Hilary Term
[2023] UKPC 5
Privy Council Appeal No 0002 of 2022

JUDGMENT

Chandra Silochan and another (Appellants) *v* Rickie Cedeno (Respondent) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Reed
Lord Kitchin
Lord Hamblen
Lord Stephens
Lord Lloyd-Jones

JUDGMENT GIVEN ON
2 February 2023

Heard on 13 June 2022

Appellants
Anand Beharrylal KC
Siân McGibbon
Omar Sabbagh
(Instructed by Ronald Dowlath (Port of Spain))

Respondent
Robert Strang
(Instructed by Charles Russell Speechlys LLP (London))

LORD STEPHENS:

Introduction

1. The appellants, Chandra Silochan and Ingrid Silochan, were each convicted on 24 March 2017 in summary proceedings before Her Worship Ms Ramsumair-Hinds ("the Magistrate") of an offence under section 18(1) of the Town and Country Planning Act (Chapter 35:01) ("the TCPA") of failing to comply with a planning enforcement notice ("the Enforcement Notice"). The appellants had carried out a development on their property at Lot No 32 Corner Sagan Drive and North Drive, Champs Fleur, in North West Trinidad ("the property") consisting of extensions to an existing residential building, without the grant of planning permission. On 9 October 2008, Rickie Cedeno, Development Control Inspector I ("the respondent") made a complaint against the appellants in which it was asserted that "*during the period January 16, 2006 to August 4, 2008"*, the appellants had failed to comply with the Enforcement Notice, dated 3 October 2005, which required them by 16 January 2006 to demolish the development on the property.

2. Upon convicting the appellants, the Magistrate imposed a fine of TT$700 on each of them "for the initial offence" committed on 17 January 2006 and a "further fine" for the "continuing offence" of TT$815,200 to be shared equally by both appellants, calculated at TT$200 per day for each of the 4,076 days between 18 January 2006 and 17 March 2017 (which was the last day in respect of which there was evidence before her that the offending extensions were still in place). In default of payment of the fines within six months, the appellants were each sentenced to two years' imprisonment with hard labour.

3. The appellants appealed against both conviction and sentence. The Court of Appeal in a judgment dated 5 October 2021, delivered by Moosai JA, with which Mohammed JA agreed, set aside the appellants' convictions for what it termed the "initial offence" committed on 16 January 2006 for failing to comply with the Enforcement Notice. It did so on the basis that the complaint in relation to the initial offence had been made outside the six-month period required by section 33(2) of the Summary Courts Act (Chapter 4:20) ("the SCA"). As a consequence of allowing the appeals against conviction in relation to the initial offence, the Court of Appeal set aside the fines on each of the appellants of TT$700 for those offences. However, the Court of Appeal upheld the appellants' convictions for what it termed the "continuing offence" of failing to comply with the Enforcement Notice committed between 17 January 2006 and 17 March 2017. The Court of Appeal also upheld the fine of TT$815,200 for the continuing offence and upheld the imposition of two years' imprisonment in default of payment of the fine. However, the Court of Appeal

removed the imposition, during imprisonment, of hard labour on the basis that this was excessive.

4. On 1 April 2022, the Board granted the appellants leave to appeal against both conviction and sentence and granted a stay of the Court of Appeal's order on sentence pending determination of the appeal.

The principal issues on the appeals against conviction

5. On the appeal against conviction, the first principal issue is the six-month limitation of time in section 33 of the SCA for the making of a complaint. Whether the complaint was made outside the period of six months depends on whether the offence of failing to comply with an enforcement notice under section 18(1) of the TCPA creates two offences (an initial offence and a continuing offence), or a single offence which can take place continuously over a period of time. If the latter, then the question is whether, as the appellants submit, it is a precondition to a conviction under section 18(1) of the TCPA that the person must first have been convicted for an offence committed on the "first day" upon which there was a failure to comply with the enforcement notice. If, as the appellants contend, it creates a single offence subject to the precondition that the person must first have been convicted for an offence committed on the "first day" upon which there was a failure to comply with the enforcement notice then "the matter of the complaint arose" in relation to that first day on 16 January 2006, with the consequence that the complaint made on 9 October 2008 would have been made outside the six-month period. However, if it was a single offence which can take place continuously over a period of time, without any such precondition, as the respondent contends, then the complaint would have been brought in time, at least, in respect of the six-month period prior to the laying of the complaint.

6. The second principal issue on the appeals against conviction concerns the failure of the Magistrate to comply with the obligation in section 130B(1) of the SCA, where a notice of appeal has been given, to draw up and sign a statement of the reasons for her decision.

The principal issues on the appeals against sentence

7. On the appeals against sentence, the first principal issue is whether the imposition of a fine of TT$815,200 was incorrect as, pursuant to section 33(2) of the SCA, those parts of the complaint which refer to events more than six months before it

was made ought to have been excluded. Furthermore, it is contended that those events after 4 August 2008, which was the end of the period set out in the complaint, should also have been excluded.

8. The second principal issue is whether the aggravating and mitigating factors including character, age, and delay were not taken into account or properly evaluated, in relation to both the imposition of the fines and in relation to imposing the sentences of imprisonment in default of payment of the fines.

Relevant legislative provisions in relation to the appeals against conviction

9. It is appropriate to set out the statutory provisions relevant to the appeals against conviction.

10. The appellants rely on the six-month limitation period within which a complaint shall be made as set out in section 33(2) of the SCA. Section 33 provides, as follows:

> "(1) Every proceeding in the Court for the obtaining of an order against any person in respect of a summary offence or for the recovery of a sum by this Act or by any other written law recoverable summarily as a civil debt shall be instituted by a complaint made before a Magistrate or Justice.
>
> (2) In every case where no time is *specially limited* for making a complaint for a summary offence in *the Act relating to* such offence, the complaint *shall be made within six months from the time when the matter of the complaint arose, and not after.*" (Emphasis added).

Accordingly, under section 33(1), every proceeding in respect of a summary offence shall be instituted by a complaint and if there is no time specially limited for making a complaint then under section 33(2) the complaint shall be made within six months. In applying section 33(2) to the facts of this case, "the Act relating to" the offence under section 18(1) is the TCPA. Any offence created by section 18(1) is a summary offence. No time is "specially limited" in the TCPA for making a complaint for a summary offence. Accordingly, the complaint in this case "shall be made within six months from the time when the matter of the complaint arose, and not after." The six-month time period runs "*from the time when the matter of the complaint arose"* rather than from

the date upon which an offence was first committed or from when an earlier matter of complaint arose.

11. Section 8 of the TCPA sets out a requirement for planning permission "for any development of land". Section 8, in so far as relevant, provides:

> "8. (1) Subject to the provisions of this section and to the following provisions of this Act permission shall be required under this Part for any development of land that is carried out after the commencement of this Act.
>
> (2) In this Act, except where the context otherwise requires, the expression 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under any land, the making of any material change in the use of any buildings or other land, or the subdivision of any land…"

The requirement to obtain planning permission is in aid of the legislative purpose of the orderly development of land.

12. Section 11 of the TCPA provides the Minister with the power to grant planning permission. Section 11, in so far as relevant, provides:

> "(1) Subject to this section and section 12, where application is made to the Minister for permission to develop land, the Minister may grant permission either unconditionally or subject to such conditions as he thinks fit, or may refuse permission."

Section 14 also provides the Minister with the power to grant planning permission to retain a development already carried out without permission. Sections 11 and 14 are in aid of the legislative purpose of the orderly development of land.

13. Section 16 of the TCPA makes provision for the service of an enforcement notice where it appears to the Minister that any development of land has been carried out without the grant of planning permission or where it appears to the Minister there

has been a failure to comply with conditions subject to which the permission was granted. Section 16 provides:

> "(1) Where it appears to the Minister that any development of land has been carried out after the appointed day without the grant of permission required in that behalf under this Part, or that any conditions subject to which the permission was granted in respect of any development have not been complied with, then the Minister may *within four years of the development being carried out*, or, in case of non-compliance with a condition, within four years after the date of the alleged failure to comply with it, if he considers it expedient to do so having regard to the provisions of the development plan, if any, and to any other material considerations, serve on the owner or occupier of the land a notice under this section.
>
> (2) Any notice served under this section (hereinafter called an 'enforcement notice') shall specify the development that is alleged to have been carried out without the grant of the permission as mentioned above or, as the case may be, the matters in respect of which it is alleged that any such conditions have not been complied with, and may require such steps as may be specified in the notice to be taken within such period as may be so specified for restoring the land to its condition before the development took place, or for securing compliance with the conditions, as the case may be; and in particular any such notice may, for the purpose mentioned above require the demolition or alteration of any buildings or works, the discontinuance of any use of land, or the carrying out on land of any building or other operations.
>
> (3) Except as otherwise provided in this section, an enforcement notice shall take effect at the expiration of such period (not being less than twenty-eight days after the service thereof) as may be specified therein." (Emphasis added.)

Several points relevant to the appeals against conviction can be made about section 16. First, there is an express four-year time limit from the development being carried out for the service of an enforcement notice. Second, there is no time limit in relation

to the obligation to comply with the requirements in an enforcement notice with the result that the obligation is to comply without any limitation of time. Third, the ability to serve an enforcement notice is in aid of the legislative purpose of the orderly development of land.

14. In circumstances where any steps required by an enforcement notice have not been taken, other than the discontinuance of any use of land, section 17 of the TCPA provides the Minister with the power to enter upon the land to take those steps himself and recover any expenses reasonably incurred from the person who is then the owner of the land. Section 17 provides:

> "(1) If within the period specified in an enforcement notice, or within such extended period as the Minister may allow, any steps required by the enforcement notice to be taken (other than the discontinuance of any use of land) have not been taken, the Minister may enter on the land and take those steps, and may recover as a simple contract debt in any Court of competent jurisdiction from the person who is then the owner of the land any expenses reasonably incurred by the Minister in that behalf; and if that person, having been entitled to appeal to the Court under section 16, failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken by the Minister upon any ground that could have been raised by such an appeal.
>
> (2) Any expenses incurred by the owner or occupier of any land for the purpose of complying with an enforcement notice served under section 16, in respect of any development, and any sums paid by the owner of any land under subsection (1) of this section in respect of the expenses of the Minister in taking steps required to be taken by such an enforcement notice, shall be held to be incurred or paid for the use and at the request of the person by whom the development was carried out.
>
> (3) Where, by virtue of an enforcement notice, any use of land is required to be discontinued, or any conditions are required to be complied with in respect of any use of land or in respect of the carrying out of any operations thereon, then if any person, without the grant of permission in that behalf

> under this Part, uses the land or causes or permits the land to be used, or carries out or causes or permits to be carried out those operations, in contravention of the enforcement notice, he is liable on summary conviction to a fine of seven hundred and fifty dollars and, in case of a continuing offence, to a further fine of three hundred dollars for every day after the first day during which the use is so continued. …"

Two points relevant to the appeals against conviction can be made about section 17. First, the power of the Minister is unlimited in time which is consistent with the obligation to comply with the enforcement notice being a continuing obligation which has no time limit. Second, the power of the Minister is in aid of the legislative purpose of the orderly development of land.

15. Section 18(1) of the TCPA creates an offence of failing to comply with an enforcement notice. It provides as follows:

> "(1) Subject to this section, where an enforcement notice has been served under section 16 on the person who was, when the notice was served on him, the owner of the land to which the enforcement notice relates and within the period specified in the enforcement notice, or within such extended period as the Minister may allow, any steps required by the enforcement notice to be taken (other than the discontinuance of any use of land) have not been taken, that person is liable on summary conviction to a fine of one thousand five hundred dollars and, in case of a continuing offence, to a further fine of three hundred dollars for every day after the first day during which the requirements of the enforcement notice (other than the discontinuance of any use of land) remain unfulfilled."

Two initial points relevant to the appeals against conviction can be made about section 18. First, carrying out a development without planning permission is not criminalised by the TCPA. Rather, it is the failure to comply with an enforcement notice that is a criminal offence. Second, the creation of a criminal offence is in aid of the legislative purpose of the orderly development of land.

16. Section 19 of the TCPA provides that compliance with an enforcement notice shall not discharge that notice. It also creates an offence if a person carries out any

development on land, for instance, by way of reinstating buildings that have been demolished in compliance with an enforcement notice. Section 19 provides:

> "(1) Compliance with an enforcement notice, whether as respects-
>
> (a) the demolition or alteration of any buildings or works;
>
> (b) the discontinuance of any use of land; or
>
> (c) any other requirements in the enforcement notice,
>
> shall not discharge the enforcement notice.
>
> (2) Without restricting the generality of subsection (1), where any development is carried out on land by way of reinstating or restoring buildings or works that have been demolished or altered in compliance with an enforcement notice, the enforcement notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were demolished or altered and section 17(1) and (2) shall apply accordingly.
>
> (3) Without affecting the operation of section 18, a person who carries out any development on land by way of reinstating or restoring buildings or works that have been demolished or altered in compliance with an enforcement notice is liable on summary conviction to a fine of one thousand five hundred dollars."

Several points relevant to the appeals against conviction can be made about section 19. First, the enforcement notice is not discharged by compliance which is consistent with there being a continuing obligation under an enforcement notice without any limitation of time. Second, a person can still be prosecuted under section 18(1) for failing to comply with the enforcement notice if, for instance, the buildings which were

demolished are reinstated. For a person to be prosecuted under section 18(1) in such circumstances, the prosecution would have to prove that the person was, when the notice was served on him, the owner of the land to which the enforcement notice relates. However, section 19(3) creates an offence not in respect of a person who was the owner of the property when the notice was served on him, but in respect of a person who carries out the development. Third, the provision that compliance with an enforcement notice shall not be discharged by compliance is in aid of the legislative purpose of the orderly development of land.

17. The appellants also appeal against their convictions on the separate ground that a material irregularity occurred when the Magistrate, in breach of her duty under section 130B(1) of the SCA failed to draw up and sign a statement of the reasons for her decision to convict and to sentence the appellants. Section 130B provides:

> "(1) Where notice of appeal has been given in accordance with section 130, the Magistrate or Justice shall within sixty days of the giving of such notice draw up and sign a statement of the reasons for his decision.
>
> (2) The appellant and respondent shall be entitled upon application to the Clerk to obtain a copy of the statement of the Magistrate's or Justice's reasons for his decision."

Factual background

18. The facts in this case are straightforward and there is no dispute about them.

19. The appellants, who are a married couple, now both of pensionable age, purchased the property on 24 January 2002. There was an existing single storey residential building on the property at the time of purchase.

20. The appellants have remained the owners of the property since 24 January 2002, so within the wording of section 18(1) of the TCPA they are and remain "the owner[s] of the land to which the [Enforcement Notice] relates".

21. In the early part of 2002, the appellants began constructing the extensions, which required, but did not have, planning permission. The extensions consisted of

structural additions to accommodate a further 21 bedrooms, purportedly for “multiple family use”.

22. On 3 April 2002 Sharon Weekes, an officer of the Town and Country Planning Division (“the TCPD”) visited the property following a complaint of unauthorised building. She observed that structural additions were being made at both ground and first floor levels to an existing building which was originally a single-storey building. She observed that the ground floor level had already been plastered and needed to have windows and doors affixed, while there was an addition taking place at the upper level. Sharon Weekes then requested the approved plans for the property from the person in charge of construction. However, what was handed to her was not an approved plan, but one identifying a proposed development comprising of 21 bedrooms. She concluded that the development on the property was unauthorised as it was taking place without the requisite planning permission. She also concluded that the development did not conform to the building standards for that site which required certain minimum building setback distances.

23. On 23 April 2002, an application was submitted on behalf of the appellants to the TCPD for planning permission for the extensions constructed on the property. In this application, the appellants sought planning permission for 14 bedrooms for “multi-family” use with the accompanying plans showing 14 bedsits each with their own toilet and shower and with two shared kitchens. The application was refused by a notice dated 15 May 2002. Several subsequent applications for planning permission made by and on behalf of the appellants were similarly refused. One of those subsequent applications was for a development consisting of 21 bedrooms.

24. On 3 October 2005, the respondent, as an officer of the TCPD, issued the Enforcement Notice which required the appellants to demolish the extensions on the property within 28 days from the date that it took effect; and provided that it took effect 28 days after service. The notice was served on Chandra Silochan on 21 November 2005. The address at which he was served and at which the complaint was left was the usual or last known address of Ingrid Silochan, so she was also deemed to have been served on the same date by virtue of section 35(1)(b) of the TCPA. In respect of both appellants, the Enforcement Notice took effect 28 days after 21 November 2005, that is on 19 December 2005. The appellants then had a period of 28 days from 19 December 2005 to comply with the Enforcement Notice by demolishing the extensions. Accordingly, compliance was required by the end of 15 January 2006.

25. In contravention of the requirements of the Enforcement Notice, the appellants failed to demolish the extensions on the property by the end of 15 January 2006 and

throughout the whole period between 16 January 2006 and 17 March 2017 they have failed to comply.

The summary proceedings and the judgment of the Magistrate

26. On 9 October 2008 the respondent, as an officer of the TCPD, made a complaint against both appellants in the Tunapuna Magistrates' Court. The complaint alleged that the appellants:

> "… during the period January 16, 2006 to August 4, 2008, did not demolish and remove from the land and building situate at Lot #32 Corner Sagan Drive and North Drive, Champs Fleurs,
>
> (i) the concrete extensions measuring approximately 1.25m x 15.24m and 5.18m x 17.6m, as structural additions at ground floor to an existing building; and
>
> (ii) a concrete upper floor measuring approximately 17.98m x 17.98m as a structural addition to an existing building.
>
> In contravention of the requirements of the Enforcement Notice served on you on November 21, 2005, contrary to Section 18(1) of the Town and Country Planning Act, Chapter 35:01."

27. The complaint, dated 9 October 2008, was tried approximately nine years later, on 20, 23 and 24 March 2017 before Her Worship Ms Ramsumair-Hinds in the Tunapuna Magistrates Court. The appellants were convicted and the Magistrate imposed the sentence which the Board has set out in para 2 above.

28. In breach of her duty under section 130B(1) of the SCA which arose when a notice of appeal was given, the Magistrate did not draw up and sign a statement of her reasons for convicting or sentencing the appellants. However, the reasoning of the Magistrate can be discerned from the record of the proceedings, the matters which

were in issue at the hearing, the submissions made by the parties in relation to those matters, and the Magistrate's oral reasons given at the hearing.

29. At the hearing there was no dispute about the facts. The prosecution had to prove beyond a reasonable doubt that (a) the Enforcement Notice had been served under section 16 on the appellants; (b) the appellants were, when the notice was served on them, the owners of the land to which the Enforcement Notice relates; (c) the period specified in the notice, or such extended period as the Minister has allowed, has expired; and (d) any steps required by the Enforcement Notice had not been taken within the period specified in the Enforcement Notice. At the hearing, the respondent's evidence established all these factual matters.

30. On 23 March 2017 at the conclusion of the prosecution case, the appellants made two points in relation to a submission of no case to answer. First, that the Enforcement Notice had not been served upon Ingrid Silochan. In response the prosecution submitted that service had been effected under section 35(1)(b) of the TCPA by leaving it at her last known place of abode. The Magistrate found that there was merit in the prosecution's submissions in relation to this point. Accordingly, the Magistrate's reason for rejecting this point is to be found in her reliance on section 35(1)(b) of the TCPA together with her factual finding, which was never contested, that the Enforcement Notice was left at Ingrid Silochan's last known place of abode. The Board also observes that, on appeal to the Court of Appeal, the appellants did not contend that the Magistrate was wrong to have rejected this point. Accordingly, there was no need for the Magistrate to draw up and sign a statement of reasons for her decision in relation to a point which was not subject to an appeal.

31. The second point was the only real issue before the Magistrate, and it involved a question of law. The point was whether the offence under section 18(1) of the TCPA was time-barred, because the deadline for complying with the Enforcement Notice had expired on 15 January 2006 and the complaint had not been made within the six-month period imposed by section 33(2) of the SCA. In response, the prosecution submitted that section 18(1) of the TCPA:

> "creates two offences. It creates an initial offence and a continuing offence, …. the initial offence occurs where the owner of the land within the period specified in the Enforcement Notice has not taken any steps required by the Enforcement Notice. … section 18 goes on [to] speak to a fine for a continuing offence … which is to be applied after the first day during which the requirements of the Enforcement Notice remain unfulfilled. That is … after the first day after

> the compliance period …. Therefore … the continuing offence occurs on the second day after the requirements of the Enforcement Notice remain unfulfilled."

The prosecution also submitted:

> "So therefore … we are arguing that the limitation period outlined in section 33 would apply from the day that the Defendants ceased the acts that constituted the criminal conduct, that is, from the date that [they] actually complied with the Enforcement Notice."

Accordingly, even though the prosecution submitted that there were two offences, one of which was committed on 16 January 2006, it was contended that section 33(2) of the SCA would only apply from the day that the appellants ceased the acts that constituted the criminal conduct, that is, from the date that they actually complied with the Enforcement Notice.

32. The Magistrate in her ex tempore judgment, simply found that there was merit in the prosecution's submissions in relation to this second point, without explaining the part of the prosecution's submissions which she considered had merit. Accordingly, there is at least ambiguity as to the Magistrate's reasons for rejecting this point but it must at the least have been on the basis that section 33(2) of the SCA would only apply from the day that the appellants ceased the acts that constituted the criminal conduct, that is, from the date that they actually complied with the Enforcement Notice.

33. In answer to the appellants' submission of no case to answer the Magistrate found a prima facie case. Thereafter, the appellants elected not to call any evidence.

34. On 24 March 2017, the Magistrate convicted each of the appellants, stating that they were "both found guilty of the offences." In the appellants' plea in mitigation, it was stated that when they bought the property there was an existing building to which they made some modifications. They were unaware they were breaking the law until they received the Enforcement Notice. Had they received proper advice, they would not have acted in the manner that they did.

35. The Magistrate proceeded to sentence on the basis that there was no remorse expressed nor did the appellants plead guilty. However, she took into consideration the appellants' good character, determining that in those circumstances she would not

apply the maximum penalty. She was also of the view that, with respect to the continuing offence, she would only impose fines on the appellants up to the date that the planning authorities last visited the property, namely 17 March 2017 and not up to the date of conviction.

36. The Magistrate's sentencing remarks throw some further light on whether she considered that section 18(1) of the TCPA created two separate offences. In imposing sentence, the Magistrate stated:

> "I find that the appropriate punishment is as follows: You are convicted, and fined -- and this is for each Defendant -- convicted and fined seven hundred dollars and this is for the *initial offence* for failing to comply. That's seven hundred dollars each. And as it relates to it being a *continuing offence*, further fined is imposed as follows: For the period January 18th, 2006 to March 17th, 2017 two hundred dollars per day." (Emphasis added.)

To impose a fine for the continuing offence, the Magistrate calculated the number of days as 4,076. In arriving at the calculation, the Magistrate excluded 17 January 2006, which was the date on which the Magistrate considered that the initial offence had been committed. She imposed a fine of TT$815,200 "to be paid only once by both Defendants" for the continuing offence. It appears from these sentencing remarks, her earlier remarks, and from the case being made by the prosecution that the Magistrate considered that section 18(1) of the TCPA created two distinct offences, namely an initial offence and a continuing offence.

37. As the Board has set out in para 2 above, the Magistrate then proceeded to impose on each of the appellants imprisonment with hard labour in default of payment of the fines.

The judgment of the Court of Appeal

38. The appellants appealed to the Court of Appeal in relation to both conviction and sentence.

39. On the issue as to whether the complaint had been made out of time, the Court of Appeal, at para 13, identified that determination of that issue "involves a consideration of the nature of the offence created by section 18 TCPA, namely

whether it was a continuing offence or not." At paras 21 and 22, the Court of Appeal held that there were two parts of section 18(1) of the TCPA which created two distinct offences. The first part created an initial one-off offence which was "complete" and "crystallises once the period for compliance has expired." The Court of Appeal further described the initial offence, at para 26, as being "complete once and for all when the period for compliance expires…." The Court of Appeal held that the second part of section 18(1) created a continuing offence which takes place "over a period of time."

40. On the basis that there were two distinct offences, the Court of Appeal allowed the appeals against conviction in relation to the initial offence under section 18(1) of the TCPA. The Court of Appeal held that the appellants' failure to comply with the Enforcement Notice within the period ending 15 January 2006 had made them liable to conviction on 16 January 2006 for the initial offence. Consequently, "any complaint with respect to the initial offence had to be laid within six months from 16 January 2006" and as the complaint "was only laid some 32 months later on 9 October 2008" "any attempt to prosecute for the initial offence or for any period which includes 16 January 2006 would be time-barred." Accordingly, the Court of Appeal held, at para 28, that it was "appropriate to set aside any order [the Magistrate] made with respect to an initial offence on account of it being time-barred."

41. However, in relation to the continuing offence under section 18(1) of the TCPA, the Court of Appeal held, at paras 27 and 28, that the appellants were in breach of the criminal law from 17 January 2006 "until the requirements of the notice had been met." As the matter of complaint related to a continuing offence and the continuing offence had been committed by both appellants within six months of the complaint having been made, the appellants' convictions for the continuing offences were upheld for the whole period from 17 January 2006. The Court of Appeal held that the initial offence was committed on 16 January 2006 and the continuing offence was committed as from 17 January 2006 so the Court of Appeal, of its own motion, amended the complaint so that it read "during the period January 17, 2006 [rather than January 16, 2006] to August 4, 2008."

42. As to the Magistrate's failure to draw up and sign a statement of the reasons for her decision, as required by section 130B of the SCA, the Court of Appeal relied on the guidance contained in the Court of Appeal authorities of *Francis Jones v Sgt Sheldon David* (Mag App No 64 of 2014) ("*Francis Jones*") and *Machel Montano v Cpl Sewdass* (Mag App No P 108 of 2016) ("*Machel Montano*"). Applying that guidance, the Court of Appeal held, at para 59, that the failure to draw up and sign a statement of the reasons for her decision was not fatal because "… it is possible to discern or imply the basis of her conclusion which was essentially one of law to facts which were straightforward and largely undisputed." At para 63, the Court of Appeal held that a pragmatic,

functional and contextual reading of the Magistrate's reasons, viewed in the context of the entire record including the live issues at trial, sufficiently informed the appellants why the case was decided against them, and permitted meaningful appellate review.

43. As to the severity of the sentence for the continuing offence, the Court of Appeal accepted that the Magistrate had not followed the principled sentencing methodology set out in the relevant authorities and Sentencing Handbook. Notwithstanding that failure, the Court of Appeal found that the sentence was not unduly harsh, excessive, or unfair in all the circumstances. However, the Court of Appeal found that the sentence of imprisonment with hard labour in default of payment was unwarranted, disproportionate, and excessive. The justice of the case did not require the imposition of hard labour to the terms of imprisonment. Accordingly, the Court of Appeal imposed in default of payment of the fines a term of two years' simple imprisonment on each of the appellants.

Appeal against conviction

(a) The first principal issue

44. The first principal issue on the appeals against conviction is as to the six-month limitation of time in section 33(2) of the SCA, see para 5 above.

(b) The appellants' submissions in relation to the first principal issue together with the further issues raised by the appellants

45. The appellants contend that the Magistrate and the Court of Appeal were wrong to hold that section 18(1) of the TCPA created two separate and distinct offences, that is an initial offence and a continuing offence. Rather, it is said, that the summary offence is committed from the first day during which the requirements of the enforcement notice remain unfulfilled, and that section 18(1) expressly made the first day a material averment without which there can be no continuing offence. It is submitted that as the first day was a material averment that the prosecution was brought out of time under section 33(2) of the SCA. The appellants also contend that the use of the words "and not after" in section 33(2) emphasises the strict nature of the six-month period within which a complaint may be made. In this way, it is contended that the complaint must be made at the earliest possible date and no later than six months from that earliest possible date.

46. Alternatively, the appellants submit, that even if the complaint could be made within six months of any time when the requirements of an enforcement notice remain unfulfilled, the dates in respect of which a complaint is made must be restricted to the six-month period prior to the laying of the complaint. So, it is said, the appellants cannot be convicted for or sentenced for a period of non-compliance which takes place more than six months prior to the making of the complaint.

47. A further issue raised by the appellants is that they were wrongly convicted for and therefore also wrongly sentenced for a period extending beyond 4 August 2008, which was the end date of the period set out in the complaint, see para 26 above.

48. In relation to the failure of the Magistrate to comply with her duty in section 130B(1) of the SCA to draw up and sign a statement of the reasons for her decision, the appellants contend that the failure deprived the appellants of the opportunity to meaningfully challenge on appeal the Magistrate's construction of section 18(1) of the TCPA and section 33(2) of the SCA.

(c) The respondent's submissions in relation to the first principal issue and the further issues raised by the appellants

49. Contrary to the submissions made to the Magistrate, the respondent now submits that section 18(1) of the TCPA creates one offence which may, depending on the facts of the case, take place on one day or (more likely) continue over many days. The respondent accepts that the Court of Appeal incorrectly decided that section 18(1) created two offences but contends, in the Board's view incorrectly, that despite the language used by the Magistrate she convicted both appellants of one offence. However, the respondent contends that even if the Magistrate and the Court of Appeal incorrectly decided that section 18(1) created two offences, and the Court of Appeal incorrectly upheld a conviction in relation to an offence which does not exist under section 18(1), this is immaterial to the safety of the conviction because the complaint charged the appellants with one offence, none of the facts are in dispute and it is plain, beyond any reasonable doubt, that a single offence was committed by the appellants continuously over the period commencing with the date six months before the complaint was made.

50. In relation to the appellants' alternative submission, see para 46 above, the respondent accepts that the six-month time limit imposed by section 33(2) acted to prevent the Magistrate from considering periods of commission of the offence prior to the six-month period before the making of the complaint. On this basis the respondent accepts that there should be an adjustment to the sentences imposed on the

appellants, in that the period of offending for which they are liable is shorter than that addressed by the Magistrate and the Court of Appeal.

51. In relation to the appellants' alternative submission as to the end date in the period of complaint, see para 47 above, the respondent submits that the complaint alleged a continuing offence in accordance with the drafting guidance of Lord Roskill in *Hodgetts v Chiltern District Council* [1983] 2 AC 120, 128, ("*Hodgetts' case"*) (see paras 54 - 59 below) and that in the case of a continuing offence the court is not limited to the dates in the complaint.

52. In relation to the failure of the Magistrate to comply with her duty in section 130B(1) of the SCA to draw up and sign a statement of the reasons for her decision, the respondents submits that the failure did not deprive the appellants of the opportunity to meaningfully challenge on appeal the Magistrate's construction of section 18(1) of the TCPA and section 33(2) of the SCA.

(d) Authorities in relation to continuing offences

53. The Board were referred to several authorities in relation to continuing offences created by different statutory provisions. Whilst those authorities are informative, caution is called for when applying the observations in one case with reference to one statute, to different provisions of a different statute in another case. The Board's consideration of the various cases to which it has been referred is subject to that qualification. To determine the issues on this appeal it is only necessary to refer to two authorities.

54. In *Hodgetts' case* the issue was whether the informations made were bad for duplicity since they related to more than one day. On 8 September 1980, the appellant council preferred informations against the respondents under section 89(5) of the Town and Country Planning Act 1971 that they had *on and since 27 May 1980*, permitted certain land and buildings to be used for the purposes of an office and storage of builders' materials in contravention of an enforcement notice served pursuant to section 87 of the Act. Section 89(1), (4) and (5) provided:

> "(1) Subject to the provisions of this section, where an enforcement notice has been served on the person who, at the time when the notice was served on him, was the owner of the land to which it relates, then, if any steps required by the notice to be taken (other than the discontinuance of a

use of land) have not been taken within the period allowed for compliance with the notice, that person shall be liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to a fine.

…

(4) If, after a person has been convicted under the preceding provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, he shall be guilty of a further offence and liable - (a) on summary conviction to a fine not exceeding £50 for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of the use of land) remain unfulfilled; or (b) on conviction on indictment to a fine.

(5) Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, in contravention of the notice, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400, or on conviction on indictment to a fine; and if the use is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £50 for each day on which the use is so continued, or on conviction on indictment to a fine."

55. The respondents, having been convicted by the justices, contended that section 89(5) created a continuing offence, by which was meant one that repeated itself every day so that the information made was bad for duplicity as it charged a very large number of offences in one information. On that basis the Crown Court allowed the appeal. The council appealed to the Divisional Court which dismissed the appeal. On appeal to the House of Lords, Lord Roskill, delivering a judgment with which the other members of the House agreed, allowed the council's appeal holding that the offence contemplated by section 89(5) of the Town and Country Planning Act 1971 was a single offence, which could take place over a period, whether continuously or intermittently,

and that, accordingly, the informations in question were not bad for duplicity. There are several points which can be taken from his speech, at pp 127-128.

56. First, he identified that:

> "much of the difficulty which has arisen in connection with [section 86 subsections (1) (4) and (5)] is due to the use of the words 'continuous' or 'continuing' offence as descriptive of the offences chargeable without regard to the fact that neither adjective is to be found in the subsections creating the offences and also without consideration of the precise meaning to be given to those adjectives in the context in which they have been used."

57. Second, he identified that:

> "Section 89 deals with penalties for non-compliance with two classes of enforcement notices: (a) those, dealt with in subsections (1) to (4), which require the owner of land to do something on it ('do notices'), and (b) those, dealt with in subsection (5), which require the user of land to stop doing something on it ('desist notices')."

58. Third, he stated that:

> "It is not an essential characteristic of a criminal offence that any prohibited act or omission, in order to constitute a single offence, should take place once and for all on a single day. It may take place, whether continuously or intermittently, over a period of time."

59. Fourth, he stated that:

> "… in the instant case each information, as already stated, charged the offence 'on and since' a specified date. Your Lordships were told that this was the practice now often adopted by prosecuting authorities in these cases. I see no objection to that practice, but it might be preferable if

> hereafter offences under the first limb of section 89(5) were charged as having been committed between two specified dates, *the termini usually being on the one hand the date when compliance with the enforcement notice first became due and on the other hand a date not later than the date when the information was laid, or of course some earlier date if meanwhile the enforcement notice had been complied with.* Indictments frequently charge offences as having been committed between certain dates. I see no reason in principle why the same practice should not be followed with these informations." (Emphasis added.)

60. In *Penton Park Homes Ltd v Chertsey Urban District Council* [1973]; 72 LGR 115; (1973) 26 P & CR 531, the respondent local authority, on 9 January 1967, granted the appellants a site licence pursuant to the provisions of the Caravan Sites and Control of Development Act 1960. The licence was made subject to certain conditions requiring works to be carried out at the site, and condition 28 required all those works to be carried out within 12 months from the date of the licence. Accordingly, the works were required to be carried out by 8 or 9 January 1968. Over four years later, in October 1972, the respondents preferred an information against the appellants alleging failure, as of 11 October 1972, to comply with condition 28. The justices found that the condition had not been complied with and convicted the appellants. The appellants appealed, contending that the offence of failure to comply with a condition attached to a site licence was a once and for all offence; that in the present case that offence had been committed on 8 or 9 January 1968; and that, more than the six months permitted for prosecution of a summary offence having elapsed since that date, the prosecution had been out of time. Bridge J, delivering the judgment of the Divisional Court with which Lord Widgery CJ and May J agreed, dismissed the appeal. He stated, at p 534:

> "For myself, I do not find it necessary to refer to the authorities which have been drawn to our attention, but it is important to observe that Mr Sullivan's researches have failed to reveal any decided case where the offence of failing to do some act which the offender was required by law to do has been held to be a once and for all offence.
>
> To say that an offence which consists in a positive action performed on a particular day is a once and for all offence is one thing; to say the same about a failure to perform an act which an offender is required by law to perform is quite

> another. In my judgment, in the absence of authority and, as was suggested by Lord Widgery CJ in the course of argument, bringing common sense to bear on this question, it is impossible to resist the conclusion that Parliament intended the offence of failing to comply with a condition of the kind expressly contemplated by section 5(4) of this statute, that is to say, a condition requiring the site licence work to be completed within a specific period, to be a continuing offence.
>
> As a matter of language the failure continues. There is, perhaps, an analogy between a failure to comply with such a condition as this in a caravan site licence and a tenant's failure to comply with the requirements of a repairing covenant in his lease, which, of course, is clearly a continuing breach of covenant.
>
> If one were forced by the language of the Act to the contrary conclusion, it would be a very startling conclusion which would show, as it seems to me, that the machinery for the enforcement of a condition of this kind was conspicuously defective.
>
> For those reasons, so far as this point is concerned, it seems to me that the justices, who had the point in mind although they heard no argument about it, rightly concluded that it was a continuing offence and that their conviction of the appellants cannot be impugned on that ground."

(e) Conclusion in relation to the nature of the offence under section 18(1) of the TCPA

61. The decision as to the nature of the offence created by section 18(1) of the TCPA must depend on ordinary principles of statutory interpretation. Applying those principles, the Board determines that section 18(1) of the TCPA does not create two distinct offences, namely an initial offence and a continuing offence. Rather, it creates a single offence which can take place continuously over a period of time and which specifies two potential maximum fines in relation to that single offence. The first is a maximum fine of TT$1,500 which can be imposed in relation to a failure to take any step required by the enforcement notice on the first day covered by the complaint during which the requirements of the enforcement notice remain unfulfilled. The

second is a maximum fine of TT$300 per day for every day after the first day covered by the complaint during which the requirements of the enforcement notice remain unfulfilled.

62. The Board determines that the words "the first day" do not refer to the first day upon which there was a failure to comply with the enforcement notice but rather they refer to the first day covered by the complaint during which the requirements of the enforcement notice remain unfulfilled. The Board rejects the appellants' construction that for a defendant to be guilty of an offence under section 18(1) of the TCPA he would first have to be prosecuted within time and convicted of an offence committed on the first day there was a failure to comply with the enforcement notice. A conviction for an offence committed on the first day there was a failure to comply with the enforcement notice is not a precondition to a conviction for a failure to take the required steps at any subsequent date.

63. The Board also rejects a construction of section 18(1) of the TCPA that an offence once committed is complete and concluded, existing only in the past. There is a continuing obligation to comply with the enforcement notice and if there is a continuing breach of the duty to take the required steps then the offence can be committed repetitively. There can be as much non-observance in 2023 leading to a prosecution, as in 2008, so that a person may be convicted of a second or subsequent offence by reference to any period of time. It is important on convicting a person of the single offence for the court to record the dates over which the offence was committed. In this way a clear record is created so that a further prosecution can be brought where the person responsible has been prosecuted and fined in relation to that period but still fails to comply with the enforcement notice during a subsequent period. On any subsequent conviction a fine up to the maximum of TT$1,500 may be imposed in relation to the failure to take any step required by the enforcement notice on the first day covered by the complaint and a further maximum fine of TT$300 per day for every day after the first day covered by the complaint during which the requirements of the enforcement notice remain unfulfilled.

64. There are several reasons for arriving at the determination that section 18(1) of the TCPA creates a single offence which can take place continuously over a period of time.

65. First, as Lord Roskill stated, at p 128, in *Hodgetts' case*, "It is not an essential characteristic of a criminal offence that any prohibited act or omission, in order to constitute a single offence, should take place once and for all on a single day. It may take place, whether continuously or intermittently, over a period of time."

66. Second, it is apparent from the language of section 18(1) that the matters which have to be proved beyond reasonable doubt by the prosecution are that (a) an enforcement notice has been served under section 16 on the person; (b) the person was, when the notice was served on him, the owner of the land to which the enforcement notice relates; (c) the period specified in the notice, or such extended period as the Minister has allowed, has expired; and (d) any steps required by the notice (other than the discontinuance of any use of the land) have not been taken. Those are the matters which once proved lead to the summary conviction of the person. The rest of section 18(1) specifies the penalty which is to be imposed.

67. Third, the last of the matters in section 18(1) which the prosecution must prove is expressed as being "any steps required by the enforcement notice to be taken … have not been taken". The steps required by the enforcement notice are not time limited, see section 16 of the TCPA at para 13 above. The mere fact that a time is fixed by the enforcement notice for taking of the steps specified in the notice does not mean that the obligation created by the notice and by the statute is spent at the expiration of that time. The obligation to comply with the enforcement notice is a continuing obligation which is not even discharged on compliance, see section 19 of the TCPA at para 16 above. The language of the steps which "have not been taken" is the language of a failure to take steps and as Bridge J stated in *Penton Parks*, as "a matter of language the failure continues." Accordingly, an offence has been created which can take place continuously over a period of time so that the offence can be described as a continuing offence. However, the conduct which is criminalised is and remains the failure to take the steps and that is but one offence. However, while the failure to take the steps is one offence, it gives rise to a cause for complaint on each day that the failure occurs.

68. Fourth, section 18(1) provides a penalty for each day during which the requirements of the enforcement notice remain unfulfilled. Accordingly, it is clearly contemplated that the offence may take place over a period of time, since the penalty for it is made dependent upon the number of days on which it takes place. Furthermore, an ordinary way of treating a single offence which can take place continuously over a period of time, referred to as a continuing offence, is to provide a penalty for each day.

69. Fifth, the TCPA in setting the maximum daily fine expressly refers to "a continuing offence". Accordingly, the legislature in enacting the TCPA expressly provided that the offence of failing to take any steps required by the enforcement notice to be taken should expose the person concerned to summary conviction for a failure which takes place over a period of time.

70. The Board determines the meaning of the words “the first day” as set out in para 62 above, for the following reasons.

71. As the Board has indicated, the first part of section 18(1) sets out four matters to be proved by the prosecution before a person can be summarily convicted. One of those matters is that the period specified in the notice, or such extended period as the Minister has allowed, has expired. Those four matters do not include a requirement that the person has been convicted of an offence in respect of the first day upon which he failed to comply with the enforcement notice. Accordingly, it is not a material averment under section 18(1) that the offender has first to be convicted of an offence which encompasses a failure to comply on the first day after the end of the period for securing compliance with the notice. The next part of section 18(1) which deals with the fines that can be imposed does refer to “the first day” but the reference to the first day in that part of section 18(1) must be construed consistently with the first part of the section. Consistency is achieved by construing the first day in the second part of section 18(1) as referring to the first day covered by the complaint.

72. An additional reason is that the first day in the second part of section 18(1) should be construed in a manner consistent with the legislative purpose. The purpose of the TCPA is to exercise control over the orderly use and development of land. That purpose can be discerned from the long title of the TCPA which states that the Act makes provision for the orderly development of land. The purpose can also be discerned from the other sections of the Act which the Board has set out in paras 11 to 16 above. It is submitted on behalf of the appellants that section 18(1) should be construed to require that a person would first have to be prosecuted within time and convicted of an offence committed on the first day there was a failure to comply with the enforcement notice. However, such a construction would mean that if the person was not prosecuted within the six-month period specified by section 33(2) of the SCA then he would be relieved of criminal liability and would be able to flout planning laws. Such a construction would undermine the legislative purpose of effective enforcement of orderly development of land by the application of planning laws. A construction of section 18(1) which achieves the legislative purpose is to be preferred.

73. A further reason is that the appellants’ construction would lead to absurd results. For instance, on the appellants’ construction once a person was convicted under section 18(1) it would be impossible to bring a further prosecution in relation to a continuing failure if the further prosecution was brought more than six months from the date of the first day there was a failure to comply with the enforcement notice. It was suggested on behalf of the appellants that to overcome this obvious lacuna, a further enforcement notice could be served and then the person could be prosecuted within six months of the first day identified in that further enforcement notice.

However, this solution faces the difficulty that there is a four-year time limit on serving an enforcement notice under section 16. Furthermore, the requirement to serve a further enforcement notice is contrary to an enforcement notice creating an obligation unlimited in time which obligation is not discharged even by compliance, see section 19 of the TCPA set out at para 16 above.

(f) Conclusion in relation to the six-month period in section 33(2) of the SCA

74. Section 33(2) of the SCA as applied to an offence under section 18(1) of the TCPA requires that the complaint "shall be made within six months from the time when the matter of the complaint arose, and not after." As the Board has observed at para 10 above, section 33(2) does not provide that the six-month period runs from the date upon which an offence was first committed or from when an earlier matter of complaint arose. The matter of the complaint which was within the six-month period and which arose for the purposes of this complaint made on 9 October 2008, was the single offence of failing to take the steps required by the Enforcement Notice continuously during the period after 9 April 2008.

75. The complaint which is set out at para 26 above identified the period as commencing on 16 January 2006. In so far as the complaint related to a period prior to 9 April 2008, the complaint was made outside the six-month period. Those parts of the complaint which refer to events more than six months before it was made are to be excluded. Accordingly, the appellants could neither be convicted of a single offence covering the period 16 January 2006 to 8 April 2008 nor could they be sentenced for that period.

(g) Conclusion in relation to the appellants' convictions for dates extending beyond those contained in the complaint

76. In *Hodgetts' case* Lord Roskill gave guidance as how to charge a single offence which takes place continuously over a period of time (see para 59 above). He considered that it was preferable that the offence was charged as having been committed between two specified dates. The start date being the date when compliance with the enforcement notice became due and the end date being "a date not later than the date when the information was laid". However, the end date could be an earlier date "if meanwhile the enforcement notice had been complied with."

77. The alternative technique adumbrated by Lord Roskill is to charge the offence as having been committed "on and since" a specified date. The Board considers that

both techniques achieve the same result which is that the period charged ends on the date the complaint was made.

78. In drafting the complaint in this case, the prosecution did not follow Lord Roskill's guidance as to the end date being the date upon which the complaint was made, namely 9 October 2008, but rather the prosecution selected an earlier date, namely 4 August 2008. Accordingly, the complaint alleged a single offence taking place continuously over a period of time ending on 4 August 2008.

79. The prosecution submits that because the complaint alleged a single offence taking place continuously over an earlier period, albeit ending on 4 August 2008 prior to the date upon which the complaint was made, it was legitimate to convict the appellants on the basis that the offence was taking place continuously between 4 August 2008 and 17 March 2017. The Board disagrees. The dates between which it was alleged that the single offence was taking place are those expressly set out in the complaint. The Board rejects any implication that the offence was taking place continuously after, as well as before, the date upon which the complaint was made. There is no room for an implication of the nature suggested by the prosecution.

80. In *R v David Kohali* [2015] EWCA Crim 1757; [2016] 1 Cr App R (S) 30, an information was laid in respect of a period of non-compliance with an enforcement order as between 1 February 2012 and 14 October 2013. The hearing in the Crown Court took place in October 2014. Following conviction, the Crown Court judge imposed a fine taking into account a period of offending not alleged in the information. At paras 23-24, the Court of Appeal stated:

> "23. Although failure to comply with an enforcement notice is a continuing offence the prosecution of any one offence is limited to the period ending at the date set out in the information, which in this case was 14 October 2013. If there is a failure to comply after that period, a further offence has to be charged.
>
> 24. It follows from this analysis that the appellant was only liable to be sentenced for the period from 1 February 2012 to 14 October 2013."

The Board agrees that a prosecution under section 18(1) of the TCPA is limited to the period ending on the date set out in the complaint with the consequence that the appellants cannot be convicted, or sentenced, in respect of any subsequent period.

81. The Board accepts that if the end date is a date prior to the date upon which the complaint was made it would be possible for the prosecution to apply to amend the end date to the date upon which the complaint was made. However, the discretion to amend cannot be exercised in such a way as to incorporate matters of complaint which arose more than six months prior to the amendment. Section 33(2) of the SCA and its purpose of ensuring that summary offences are charged and tried as soon as reasonably practicable, cannot be circumvented by way of an amendment.

82. The Board considers that the end date in a complaint cannot be amended to a date after the date upon which the complaint was made. As Lord Roskill stated in *Hodgetts' case*, the end date in the complaint cannot be a date "later than the date when the information was laid". If there is a failure to comply after the date upon which the complaint was made, then a further complaint must be made.

83. The Board allows this aspect of the appellants' appeals. The appellants ought not to have been convicted in respect of any period after 4 August 2008.

(h) Conclusion in relation to the challenge to the appellants' convictions based on the Magistrate's failure to comply with section 130B(2) of the SCA

84. The Board can deal briefly with this aspect of the appellants' appeals which is dismissed. The Court of Appeal faithfully and correctly applied the guidance in *Francis Jones* and in *Machel Montano.*

85. In relation to the appellants' convictions there was no factual dispute. The only issue was a matter of law and the Magistrate's decision was capable of being ascertained by reference to the record of evidence. The appellants were not deprived of the opportunity on appeal of challenging the Magistrate's construction of sections 18(1) of the TCPA or of section 33(2) of the SCA.

86. In relation to sentences imposed on each of the appellants again the Magistrate's reasoning was capable of being ascertained by reference to the record of her sentencing remarks.

(i) A summary of the Board's conclusions in relation to the appeal against conviction

87. In summary:

(a) Section 18(1) of the TCPA creates a single offence which can take place continuously over a period of time.

(b) The words "the first day" in section 18(1) refer to the first day covered by the complaint.

(c) The failure to take the steps required by the enforcement notice is one offence but it gives rise to a cause for complaint on each day that the failure occurs.

(d) The six-month time period in section 33(2) of the SCA runs "*from the time when the matter of the complaint arose"* rather than from the date upon which an offence was first committed or from when an earlier matter of complaint arose.

(e) Those parts of the complaint which refer to events more than six months before it was made are to be excluded.

(f) Those parts of the complaint which refer to events after 4 August 2008 are to be excluded.

(j) The overall implication in relation to the appellants' convictions

88. The appellants were wrongfully convicted by the Magistrate, with this conviction being upheld by the Court of Appeal, of what was considered to be one of two offences created by section 18(1) of the TCPA, namely a continuing offence. Section 18(1) does not create two offences. The appellants ought to have been convicted of the single offence of not taking the steps required by the Enforcement Notice dated 3 October 2005 continuously over the period from 9 April 2008 until 4 August 2008. The Board, pursuant to section 144 of the SCA, will thus amend the convictions of the appellants.

Appeals against sentence

89. The Board has amended the appellants' convictions with the consequence that (a) it allows the appellants' appeals against the fine of TT$815,200 because it was calculated taking into account a period prior to 9 April 2008 and a period after 4 August 2008; and (b) it allows the appellants' appeals against the sentences of imprisonment in default of payment of the fine.

90. The Board has determined that on the convictions as amended the appellants may be sentenced to a maximum fine of TT$1,500 in relation to the first day covered by the complaint. The first day is 9 April 2008 given that the earlier dates in the complaint are excluded under section 33(2) of the SCA. The Board has also determined that the appellants may also be sentenced on the convictions as amended to a maximum fine of TT$300 per day for every day after the first day covered by the complaint which is every day up to and including 4 August 2008.

91. In circumstances where, as here, the convictions have been amended, it would be appropriate to remit to the Court of Appeal the question as to what sentence should be imposed on each of the appellants taking into account all aggravating and mitigating factors together with the totality principle. The Court of Appeal is better placed than the Board to obtain information as to, for instance, the age and personal circumstances of the appellants together with details as to the financial benefit, if any, which they have obtained by this unlawful development. The Court of Appeal is also better placed to determine and to give guidance as to the circumstances in which, in the exercise of discretion under section 68(1) of the SCA, a term of imprisonment in default of payment of a fine may be imposed. For instance, the local courts will be aware of what, if any, are the alternative methods in Trinidad and Tobago, and their effectiveness, for enforcing payment of a fine rather than imposing a prison sentence.

92. In circumstances where the sentencing exercise is being remitted to the Court of Appeal, the Board does not consider it appropriate to determine any other aspect of the appellants' appeals against sentence.

Overall disposal of the appeals

93. The Board amends the appellants' convictions so that they are each convicted of the single offence of not taking the steps required by the Enforcement Notice dated 3 October 2005 continuously over the period from 9 April 2008 until 4 August 2008.

94. The Board remits sentencing for the amended convictions to the Court of Appeal.