FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00MR/LSC/2020/0114
Property	**:**	22 The Vulcan, Gunwharf Quays, Portsmouth PO1 3BF
Applicant	**:**	Geoff Parfitt
Representative	**:**	
Respondent	**:**	Gunwharf Quays Residents Company Limited
Representative	**:**	Mr Beresford, counsel, instructed by DAC Beechcroft LLP
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges
Tribunal Member(s)	**:**	Judge D. R. Whitney Mr J Reichel FRICS
Date of Hearing	**:**	16th March and 29th March 2021
Date of Decision	**:**	27th May 2021

DECISION

Background

1. The Applicant is the leaseholder of the Property. The Respondent is the company which manages the development in which the Property is situated.

2. The Applicant looks to challenge items within the service charges for the years 2018/2019, 2019/2020 and 2020/2021. The Applicant also seeks orders pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold Reform Act 2002.

3. Directions were issued on 4th December 2020. Subsequently various further applications were made and the Tribunal issued further orders.

4. The Respondent has produced a hearing bundle of some 893 pages. References in [ ] are to pages within that bundle.

The Law

5. The relevant law is contained in sections 19 and 27A of the Landlord and Tenant Act 1985 which is exhibited hereto marked A.

Hearing

6. The hearing was attended by the Applicant and his partner Ms Barton. Mr Beresford of counsel attended to represent the Respondent company together with Dr Bland, Mr Shearn and Mr Farthing.

7. The Tribunal had received from both parties skeleton arguments which it had read in advance of the hearing.

8. The below is a summary only of the evidence and submissions made at the hearing.

9. Mr Parfitt explained he was a reluctant litigant. He did not feel matters were transparent. In his submission the demands made were unreasonable. He suggested the erection of fences and gates restricted movement around the estate and the legal costs incurred by the Respondent company were unnecessary. In his view either leaseholders affected or breaching the terms of the lease should pay or the managing agent could deal with matters.

10. Turning to the fencing and gates in his opinion these were improvements and the costs are not recoverable.

11. He suggested that the Board had received advice from Longmores Solicitors in October 2018 [282] which clearly set out what action they could take in respect of breaches of the lease and costs recovery. He submitted this advice made clear the costs of legal advice could not be recovered as a service charge item.

12. Mr Parfitt relied upon his witness statement [207-227]. He confirmed his name and address and that the contents of the statement was true. He confirmed to the Tribunal he had nothing to add to this statement.

13. Mr Beresford then cross-examined Mr Parfitt.

14. In respect of the works to the fencing and gates Mr Parfitt said he would have expected to have been consulted. Mr Parfitt explained that copies of Newsletters were not sent to him. He explained he had commented about the "style" of the newsletters and had then been told they would not be sent to him anymore. He believed consultation is a two-way process and not simply the Board of directors telling leaseholders what they are doing.

15. Mr Parfitt did not believe he had been invited to the October 2019 AGM. He said he did not recall being sent the AGM slides.

16. Mr Parfitt was referred to photographs of the railings [713-717]. He did not accept there was any benefit from the new railings and possibly only a handful of people benefitted. His view was that the costs should not have been paid from the general service charge funds.

17. Mr Parfitt stated he was told nothing about breaches of lease when he purchased his flat. His view was that the costs which had been expended should be proportionate and recovered from the offender.

18. It was suggested that the gates and railings were needed to protect elderly residents during the pandemic. Mr Parfitt said he had sympathy for elderly residents, but he could not see how Covid could be caught from someone simply walking through the development. In his view only certain properties benefit.

19. Mr Parfitt confirmed he relied upon his statements and oral evidence.

20. The Tribunal adjourned for a short break and thereafter Mr Beresford presented the case for the Respondent.

21. Mr Beresford relied upon the case of Arnold v. Britton [2015] UKSC 36. In this case the background knowledge known to all parties was that each leaseholder would also be a shareholder in the Respondent company. In his submission one way or another the members would contribute to any expenditure of the company. In his submission it was a conscious decision on the part of the

draftsman of the lease that leaseholders would contribute towards all expenditure incurred by the Respondent.

22. Mr Beresford suggests under the memorandum and articles of association of the company there could be any number of calls made for the members to make payments to the Respondent company. Under the lease the Applicant is liable to pay 0.26% of the costs. As a leaseholder he has the protections afforded him under statute by Parliament. Mr Beresford referred to the lease [54-87] and the provisions of the same particularly clause 11 and the Fourth Schedule. In his submission all expenditure undertaken by the company was recoverable.

23. Turning to the gates and fences Mr Beresford accepted there had not been gates present and it could be said the fencing works were an improvement. The works reduced the amount of footfall and reduced litter ands so was a benefit. Clause 5 of the Fourth Schedule [84] specifically allowed "repair and maintain replacing and reinstating where necessary any walls and fences…" .

24. Mr Beresford relied upon Regent Management Limited v. Jones [2010] UKUT 369 (LC) [337-349]. In particular paragraph 35 [344]. This in his submission sets out the test.

25. Mr Beresford then called Dr Bland director of the Respondent. He confirmed his statement [405-426] was true.

26. He confirmed the pie chart of expenditure [429] was prepared by the Respondents solicitor to explain how and where expenditure took place in respect of legal costs incurred and the amounts spent. The solicitor did not charge for preparing the same.

27. Dr Bland was cross examined at length by Mr Parfitt.

28. Dr Bland explained how a cyclist had been caught on CCTV in the courtyard and lifted his bike over the railings. This person spat at a member of staff. Dr Bland did not have a crime reference number.

29. Dr Bland suggested he believed that at least 60% of residents are over 60 following a questionnaire sent out by the Company. He thought in actual fact the figure may be higher. He worked this figure out from the number of questionnaires returned.

30. At the start of pandemic all the accessways had been blocked off to dissuade people coming through the estate. This benefitted elderly residents.

31. When questioned in respect of short-term letting Dr Bland explained one resident wrote 17 letters to Encore (the previous agents) without a response and so took his own legal remedy. Dr Bland

suggested whilst the company had spent about £17,000 all 396 leaseholders had benefitted.

32. Dr Bland stated he is not a lease expert but represents people who live in what he described as a virtual retirement village.

33. At [249 and 253] appeared 2 invoices for the same works. Dr Bland confirmed he did not know why two invoices but could assure everyone the Respondent only paid once for the works. The fencing works were first discussed in February 2019. With the fence that was then in place people would cut through the estate from Millennium Walkway. This meant the fence was always needing to be repainted as people always lifting people and belongings over the fence. Supposedly Land Securities as the freeholder of the commercial parts were looking to put in additional security on their side including installing bollards.

34. Dr Bland explained the cleaners regularly had to clean up after late night revellers. He stated that as soon as the new railings were installed in or about June 2020 matters started to get better.

35. Dr Bland explained he became a director of the Respondent towards the end of 2018. This was at about the same time as the previous board all resigned. A Mr Verma had been the previous chair. The management contract with Encore was ended in or about September 2019.

36. He explained that the Respondent was looking to pursue a claim against Encore via the Property Ombudsman and the Respondent was no longer instructing solicitors to pursue this. The solicitors had initially looked at and advised on bringing a claim against Encore. The figure to be claimed was in the region of £100,000. The Respondent company spent about £13,000 on taking advice as to the claim. It opted for the Property Ombudsman route as being the most cost effective being cost free. Hopeful the Respondent will be awarded compensation.

37. Dr Bland explained he had not included any of the legal advice obtained as he was advised that this was privileged and should not be disclosed.

38. Dr Bland explained that the board had pursued a claim against Barclays due to issues as to whether the companies account was a proper trust account. He explained compensation of approximately £2,500 had been given as a credit to the account by Barclays which effectively covered the legal costs incurred.

39. Dr Bland explained that the board discovered at various leaseholder surgeries towards the end of 2018 with occupiers in the development that there was a problem with short-term letting. They learnt that one resident, Mr Jenkins, had been sending

numerous emails to Encore without response. It appeared the old board and Encore had no appetite to deal with this issue.

40. Dr Bland believed that about 50 flats were being used in breach of the user covenant under the lease. Each leaseholder believed to be in breach was written to asking them to pay for the cost of the letter and to agree to desist. Some did but many challenged this route including a leaseholder who was a barrister. Some agreed but only on basis that they did not pay any costs.

41. Dr Bland stated the company recovered what it could and believed that it had now effectively stopped the majority of the unlawful subletting. The board had discovered that Mr Jenkins had taken action via the freeholder and used his own solicitors, Churchers and the board agreed to reimburse him for the money he paid to them in taking advice. The board did this as it believed it was the right thing to do.

42. Turning to anti-social behaviour Dr Bland explained the board had various complaints relating to the occupiers of one flat. The solicitors had been investigating and keeping a log but due to the involvement of the council and other public agencies in respect of the occupants who were believed to be vulnerable no further action was currently being taken.

43. Solicitors costs were incurred in respect of parking and abandoned cars as this was brought up at surgeries with occupants. Advice as to what action could be taken and a suite of letter templates and steps to take was prepared by the solicitors to be used by the managing agents.

44. Dr Bland explained how the company and its board took advice from solicitors on many areas. He explained that the board was concerned to get matters correct and concerned given some of the issues which had been inherited and the problems which existed on the estate. This included the drafting of the estate regulations and also helping with the contract for Dack, the new managers.

45. Given the issues with Encore the company wanted to satisfy itself over the contractual requirements with Dack. Dr Bland believes that since Dack took over the difference is obvious to all and so the money was well spent.

46. On re-examination Dr Bland said he understood the Property Ombudsman process will take about 5 months.

47. He explained that he did not know if the freeholder had been contacted and he could not recall it ever being suggested that they contact the freeholder to enforce the lease terms.

48. In respect of the unlawful sub letting no legal action had been taken against anyone. The evidence against some leaseholders was not really available but in the main unlawful sub-letting had now ceased.

49. Dr Bland explained the contract with Dack was for a capped amount of time. Any additional work above and beyond this would be chargeable in accordance with a rates table agreed with them.

50. This concluded the evidence of Dr Bland.

51. The hearing then adjourned until 29th March 2021 at 10am.

52. At the commencement of the resumed hearing Mr Beresford requested permission to rely upon an email his client had now obtained from the freeholder. The Tribunal declined to allow them to rely on such email and the Tribunal did not have sight of the same.

53. Mr Beresford relied upon his skeleton arguments and the points he had previously raised as to the construction of the lease.

54. Gunwharf Quays was a substantial development with 396 leaseholders. The Respondent was not a professional landlord but a leaseholder owned and operated company. All of the directors were volunteers and it was not unreasonable for them to take professional advice on matters. He relies on clause 10 of the lease [66] which gives a wide discretion to the Respondent. There are 396 leaseholders and it is for the Respondent to undertake a cost benefit exercise. The Applicant pays 0.26% of estate wide costs. Mr Beresford made clear he was not submitting because the Respondents share of the cost is small that they do not have a right to challenge the costs but that the Respondent considers the benefit to the company as a whole.

55. Mr Beresford suggested it was clear from various documents sent to leaseholders such as that at [690] that information was provided to leaseholders. The Respondent has not hidden any expenditure and has explained the same to the leaseholders.

56. The managing agents, Dack are property managers and not lawyers. This is why the Respondent had lawyers draft letters and prepare templates for use by the agents. It is hoped moving forward this expenditure will allow the agents to carry the burden of dealing with these matters and so the expenditure will, moving forward, be limited.

57. When the current board took over they were faced with many issues. Unlawful sub-letting was endemic. It was reasonable for the board to rely upon legal advice.

58. Mr Beresford invited the Tribunal to rely upon the pie chart of legal advice [429]. This gives the heads of legal expenditure.

59. In respect of the unlawful subletting there were some 50 leaseholders in breach and currently it is believed there is only one still so doing. The cost for each letter was about £350 which Mr Beresford suggests is a reasonable amount.

60. Mr Jenkins paid £1302 to Churchers Solicitors [287] and this sum was reimbursed by the company. Mr Beresford accepted on one view this may be said to be generous but he suggested a better analysis was that it was reasonable to reimburse as the company had a duty to act fairly. It was for the company to have pursued these issues.

61. Mr Beresford submitted the Respondent did try to recover the costs and some monies were recovered. The company had to take a pragmatic view and this was reasonable. The leases were tri partite and in his submission the Respondent was in the best position to enforce the lease terms and had service charge funds which in his submission it could use for this purpose.

62. Mr Beresford suggested that the Respondent could not force the freeholder to take action. The leaseholders could require the freeholder to take action but subject to paying the costs it incurs. Mr Jenkins followed this route but he is the only leaseholder who has done so.

63. Mr Verma was one of the worst offenders and he and the old board turned a blind eye to the breaches of lease. There was a clear tension between the old and new board.

64. In respect of the Encore claim Dr Bland says the claim might be worth up to £100,000. The position is whether it was reasonable to spend costs to consider if there was a prima facie case. The question of reasonableness is not simply a question of looking at the outcome.

65. Mr Beresford suggested in respect of other matters it was reasonable for the board to take advice. This board had been affected by the experience it had in dealing with Encore and the matters it discovered on taking up their positions.

66. In particular it is noteworthy that typically the Respondent holds funds of in the order of £800,000. The Respondent is a substantial entity and question of reasonableness has to be viewed having regard to this.

67. Turning to the works Mr Beresford suggests it does not matters whether they are repairs or improvements as the lease gives the Respondent very wide powers. Mr Beresford referred to Arnold v. Briton and the 7 factors identified by Lord Neuberger. In his opinion the lease is permissive and in particular clause 11.2.4 [70]

which allows the Respondent to recover all costs it incurs. He accepts the clause is unusual but clear if you consider the intention of the parties at the commencement that the Respondent should be able to recover all its expenditure as a service charge.

68. Mr Beresford suggests the costs of the works are reasonable. The majority of residents are over retirement age and the works notably reduced the amount of litter. In his submission the decision to undertake the works was reasonable and there is no evidence the works could have been undertaken for a lesser amount.

69. Mr Beresford in closing suggested that he would oppose any order pursuant to section 20C or paragraph 5A. In his opinion at best the Applicant will have a pyrrhic victory since he will have to pay towards the costs either as a service charge item or as a member of the company.

70. At this point the Tribunal adjourned for a short break before hearing from Mr Parfitt.

71. Mr Parfitt suggested that the Respondent had previously had advice from Longmore solicitors which suggested they could not recover any costs. Further he suggests that the wording of the Fourth Schedule part 2 paragraph 8 [85] is carefully worded to allow the Respondent to weed out complaints and recover the costs from those leaseholders who were complaining. In his opinion it should be those leaseholders who are in breach who should pay the costs. In his opinion such matters should be an estate cost only as a matter of last resort.

72. Mr Parfitt denied he was invited to the AGM and the only costs details he received were those included within the budget.

73. As to legal expenditure Mr Parfitt suggests that the costs incurred are not reasonable. He noted that copies of advice had not been provided as Dr Bland said it was confidential or privileged. He was bewildered that the managing agents did not have the knowledge and templates required to deal with various of the matters already.

74. Mr Parfitt believed he should have been consulted over the costs being incurred. He was not. He suggested this was a failure as the Respondent had not adopted a reasonable approach. He did accept that the Respondent could take legal advice but in respect of the items charged it was unreasonable for them to do so and the sums spent were unreasonable.

Decision

75. The Tribunal thanks Mr Parfitt and Mr Beresford for their considered and careful submissions. The Tribunal has considered all documents within the bundle, the skeleton arguments and all which was said at the two days of hearing.

76. Whilst we note that Mr Parfitt's proportion of the costs was small (being 0.26% of the total sums) as was accepted by Mr Beresford the total sums spent must be reasonable. We do however accept Mr Beresford's submission that the costs have to be considered in light of the fact that this is a substantial development of some 396 flats with many complexities as to the construction, layout and services which the Respondent is required to provide.

77. Turning firstly to the lease terms we accept that the correct approach is that set out in Arnold v. Britton. Account should be taken of the background circumstances and we accept that the draftsman in drawing up the lease would have had in mind that the Respondent was a company in which each leaseholder was a member. This has a bearing on considering the various clauses.

78. We find that clause 10 of the lease [66] does provide a wide power for the Respondent to delegate its powers to third parties including by way of appointing solicitors. Clauses 11.1.4 and 11.2.4 [68 & 70] allow the recovery of such costs as either a Block or Estate Service as appropriate. This Tribunal is satisfied that the terms of the lease are broadly drawn to allow recovery to take account of the fact that the Respondent essentially can only recover costs from the leaseholders or its members, who are one and the same. We accept Mr Beresford's argument that by recovering all costs as service charges each leaseholder has the benefit of the statutory protections afforded them by Parliament such as the right to bring proceedings before this Tribunal under Section 27A of the Landlord and Tenant Act 1985.

79. In respect of the fencing and gate works paragraph 5 of Part 2 of the Fourth Schedule did in our opinion allow works of the type incurred to be undertaken. In our judgment the replacement of the fence was a repair. Dr Bland explained how the prior fence had required repeated repairs and redecoration. The Respondent decided that it would be prudent to effect a repair by replacing with a different form of railings. In our determination repair does not have to be like for like and replacement, as happened here, can and is a repair.

80. Whilst originally there was no gate again we are satisfied that on an estate of this type the erection of a gate at part of the boundary can be a repair. We find the installation of the gate was such in the circumstances and facts of this case.

81. If we are wrong in this interpretation, we further accept the submission on behalf of the Respondent that clause 11.2.3 and 11.2.4 [69 & 70] allow the Respondent to charge such items as an estate service charge as proposed.

82. In respect of the actual amounts charged for the railing works and the installation of the gate Mr Parfitt did not appear to specifically challenge the reasonableness of the amounts themselves. We have looked at these amounts and we are satisfied that the sums claimed for the erection of the gate and the new railings were reasonable and are payable.

83. We do however comment that we do not accept Dr Bland's comments that the development is akin to a retirement community. The fact currently many residents fall in to that bracket is irrelevant. There is no stipulation or requirement for properties to be occupied by people of any particular age, the development is a substantial residential development that can have people of all ages and this Tribunal would suggest the Respondent should be careful not to favour any group.

84. The question of legal costs incurred needs now to be considered. As set out above we are satisfied that in principle the Respondent was able to recover legal costs. We have considered the items in particular for ease of identification relying upon the pie chart within the bundle [429]. We remind ourselves the test is whether the Respondent was reasonable in incurring such costs and the amounts incurred are reasonable. In so doing it is not for us to impose our own judgment on what we think is reasonable but to look through the eyes of the Respondent.

85. We accept the evidence of Dr Bland that the new board was faced with various issues and genuinely had a concern to make sure that they were doing "the right thing". Equally we can understand Mr Parfitt's concern that a sum of approximately £70,000 had been spent on solicitors' fees and the expenditure appeared on the face of it to be on-going. The evidence of Dr Bland seemed to be that much of this expenditure had now come to an end and we would certainly not expect to see ongoing legal costs of this level. Certainly, if such costs were being sustained over a long period it may be that this Tribunal's conclusions would be different.

86. Mr Parfitt did not as such challenge the make up of the amounts or the hourly rates claimed. The basis of his challenge was that the sums spent were excessive for the individual items and either should not have been incurred at all or the managing agents could have undertaken works.

87. We note, and accept, that the contract with the managing agent was for a fixed number of hours and so if they had undertaken some of

these tasks then it is possible additional charges would have been levied by them.

88. We will break the items down into certain distinct groups. We have looked through all the documents relating to the legal costs and considered these carefully together with the evidence and submissions made.

Unlawful subletting

89. This Tribunal accepts that sub letting not in accordance with the lease terms can be to the detriment of occupiers, leaseholders and the management of the development as a whole. Whilst the leases do contain clauses entitling individual leaseholders to require the freeholder (or the managing agent) to take action subject to indemnities in our judgment it does not mean the Respondent is obligated to only follow this route. We are satisfied that it would appear there existed a substantial issue. Dr Bland candidly admitted evidence in respect of certain breaches was limited.

90. It appears to be accepted that the Respondents solicitors wrote to all of the believed offending leaseholders and it does not appear to be challenged that in the main unlawful subletting has now ceased. We were told that a charge of about £350 per leaseholder written to was made. Further work was undertaken in preparing templates for the managing agents and to deal with further issues arising. In our judgment save for what we say below we accept that all such expenditure was reasonable. The costs charged are in line with those we would expect from solicitors experienced in such matters and the volume of work undoubtably required to resolve these issues. Moving forward we would however expect the managing agents to be in a position to tackle any further issues unless and until actual legal action was undertaken in which case we would expect the costs to be recovered from any offending leaseholder.

91. We do not however accept it is reasonable for the Respondent to refund the costs paid by Mr Jenkins to Churchers Solicitors [98]. Whilst we can see the current board may have every sympathy with Mr Jenkins, whom we are told tried to get Encore to take action, this of itself does not entitle the Respondent to refund such monies. These were sums spent by Mr Jenkins in his personal capacity taking advice as to how he could require the freeholder to take action. This was his prerogative, and it is not something that should now be recovered as a service charge item.

Encore claim

92. We determine the amounts spent are reasonable. We have considered the costs carefully. The sums spent are high. We are mindful that a prudent person would not spend more than they may think they would recover, certainly upon initial advice consideration should be

given as to a costs analysis. We heard from Dr Bland that in his view the losses for the Respondent as a result of the actions of the former managing agent are in excess of £100,000. It was clear the Respondent had been advised as to the inevitable litigation risks and has decided to pursue a no (further) cost option at this time via the Ombudsman. We accept that the decision is one for the Respondent to have made and we are satisfied on a balance of probabilities that it was reasonable for them to incur the legal costs they have done in assessing the claim against the former managing agents.

Company advice, contracts, regulations

93. We find it was reasonable for the company to take advice on these matters. The directors are all volunteers, the company is responsible for a substantial development with a budget that reflects this. It is proper and reasonable for the board to take advice to ensure that it is acting at all times properly and in the best interests of the leaseholders. We find that the amounts claimed are reasonable.

Anti social behaviour

94. We did consider this head carefully. Whilst taking some advice on the basis of the incidents as described in evidence was reasonable it was noteworthy that solicitors continued to be involved even after it seems a decision had been made not to take any action at that time. Whilst we can see the logic of engaging with the local authority who it seems are assisting the persons concerned it is concerning that the solicitors continued to be involved in record keeping and the like. We did consider whether or not the amounts claimed should be reduced but considering all the evidence and the fact action may still be required by the Respondent on balance we were just about satisfied that these costs were reasonable.

Other costs

95. We have looked carefully at the pie chart and the timesheets and invoices. The oral evidence added little. It is clear that the board as a whole was placing substantial reliance upon its solicitors. We have taken account of the circumstances the board found itself. The previous board had all resigned and appeared to be unwilling to assist with any meaningful handover. Members of that board we were told were some of the unlawful subletting offenders. The board also found itself with a managing agent it was unhappy with and it identified many areas of concern.

96. We take account of the fact that the development has a substantial annual budget in the order of £1,000,000. It has in its accounts at any one time a substantial sum of money typically close to its annual budget figure. We weighed this up against the realistic

concerns of Mr Parfitt. We would certainly not expect to see over this period of time, even for a substantial development, legal costs of in the order of £70,000 which it was not believed would be recovered in some ongoing litigation. That is however the case here. This is unusual but having heard oral evidence and looking at all the evidence on balance we find the costs are reasonable.

Conclusion

97. We find that the sums challenged by Mr Parfitt are all recoverable under the lease terms and are reasonable save we disallow the sum of £1302 reimbursed to Mr Jenkins by the Respondent. It is not reasonable for Mr Parfitt to have to pay his proportion of this sum.

98. Mr Parfitt has sought orders pursuant to section 20C of the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002. Such orders are always at the discretion of the Tribunal. We make no criticism of Mr Parfitt in pursuing his application. He did so in a measured way limiting matters to specific items. We can see on the face of the figures why a leaseholder may question some of the money spent. Ultimately the decisions on expenditure subject to any consultation requirements and the lease terms are for the Respondent.

99. In the main the Respondent has demonstrated that the sums claimed were payable and reasonable. We determine that we should not in the circumstances and facts of this case exercise our discretion to make any orders.

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 rpsouthern@justice.gov.uk being 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