Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0016/11/17

In the matter of number 154 Mackintosh Place, Roath, Cardiff, CF24 4RS

And in the matter of an application under paragraphs 31 and 32 of Part 3 Schedule 5 of the Housing Act 2004 regarding the conditions of an HMO Licence

TRIBUNAL:	**Timothy Walsh (Chairman)** **John Singleton (Surveyor)** **Angela Ash**
APPLICANT:	**Mr. Assan Khan**
RESPONDENT:	**Cardiff County Council**

REASONS FOR THE DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL

Summary of Determination

1. The Applicant's application for a debarring order is, for the reasons that follow, dismissed.

The Substantive and Procedural Applications and the relevant legislation

1. This case concerns a dispute over the conditions of an HMO licence for a property known as number 154 Mackintosh Place, Roath, Cardiff, CF24 4RS ("the Premises"). Significantly, for present purposes, it is one of two cases that have been consolidated and will be heard together. The second case concerns an adjacent property at number 152 Mackintosh Place (being case number RPT/0015/10/17). Because the two cases involve the same parties, adjacent properties and very similar issues, the Tribunal directed that they should be heard together in directions issued on 30 November 2017 ("the Directions"). There was no appeal from that order which was plainly appropriate.

2. The Applicant, Mr. Khan, has made his substantive application in the Tribunal's Form RPT9; that is the correct form to use where the owner or manager of premises wishes to appeal against a decision of a Local Housing Authority (in this case the Respondent) in relation to the grant of a licence under paragraphs 31(1) or 32(1) of Schedule 5 of the Housing Act 2004.

3. With regard to the Premises, the licence in question is licence number 529118 ("the Licence"); it was issued by the Respondent Local Housing Authority on 23 October 2017 to the Applicant as the Licence holder.

4. The material statutory provisions concern the licensing scheme in Part 2 of the Housing Act 2004 ("the Act") as they apply to an "HMO". For the purposes of the Act, an HMO is a house in multiple occupation as defined by sections 1 and 254 to 259 of the 2004 Act. Where Part 2 of the Act applies, section 61(1) of the Act requires an HMO to be licensed (save in limited circumstances). Sections 63 to 67 of the Act deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions. An application for a licence is made under section 63 of the Act and that application must be granted or refused in accordance with section 64.

5. Here, the respondent Local Authority granted the Licence pursuant to its statutory power to do so under section 64. Section 67 of the Act is concerned with licence conditions and section 67(1) states, in terms, that a licence may include such conditions as the local housing authority consider appropriate for regulating all or any of (a) the management, use and occupation of the house concerned, and (b) its condition and contents.

6. Section 71 of the Act provides that Schedule 5 has effect to deal with the procedural requirements relating to the grant, refusal, variation or revocation of licences and appeals against licence decisions. The provisions concerning appeals against licence conditions are contained in Part 3 of Schedule 5 which, insofar as relevant, provides as follows:

   *"**Part 3 Appeals against Licence Decisions***

   Right to appeal against refusal or grant of licence

   31 (1) The applicant or any relevant person may appeal to the appropriate tribunal against a decision by the local housing authority on an application for a licence—
   (a) to refuse to grant the licence, or
   (b) to grant the licence.
   (2) An appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence.

   Right to appeal against decision or refusal to vary or revoke licence

   32(1) The licence holder or any relevant person may appeal to the appropriate tribunal against a decision by the local housing authority—
   (a) to vary or revoke a licence, or
   (b) to refuse to vary or revoke a licence.
   (2) But this does not apply to the licence holder in a case where the decision to vary or revoke the licence was made with his agreement…

Powers of tribunal hearing appeal

34(1) This paragraph applies to appeals to the appropriate tribunal under paragraph 31 or 32(2) An appeal—
(a) is to be by way of a re-hearing, but
(b) may be determined having regard to matters of which the authority were unaware.
(3) The tribunal may confirm, reverse or vary the decision of the local housing authority.
(4) On an appeal under paragraph 31 the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct…"

7. For these purposes, in respect of premises situated in Wales, the "appropriate tribunal" for appeals remains the Residential Property Tribunal.

8. As regards the procedural position, insofar as relevant for present purposes, section 230 of the 2004 Act provides as follows:

230 Powers and procedure of residential property tribunals
(1) A residential property tribunal exercising any jurisdiction in respect of premises situated in Wales by virtue of any enactment has, in addition to any specific powers exercisable by it in exercising that jurisdiction in respect of premises situated in Wales, the general power mentioned in subsection (2).
(2) The tribunal's general power is a power by order to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue raised in or in connection with them.
(3) In deciding whether to give directions under its general power a tribunal must have regard to—
(a) the matters falling to be determined in the proceedings,
(b) any other circumstances appearing to the tribunal to be relevant, and
(c) the provisions of the enactment by virtue of which it is exercising jurisdiction and of any other enactment appearing to it to be relevant.
(4) A tribunal may give directions under its general power whether or not they were originally sought by a party to the proceedings…

(7) Schedule 13 (residential property tribunals: procedure) has effect."

9. Schedule 13 of the 2004 Act makes provision for the enactment of procedural regulations applicable in the Residential Property Tribunal in Wales. The relevant procedural regulations are to be found in the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016 which came into force on 23 November 2016 ("the Regulations").

10. Regulation 3 of the Regulations states the overriding objective:

*"**3 The overriding objective and parties' obligation to co-operate with the tribunal***

(1) When a tribunal—

(a) exercises any power under these Regulations; or

(b) interprets any regulation of these Regulations,

it must seek to give effect to the overriding objective of dealing fairly and justly with applications which it is to determine.

(2) Dealing with an application fairly and justly includes—

(a) dealing with it in ways which are proportionate to the complexity of the issues and to the resources of the parties;

(b) ensuring, so far as practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings;

(c) assisting any party in the presentation of the party's case without advocating the course the party should take;

(d) using the tribunal's special expertise effectively; and

(e) avoiding delay, so far as is compatible with proper consideration of the issues.

(3) Parties must—

(a) help the tribunal to seek to give effect to the overriding objective; and

(b) co-operate with the tribunal generally."

11. It will be appreciated that sections 230(2) and (3) of the 2004 Act and the overriding objective in Regulation 3 are two sides of the same coin and are directed at securing the just, expeditious and economical disposal of proceedings in a way that achieves fairness between the parties. The overring objective in Regulation 3 does, of course, bear a close resemblance to the overriding objective applied in civil proceedings under Part 1 of the Civil Procedure Rules.

12. We return to the balance of the material Regulations where relevant below.

13. The Applicant's substantive application in respect of the Premises appeals against the terms upon which the Licence was granted on 23 October 2017. That application was received by the Tribunal on 20 November 2017. The Application Form sets out the bases of the objection to the licence conditions in four short paragraphs. The text is not easy to read but the thrust of the complaint is clearly that the Licence conditions are too onerous.

14. Contrary to the requirements specified on the face of the RPT9 pro forma, neither a copy of the notice granting the Licence nor the Licence itself were included with the Application and the clerk to this Tribunal chased those documents on 22 November 2017. The Applicant supplied these by letter dated 23 November 2017 and the Procedural Chairman then issued case management directions on 30 November 2017 (i.e. "the Directions"). Those Directions were endorsed with this Tribunal's standard warning to the parties which is in bold and is in these terms:

"WARNING

It is important that these Directions are complied with. Failure to do so may result in the Tribunal being unable to consider important evidence or documents which could prejudice your case"

15. Paragraph 1 of the Directions required the Applicant to file and serve (the order says "a copy to" the Respondent) a witness statement setting out the basis of the Applicant's appeal "*containing all relevant information, evidence, submissions and documents that the Applicant wishes the tribunal to take into account"*. The Directions required that statement to be filed by 12 noon on 18 December 2017.

16. In response to those directions, the Applicant produced a three-page witness statement extending to nine paragraphs which was emailed to the Tribunal on 17 December 2017. We have considered the detail of that statement; it includes, but is not limited to, the following:

    (i) The Applicant asserts that the Respondent has adopted an aggressive, draconian approach which is "onerous, inappropriate and unreasonable".
    (ii) The Applicant raises the possibility that the Premises may not be a licensable HMO under the Act.
    (iii) The Applicant objects to any condition requiring periodic inspection of the Premises. This is said to be a breach of the Human Rights Act 1998.
    (iv) The statement contains the grave and serious allegation that the Respondent is discriminating against individuals from ethnic minority backgrounds and asserts that the Respondent is guilty of "institutional discrimination".
    (v) The statement also includes the complaint that the Respondent has failed to provide proper disclosure in response to a request for information dated 20 July 2017, although we have only seen part of a letter from the Information Commissioner's Office dated 7 December 2017. That letter refers to a "Subject Access Request" ("SAR") for personal data made by the Applicant on 20 July 2017 and a possible breach of the Data Protection Act by the Respondent in failing to respond. That was not, and plainly cannot be, a failure to provide disclosure under the Directions issued in the present proceedings and the correspondence does not explain the relevance of the SRA to the present proceedings.

17. Much of the balance of the statement concerns submissions about non-disclosure.

18. Paragraph 2 of the Directions required the Respondent to file a statement of case and/or any witness statement, adding that it should contain "*all other relevant information, evidence and documents that the Respondent took into account in granting the licence and that the Respondent wishes the Tribunal to take into account".* That had to be filed and served by noon on 5 January 2018.

19. On 15 January 2018 the clerk to the Tribunal contacted the Respondent, pointing out that the required statement of case and supporting papers had not been received.

20. On 16 January 2018 the Respondent's Ms. Rachel Stickler emailed the Tribunal. She stated that the Respondent had not filed its statement of case because it had not received the Applicant's witness statement. The Respondent requested a copy of the statement from the Tribunal and it was duly sent by the Clerk to the Tribunal on 16 January 2018 whereupon (on 18 January 2018) the Respondent sought an extension of time to file a response by 2 February 2018.

21. On 22 January 2018 the Vice President of the Tribunal, as Procedural Chair, granted the Respondent's application and extended the time for the Respondent to comply with paragraph 2 of the Procedural Directions to noon on 29 January 2018 and that was varied thereafter to 2 February 2018. The Respondent has complied with that extended deadline and filed a Statement of Case in response to the substantive application by the Applicant.

22. Significantly, however, prior to the request(s) for, and the orders facilitating, an extension of time the Applicant issued an "Application for Debarring Order" dated 15 January 2018 (date stamped as received by the Tribunal on 16 January 2018).

23. The Debarring Order application seeks an order debarring the Respondent from "further participation in this appeal" and also seeks to strike out the Respondent's case "or remove it from the proceedings". It is alleged that the Respondent's unnecessary delay has caused "clear" and "unfair" prejudice to the Applicant. There is also reference to Supreme Court and other authority including the recent decision in *BPP Holdings Ltd. v. Revenue & Customs Commissioners* [2017] 1 WLR 2945.

24. The Applicant's present application, like the substantive application, repeats the complaint made in the substantive application that there has been a failure to comply with a request for information made in July 2017. He complains that the Respondent is withholding information that he requires and that it is undermining his case "unjustly". The Applicant also seeks an order that this tribunal "*direct at an early stage of these proceedings, the respondents to disclose all the information/data/documents that [have] been requested*". It is not apparent from the application what that documentation actually is. Of course, since the Applicant issued that application the Respondent has filed a statement of case and supporting evidence in any event.

25. For the avoidance of doubt, this decision is confined to a determination of the Applicant's request for a debarring order.

Discussion

26. At the hearing of this debarring order application the Applicant appeared in person. When doing so he produced a detailed skeleton argument dated 12 February 2018 which he indicated had been prepared with the assistance of counsel. We have had close regard to

that submission. Unfortunately, however, the Applicant was labouring under the misapprehension that the procedural regime applicable in the Property Chamber of the First-Tier Tribunal applied in Wales. As already explained above, it does not.

27. Two matters featured heavily in the Applicant's submissions to the Tribunal.

28. First, the Applicant is quite clear that he sent hard copies of his statement to the Respondent, filed in accordance with paragraph 1 of the Directions, in compliance with the requirement to provide a copy by 18 December 2017. He informed the tribunal of the address that he had used and it is common ground that, if used, that would have been the appropriate address for service. The Applicant could not provide proof of posting but, when emailing the Tribunal on 17 December 2017, he stated that: *"I have also sent hard copies in the post and to the other party"*. For the purposes of the present application, we accept that the Applicant had probably posted his statement to the Respondent by that time.

29. In reply, the Respondent says that it never received that document. That is the evidence and position of Ms. Stickler, the Respondent's Neighbourhood Services Officer, and it is corroborated by her email to the Tribunal requesting a copy of the Applicant's statement on 16 January 2018. We accept that no copy of the statement came to the attention of the relevant department of the Respondent and that there is no evidence that it was received at all. It may be material that the documentation was being sent shortly before Christmas with the resulting uncertainty that can attend the post at that time of year.

30. The Applicant's response to this is that the Respondent could, and should, have taken steps to contact him or the Tribunal earlier but failed to do so. On the contrary, the Respondent only took any steps after the Tribunal chased it on 15 January 2018 and that, says the Applicant, was because he had contacted the Tribunal enquiring about compliance. For its part, the Respondent acknowledges that it was not proactive.

31. Secondly, at the hearing the Applicant sought to stress the prejudice that he says results from the Respondent not providing a statement of case nor supporting documentation before 2 February 2018. He pointed, in particular, to the fact that he needs a medical procedure (or procedures) which means that the two consolidated cases will not now be listed for hearing before June 2018. The Applicant points to the fact that the Directions of 30 November 2017 (at paragraph 3) anticipated listing a hearing in a window expiring on 2 February 2018. He could have attended a hearing in that window but he says he will now have to wait up to five further months for his applications to be determined.

32. Since the assertion of prejudice by the Applicant can only really turn on the delay that is alleged to result from non-compliance with the Directions, it is necessary to consider whether the matter would have been listed sooner in any event. Having regard to the fact that the instant application and that relating to the neighbouring property will be heard together, we have also had to consider the procedural background in the parallel case concerning number 152 Mackintosh Place which is as follows.

33. The Tribunal received the Applicant's RPT9 Application in relation to number 152 Mackintosh Place on 24 October 2017. The Tribunal then issued directions in that case on 6 November 2017 requiring that the Applicant file and serve a statement setting out his case by 22 November 2017. On 21 November 2017 the Tribunal received a request (dated 17 November 2017) that those directions be amended. On 24 November 2017 the Procedural Chairman thereafter issued amended directions which required that the Applicant file his statement by 1 December 2017. By letter dated 25 November 2017 the Applicant made another application to vary the directions. On 30 November 2017 the Tribunal emailed the Applicant stating that the renewed application to amend the directions was rejected. The Respondent was due to file a statement in response on 13 December 2017 but on 12 December 2017 the Respondent emailed the Tribunal to say that they were unable to do so because the Applicant had still not complied with the amended directions to file his own statement.

34. In fact, it appears that the Applicant made a further (third) application to vary the directions by letter dated 1 December 2017 (but received by the Tribunal on 4 December 2017). That application was also rejected and on 13 December 2017 the Tribunal wrote to the Applicant that the Tribunal was proposing to strike out his application in respect of 152 Mackintosh Place as "frivolous or vexatious" under rule 41 of the 2016 Regulations unless he complied with the direction to file a statement setting out his case by 22 December 2017. That was a date falling a month after the Applicant should have first complied with the directions and three weeks after the already extended deadline. On 17 December 2017 the Applicant finally filed his statement of case for 152 Mackintosh Place. That was at the same time that he complied with the Directions for 154 Mackintosh Place (in respect of which he complied with the original directions as issued requiring a statement by 18 December 2017).

35. On 22 December 2017 the Tribunal notified the Respondent that it had received the Applicant's statement in the 152 matter and on the same date it made consequential amendments to the case management timetable and issued further amended directions in respect of the 152 Mackintosh Place application. Those amended directions required the Respondent to provide a statement of case by 12 January 2018. However, on 27 December 2017 the Respondent emailed the Tribunal to say that they had still not received the Applicant's statement in relation to 152 Mackintosh Place. The Applicant emailed the following day to say that it had been posted. This exchange should probably have put him on notice that the Respondent also had not received the statement for 154. The Tribunal sent the Applicant's statement for 152 to the Respondent on 5 January 2018. On 9 January 2018 the Respondent then requested an extension of time because it had been left with only 5 working days to provide its response. On 10 January 2018 this prompted the Procedural Chairman to extend the time for the Respondent to file a statement of case to noon on 2 February 2018.

36. It is against this background that the Procedural Chairman's decision to extend time for the Respondent to file its statement in reply in respect of number 154 must be understood. That extension of time simply meant that the Respondent would be filing its statements in both consolidated applications at the same time. Moreover, the Applicant has sensibly and

properly raised no complaint about the extension of time given in relation to number 152. Most of the delay in that matter has been the result of the Applicant's failure to comply with the directions and the Respondent's application to extend time to file its own statement by 2 February 2018 (in respect of 152) was made in that context, before the deadline expired and in circumstances in which it had not received the Applicant's own long-delayed statement until 5 January 2018 (which it should have received in November 2017).

37. Three points clearly emerge from this. First, the Applicant does not complain about the revised procedural timetable in relation to number 152. Secondly, he plainly could not object to that revised timetable which has sought to achieve fairness for both parties and to ameliorate the effects of the Applicant's own delay. Thirdly, there is no challenge to the propriety of consolidating the 152 and 154 matters which is both a sensible and a proportionate course involving an appropriate allocation of the tribunal's resources to the resolution of mirror disputes. It follows that the filing of the Respondent's statement in the instant 154 matter on 2 February 2018 will not have materially affected when these consolidated matters come on for trial. This is because the 2 February 2018 is the unchallenged date upon which the Respondent was required to file its statement in the 152 matter.

38. In short, we would dismiss this application for a debarring order for the simple reason that we reject the suggestion that the substantive application will be determined later than it otherwise would have been. Given the procedural background, the Applicant has suffered no prejudice at all because the delayed provision of a Respondent's statement to 2 February 2018 has not delayed the final hearing.

39. Even putting the procedural issues with regard to the number 152 matter to one side, for the reasons that follow we would have dismissed this application as wholly without merit in any event.

40. There are, in our view, a number of factors that must be weighed generally in considering what is, in effect, an application for an order prohibiting the Respondent from further involvement in these proceedings. We must bear in mind this tribunal's general power under the 2004 Act to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue raised in or in connection with them. When doing so, we must have regard to: (a) the matters falling to be determined in the proceedings, (b) any other circumstances appearing to the tribunal to be relevant, and (c) the provisions of the enactment by virtue of which we are exercising jurisdiction and of any other enactment appearing to us to be relevant. We must also have regard to the overriding objective in the Regulations.

41. In enacting Part 2 of the Housing Act 2004 the legislature imposed a scheme for the licensing of HMOs and the imposition of licensing conditions. The licensing regime is in place to safeguard the occupants of HMOs. Before granting a licence a local authority must, for example, be satisfied that the house is reasonably suitable for occupation in the density proposed to "the prescribed standards for occupation" or that the proposed management

arrangements are satisfactory. Crucially, in hearing an appeal under Part 3 of Schedule 5, the Tribunal deals with the application by way of rehearing. The matter is heard *de novo* and the Tribunal will have to decide whether a licence should be granted and, if so, on what terms. In the circumstances, the process is not simply adversarial with the Tribunal adjudicating upon rival submissions. Rather it is, at least to a degree, inquisitorial. Shutting out the involvement of the local authority and any relevant evidence that assists in informing the Tribunal's view as to the appropriate terms of any licence should be approached with caution when viewed through that prism.

42. Secondly, this application must be determined applying the 2016 Welsh regulations and not those applying to the First-Tier Tribunal in England.

43. With regard to the 2016 Regulations, the Tribunal has wide powers to summarily dismiss vexatious or frivolous *applications* under regulation 41 but this does not relate to respondents. There are also wide case management powers under regulation 26(e) which allow the Tribunal to "*take any other step or make any other decision which the tribunal considers necessary or desirable for the purpose of managing the case*". This mirrors the Tribunal's general power to make such orders under the 2004 Act. In addition, the Tribunal also has powers under Regulation 18 to make an order requiring a party to supply to the tribunal any information or document which it is in the power of that party to supply. Non-compliance with an order under Regulation 18 triggers the application of Regulation 19 so that the Tribunal may (a) draw such inferences as it thinks fit, or (b) make an order dismissing or allowing the whole or part of an application.

44. In our view, the Tribunal's powers probably do extend to the possibility of making an order limiting or debarring a Respondent's involvement on appropriate facts but such an order would be exceptional and require compelling facts.

45. Turning to the facts here, in addition to the points already made, the following emerges:

    (I) The Applicant was required to provide the Respondent with a copy of his supporting witness statement when he filed it before 18 December 2017. He filed it, but the Applicant probably did not receive the copy served by post.

    (II) The Respondent was originally required to file a statement of case and all relevant information by 5 January 2018. The orders were sequential for the self-evident reason that it anticipated the Respondent responding to the case that the Applicant had set out in his statement. That was not possible if the statement was not received by the Respondent. That said, the Respondent could have filed a statement of case without prejudice to its ability to file a further reply or it could have sought clarification, or an extension of time, before the specified deadline in the Directions when nothing was forthcoming from the Applicant.

    (III) The Respondent requested an extension of time on 18 January 2018 by which time it was 13 days late in providing its Statement of Case.

(IV) The Procedural Chair gave an extension to 2 February 2018 and the Respondent complied with that new deadline. That meant that the two consolidated matters were, as explained above, now proceeding in tandem.

(V) The totality of the delay in the provision of the Respondent's statement was 4 weeks.

(VI) Although the Applicant has alleged prejudice he has not, in fact, identified any prejudice beyond the misleading claim that there may be a resulting delay in resolving the appeal.

46. It should also be noted that the Procedural Chairman has already decided that it was appropriate to grant an extension of time in respect of paragraph 2 of the Directions to 2 February 2018 and the Respondent has complied with that extended deadline. That extension was, in our view, an order that was plainly within the discretion afforded to the Tribunal and was manifestly appropriate. There has been no appeal from that order but any appeal would be utterly hopeless for the reasons already given. Since that extension of time has already been granted, however, there is nothing upon which the present application can "bite". The breach of paragraph 2 of the Procedural Directions has already been remedied by the extension of time. For all practical purposes, that was the only procedural direction that had been breached in these proceedings when the present application for a debarring order was made.

47. Even if an order extending time had not already been made, however, we would still have dismissed the present application for a debarring order for the following additional reasons:

(a) Part of the reason for the Respondent's failure to comply with the Directions is the fact that the Respondent appears not to have received the hard copy of the Applicant's statement. We accept that this prejudiced the ability of the Respondent to respond expeditiously. Whilst the Respondent could have been more proactive, at least some responsibility for the delay rests with *both* parties.

(b) The Respondent applied for an extension of time promptly and has since met that extended deadline.

(c) The maximum delay resulting from the failure to comply with the original Directions is short. Namely 28 days.

(d) There is no evidence of real or substantial prejudice to the Applicant by reason of that delay. On the contrary, it is doubtful that there is any prejudice.

(e) Given the character of an appeal of the present type, generally a Tribunal should be slow to shut out evidence that might be relevant to the *de novo* consideration of the Licence application.

(f) It would be disproportionate to debar the Respondent from further involvement in these proceedings given the foregoing matters.

(g) The Tribunal is required to ensure, so far as reasonably practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings. Again, the Tribunal should accordingly be slow to exclude a party's involvement.

(h) Whilst the Regulations allow potentially draconian sanctions on appropriate facts, insofar as the application of the material regulations applicable here engages the

Tribunal in an exercise of discretion we have no hesitation in concluding that it is appropriate dismiss this application.

48. For completeness, we would add that we have had regard to the Supreme Court's decision in *BPP Holdings Ltd. v. HMRC* but that case involved the application of different rules and a very different factual matrix. It is, of course, correct that the decisions of the Court of Appeal in *Mitchell v. News Group Newspapers Ltd.* [2014] 1 WLR 795 and the softening of the approach advocated in *Denton v. TH White Ltd.* [2014] 1 WLR 3926 lay down important guidance as to when relief from sanctions ought to be granted under the different procedural code that applies in the courts, although tribunals can generally be expected to follow a similar approach (as to which see *BPP Holdings Ltd. v. Revenue & Customs Commissioners* at paragraphs [25] and [26]). In *Denton* the Court advocated a three-stage approach. First, the court must identify and assess the seriousness or significance of the relevant failure. If a breach is not serious or significant, relief will usually be granted and there will be no need to spend much time on the second and third stages. The second stage requires a court to consider why the failure or default occurred. If there is a good reason for a serious or significant breach relief will probably be granted. The third stage requires the court to consider all the circumstances of the case and a serious breach for no good reason is not, therefore, automatically prevented from attracting relief.

49. Here there was, in fact, no "unless order". The Tribunal's standard warning is not equivalent. Under what has been described as the doctrine of "implied sanction" similar principles might apply if a party would be practically excluded. Even if that applied here, however, the facts compel only one conclusion. The Respondent's failure to file its statement and evidence until 28 days after originally ordered was not a serious or significant breach when viewed in the context of both of the Applicant's cases and the chronology of events. There was a "good reason" for non-compliance in that the Respondent did not receive a copy of the Applicant's statement in circumstances in which he had repeatedly failed to comply with directions relating to the neighbouring property. Finally, and in any event, having regard to all the circumstances of the case it would not be appropriate to prevent the Respondent actively participating in the appeals.

50. Accordingly, in the circumstances the Applicant's application for a Debarring Order is dismissed.

ORDER

The Applicant's Application for a debarring order dated 15 January 2018 is dismissed.

DATED this 5th day of March 2018

CHAIRMAN