a promise or representation, and that the assertion by the Applicants of their strict legal rights under the relevant covenants would be unconscionable.

41. The Tribunal cannot be satisfied, simply on the basis of the assertion by the Respondents of a verbal agreement not otherwise proved or admitted, that there was any relevant promise or representation made by the Applicants in 1999.

42. However, the letter written by Mr Nichols on 6 May 2009 is an unambiguous statement that the Applicants would not require the accounts to be audited, and that they accepted the way in which the accounts were being presented. Although the letter does not refer specifically to the relevant clauses in the lease, the Tribunal

concludes that the wording was wide enough to cover waiver of all those clauses. In reaching this conclusion, the Tribunal takes into account the nature and content of the demands being received by the Applicants at this time. They consisted of "Half-yearly freehold accounts", usually with an accompanying letter. Essentially the Applicants were receiving the information they were entitled to, albeit not in the correct format. Furthermore, in the letter of 6 May 2005 the Applicants expressly acknowledged that they were making a concession. The Applicants may not have had the specific provisions of the lease in mind but the Tribunal is satisfied that as professional property investors in leasehold dwellings, they were aware of the significance of what they were doing. They were also aware that by dispensing with a certificate, the service charges they had to pay would be reduced.

43. Each of the subsequent letters from Mr Nichols confirming that the accounts need not be audited were written at the request of the Respondents. The only possible interpretation of this is that the Respondents wanted to ensure that they would not be prejudiced if they did not get the accounts audited.

44. Although the letters from Mr Nichols from 22 September 2006 onwards only referred specifically to the auditing of the accounts, and not to the way in which the accounts were presented, the statement in the letter of 6 May 2005 that the Applicants were "quite happy" with the way the accounts were presented was never modified or withdrawn until the letter of 20 July 2012. As of March 2007 the Applicants were receiving more information than previously, and in reality (because of the narrative provided) more information about the service charges than that required by the lease. There is no reason why the Applicants would have been less happy after March 2007 than before that date. The Tribunal therefore concludes that the promises and representations made in the letter of 6 May 2005 continued in effect until the letter of 20 July 2012 was received by the Respondents. Indeed, the terms of the letter of 20 July 2012 implicitly accepts that was the position.

45. The Tribunal is also satisfied that the Respondents acted in reliance on the Applicants' representations, and altered their position to their detriment. By not obtaining a certificate and preparing service charge accounts in the way the lease required, they put themselves at risk of the very situation they now find themselves in, namely a challenge to payability on the grounds of non-compliance. In the view of the Tribunal, it follows that it would be unconscionable to allow the Applicants to resile from the representations that they made in respect of those service charge years which ended prior to 20 July 2012.

46. Although this point was not raised by the Applicants, the Tribunal will say also that it does not consider that the substitution of Mr Hassall by Mrs Donaldson as joint lessor in 2009 affects the

position. Mr Donaldson remained the individual running the service charge expenditure and the accounts.

47. The estoppel operates from 6 May 2005, near the start of service charge year 2005-06 (which will run from 1 April 2005). It cannot affect the service charges for year 2004- 05 which are therefore determined at NIL, it being too late (due to s 20B) to remedy matters now. As regards service charge years 2005-06 to 2010-11 inclusive, the Tribunal determines, for the reasons set out above, that the Applicants are estopped from relying on breaches of the lease, and the service charges as demanded in those years remain due and payable as previously demanded, as the Applicants do not dispute any specific items of expenditure.

48. The position as regards service charge year 2011-12 is that the estoppel was still in effect, but as an element of service charge is disputed on other grounds, the amount payable for this year is dealt with below.

49. The position as regards service charge year 2012-13 is that no estoppel is in effect and no service charges will be payable until the relevant provisions of the lease have been complied with. An element of the service charge is also disputed and this is dealt with below.

Payability of Management fee and HMO License fee

50. In service charge year 2011-12 external decoration and repair work was carried out at a cost of £8697.00. Mr Donaldson proposed that he should be paid a management fee of 10%, £869.00, for overseeing matters. In an email of 14 March 2011, prior to the works commencing, Mr Donaldson asked Mr Nichols to confirm his agreement to this. Mr Nichols responded "That's OK ... I assume that the 10% is as per the lease". In reply Mr Donaldson stated "No, there is no provision in the lease for charging for the management of a major project" but he asked for agreement to it anyway. On 23 March 2011 Mr Nichols replied "Confirmed". Payment of the Applicants' share of the £869.00 was demanded during service charge year 2011-12.

51. Before the Tribunal, Mr Nichols admitted that he had agreed to the charge at the time but argued that the fee was not payable under the lease. Mr Donaldson said clause 2(3)(i) of the lease allowed the costs of employing managing agents to be recovered through the service charge. He was his own managing agent and therefore the fee was recoverable.

Discussion and determination

52. Mr Donaldson is incorrect in assuming that a lessor may carry out management duties himself and then charge for those services. This cannot be done unless there is specific provision in the lease for such a

charge. There is no such provision in this lease. A person cannot employ himself as a managing agent. (While there is no prohibition on appointing another connected person as agent, the arrangement must be a genuine commercial agreement and not a sham: *Skilleter v Charles* (1991) 24 HLR 421). Accordingly, while it appears that there was a free-standing agreement to pay Mr Donaldson a fee of £869.00 this sum is not payable as a service charge and the total amount demanded as a service charge during this year is reduced accordingly.

53. Although not challenged by the Applicants, and therefore not considered by the Tribunal, it is noted that smaller amounts have been charged for Mr Donaldson's management on many occasions over the years. None of these charges are payable under the lease, a matter which should be noted for the future, along with the fact that the only payments on account provided for in the lease are £12.50 on each rent day (to date these payments have been incorrectly identified as management fees).

Payability of HMO Licence fee

54. The service charges demanded for 2012-13 include a fee of £919.20 paid by Mr Donaldson to Hastings Borough Council for a licence under the Housing Act 2004, because 10 Cornwallis Gardens is classed as a house of multiple occupation ("HMO").

55. By a separate decision in Case No. CHI/21UD/LBC/2013/0032 the Tribunal has decided that this fee is not payable by the lessees under clause 2(2) of the lease, which is not a provision that relates to the service charge.

56. In this case, Mr Nichols contended it was also not recoverable under the lease as a service charge. At the hearing, Mr Donaldson accepted this.

Discussion and determination

57. For the avoidance of doubt, any service charge demanded for 2012-13 shall not include the HMO licence fee as it is not expenditure of a type recoverable through the service charge under the lease. In any event, no service charges for 2012-13 will be payable until the provisions of the lease as to certificates etc. have been complied with (see para. 49 above).

58. It is also noted that the Applicants have not challenged any other specific elements of the service charges in 2012-13.

Section 20C Application

59. The Applicants requested an order under section 20C. Mr Nichols said he had only come to the Tribunal "to fight back a bit" in response to the lessors' allegations that the Applicants were themselves in breach of certain covenants in the lease. It would be grossly unfair if he had to pay any costs. Mr Donaldson said he felt the Applicants had acted unreasonably in certain respects and (referring to Case No CHI/21UD/LBC/2013/0032 heard at the same time) said that both sides had needed to clarify the position with regard to the HMO fee. Mr Nichols had openly said his application was purely retaliatory.

60. In deciding whether to make an order under section 20C a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings. The Tribunal determines not to make an order under section 20C limiting recovery of the lessors' costs of these or the related proceedings (Case No. CHI/21UD/LBC/2013/0032) as future service charge, for two reasons. First and primarily, the lessors have been overall the successful party in both applications. Second, the lessees' statement of case in these proceedings made no reference at all to the crucial correspondence which went to the heart of the matter, which may be criticised as less than candid conduct on their part. It is however noted that the lease would not appear to permit the lessors to recover the costs of the proceedings via the service charge in any event.

Respondents' Application for Costs

61.. Mr Donaldson made the same points as regards section 20C and submitted that the Applicants had behaved unreasonably. Mr Nichols objected to a costs order and said he had done everything, most recently suggesting a meeting only last week, to try to settle matters.

62. The Tribunal may make a costs order where a party has acted unreasonably in bringing, defending or conducting proceedings. Although Mr Nichols' motivation in bringing these proceedings may have been retaliatory, he sought professional legal advice and was advised that the service charges were susceptible to challenge. The fact that the Tribunal has upheld most of those charges does not mean the application was unreasonable. The main issue of estoppel is not straightforward and the outcome was certainly not a foregone conclusion. In the related proceedings, the lessees prevailed with regard to one of the alleged breaches. The failure to produce relevant correspondence is regrettable, but does not amount to unreasonable conduct. Overall the Tribunal does not find there has been

unreasonable behaviour by the Applicants and no costs order against them will be made.

Dated: 26 November 2013

Judge E Morrison (Chairman)

Appeals

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.