FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AR/HNA/2018/0060 & 61**
Property	**:**	**327 London Road, Romford RM7 9NS**
Applicants	**:**	**Mohammed Bharadia** **Mubina Bharadia**
Respondent	**:**	**London Borough of Havering**
Type of application	**:**	**Appeal against a financial penalty – Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal	**:**	**Judge Nicol** **Ms S Coughlin MCIEH**
Date and venue of hearing	**:**	**7th January 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**7th January 2019**

DECISION

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1. The appeal is allowed on the ground that the Financial Penalty Notices the Respondent issued on 24th September 2018 against each Applicant under section 249A of the Housing Act 2004 were invalid.
2. The Respondent shall reimburse the Applicants their issue and hearing fees totalling £400.

Reasons

1. The Applicants own the subject property, a house with four bedrooms and two living rooms. They let it on a single assured shorthold tenancy to Ms Gabriella Petrescu on the understanding that the only occupants would be relatives of hers. When the Respondent inspected the property in 2017, they accepted that this was the case so that the property should not be classified as a house in multiple occupation.

2. However, at some point the occupants of the property changed. Ms Petrescu moved out. Those who moved in were not her relatives and the property became a house in multiple occupation. The new tenants paid their rent to Ms Petrescu who continued to meet her payment obligations under the original tenancy to the Applicants.

3. These developments were serious. The Housing Act 2004 provides for a scheme to enforce proper housing standards in such properties because the occupants are frequently vulnerable, at the mercy of a landlord's market and their own ignorance of their rights or a lack of ability to enforce them. The Applicants say that they were unaware of the changes and continued to believe that the property was not an HMO. For the purposes of the hearing before the Tribunal on 7th January 2019, the Respondent, through their counsel, Mr Ham, accepted that they could not prove otherwise.

4. On 1st March 2018 the Respondent introduced an additional licensing scheme so that all HMOs in certain parts of the borough now had to be licensed.

5. On 18th April 2018 the Gangmasters and Labour Abuse Authority notified the Respondent that they thought the property was being used as an HMO. Therefore, on 26th April 2018 the Respondent sent to the Applicants a letter warning about their failure to license the property. The Applicants protested that the property was not an HMO but, in any event, claim to have served notices for the tenants to leave.

6. On 28th June 2018 the Respondent inspected the property jointly with the police and immigration services. They were satisfied from what they observed that, whatever the situation in the past, the property was now an HMO and had been since at least the date of their warning letter. There were also a number of breaches of the management regulations.

7. When the Respondent inspected the property again on 28th September 2018, the tenants had left and it was empty.

8. Following requisite notices of intent, on 24th September 2018 the Respondent sent Financial Penalty Notices to the Applicants, one for the failure to license, requiring them to pay £750 each, and one for the management breaches, to pay £1,000 each. The Applicants appealed both sets of Notices on 3rd October 2018.

9. At the hearing of the appeal on 7th January 2019 the Respondent withdrew the notices in relation to the management breaches because they accepted they could not prove to the requisite standard that the Applicants were actually managing the property within the meaning of the Housing Act 2004.

10. In relation to the other notices, the Tribunal decided to consider first the argument raised in the application that the notices were invalid and that this had the consequence of invalidating the penalty as well. If correct, this would be determinative of the appeal.

11. Schedule 13A of the Housing Act 2004 provides:

> 6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty.
>
> 7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

12. The Respondent uses notices in a standard format of its own devising. The second paragraph states,

> You are required to pay a Financial penalty of [£XXXX] within 28 days of the date of this notice.

13. Paragraph 10 of the standard format notice also states that further action will be taken in the event of non-payment "within 28 days of this notice".

14. This time period is important for a number of reasons:

(a) It shows the time within which the penalty should be paid.

(b) Its expiry triggers the right of the authority to enforce payment.

15. Mr Ham conceded, correctly in the Tribunal's opinion, that the Respondent's notices were defective for failing to comply with the statutory requirement for the period specified in the notice. In fact, there are two elements to this non-compliance:

(a) Time runs not from the date of the notice but from when the notice is "given". The Tribunal did not receive any submissions as to what this meant but the Applicants asserted that the relevant date was 26th September 2018, two days after the date of the notices.

(b) The statutory time limit runs from the day after the notice was given.

16. There remained the issue of the consequences of the Respondent's failure to give the statutory time period. The Tribunal provided the parties with a copy of *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89 in which Lewison LJ considered the consequences of non-compliance with statutory requirements and stated:

> 52. The outcome in such cases does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by non-compliance on the particular facts of the case … The intention of the legislature as to the consequences of non-compliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole … Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of

secondary importance or merely ancillary, the notice may be held to have been valid … One useful pointer is whether the information required is particularised in the statute as opposed to being required by general provisions of the statute. In the latter case the information is also likely to be viewed as of secondary importance. Another is whether the information is required by the statute itself or by subordinate legislation. In the latter case the information is likely to be viewed as of secondary importance. In this connection it must not be forgotten that while the substantive provisions of a bill may be debated clause by clause, a draft statutory instrument is not subject to any detailed Parliamentary scrutiny. It is either accepted or rejected as a whole. A third is whether the server of the notice may immediately serve another one if the impugned notice is invalid. If he can, that is a pointer towards invalidity.

17. Mr Ham pointed out that there appear to have been no consequences flowing from the defect in the notices but that is irrelevant. His principal argument was that, looking at the statutory scheme as a whole, the precise time period is of secondary importance, particularly in the light of the fact that the Respondent's notices were otherwise compliant.

18. Mr Ham conceded that at least two of the three "pointers" identified by Lewison LJ were in favour of the Applicants:

(a) The time period is particularised in the statute as opposed to being required by general provisions of the statute.

(b) It is also in the statute itself, not in subordinate legislation.

19. The Tribunal is also satisfied that the third "pointer" is in the Applicants' favour in that it had been open to the Respondent to withdraw the defective notices and issue new ones when they became aware of the issue.

20. Mr Ham is correct in saying that these are only "pointers" so that they are not necessarily conclusive. However, they strongly support the Tribunal's conclusion that the statutory notice requirements in this case are intended to be strict so that non-compliance in any respect invalidates such notices, irrespective of any proven consequences.

21. The statutory scheme is for the imposition of criminal sanctions without the intervention of a court. Such exceptional circumstances must be underpinned by strict compliance with the requisite procedural protections. It is inappropriate to characterise any of the statutory requirements as lacking in importance, secondary or ancillary.

22. Mr Ham pointed out that the appeal is a re-hearing and argued that the Tribunal could cure the defect by exercising its power under paragraph 10(4) to vary the notice. However, the Tribunal cannot vary statutory requirements. Altering the period given in the notice would not just be a variation but would, as the Applicants asserted, amount to re-issuing the notice, which the Tribunal has no power to do.

23. Therefore, the consequence of the defective nature of the notices in this case is that they are invalid and cannot impose any penalty on the Applicants.

24. The Applicants sought reimbursement of their application and hearing fees (£200 each) under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Mr Ham did not oppose this and the Tribunal so orders.

Name: NK Nicol **Date:** 7th January 2019