



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/OOCQ/HNA/2019/0023**

Property : **44 Walsall Street
Coventry
CV4 8EY**

Applicant : **Mr Tan S Sandhu**

Representative : **Mr C Hopkins
Warwick Vesey Solicitors**

Respondent : **Coventry City Council**

Representative : **Mr Adrian Chowns
Mr Steven Chantler**

Type of Application : **An appeal under paragraph 10 of Schedule 13A
to the Housing Act 2004 against a decision by
the Local Housing Authority to impose a
Financial Penalty.**

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mr P Wilson BSC (Hons) LLB MRICS MCEIH
: CEnvH**

Date of Decision : **24th October 2019**

DECISION

INTRODUCTION

1. This is the Tribunal's determination on an appeal made by Mr Tan S Sandhu ("the Applicant") against the decision of Coventry City Council ("the Respondent") to impose a financial penalty under section 249A of the Housing act 2004 ("the Act") relating to 44 Walsall Street, Coventry, CV4 8EY ("the property").
2. The Applicant is the owner of the Property.
3. On 8th April 2019 the Respondent served a Notice of Intention to Issue a Financial Penalty on the Applicant under paragraph 1 of schedule 13A to the Act. The notice was issued as the Respondent was satisfied beyond reasonable doubt that the Applicant had committed an offence as he had failed to comply with Management Regulations in respect of an HMO (Section 234(3)).
4. The notice of intention confirmed that the Respondent intended to impose a Financial Penalty of £2,100.00 in relation to Regulation 3 – Duty of Manager to provide information to occupier and £29,399.00 in relation to Regulation 4 – Duty to take safety measures. Representations were made by the Applicant prior to the service of the Final Notice.
5. On 12th July 2019 the Respondent served two Final Notices of Decision to Impose a Financial Penalty on the Applicant. The Respondent had considered the representations made and determined to reduce the Financial Penalty. Pursuant to schedule 13A to the act, the first Notice imposed a Financial Penalty of £650.00 in respect of the alleged breach of Regulation 3 and £23,999.00 in respect of the alleged breach in respect of Regulation 4. The notice confirmed that the Respondent considered that an offence has been committed under section 234 (3) of the Act.

Alleged breach in respect of Regulation 3	£650.00
Alleged breach in respect of Regulation 4	£23,999.00
Total	£24,649.00

6. On 9th August 2019 the Applicant applied to the Tribunal. The Application was received by the Tribunal on the same date. The Tribunal issued Directions on 13th August 2019 following which submissions were made by both parties.

INSPECTION

7. The Tribunal inspected the Property on 14th October 2019 in the presence of Mr T S Sandhu (the Applicant), Mr C Hopkins (the Applicant's Representative), Mr A Chowns, Mr A Chantler (on behalf of the Respondent) and Miss C Taylor (an employee of the Respondent and attending as an observer).
8. The Property was found to be a semi-detached house situated in an established residential area. It is brick built with rendered elevations to the majority of the walls. The main house has a pitched tiled roof. There is a single storey addition to the side having a flat felt roof and further single storey addition to the rear having a pitched tiled roof.

9. The house has gas fired central heating and upvc double glazing throughout. There are smoke/heat detectors fitted to all rooms and communal areas and extractors to the shower rooms.
10. Briefly the accommodation comprises of entrance porch, hallway with staircase off and fitted rear kitchen with base and eye level cupboards, stainless steel sink unit, built in cooker with hob and extractor over. There is a store off the kitchen and shower room with three-piece sanitary suite. There are two double letting bedrooms on the ground floor, one of which has an en-suite shower room with three-piece sanitary suite.
11. On the first floor the landing leads to two double letting bedrooms, one single letting bedroom and a shower room with three-piece sanitary suite.
12. The Tribunal found the property to be in generally good condition throughout being well maintained, appointed and decorated.
13. To the front of the house is a slabbed garden area with one vehicle parking space. To the rear is a good-sized garden with a gravel finish.

THE CALCULATION OF THE PENALTY

14. In respect of the alleged breach of Regulation 3 the Respondent calculated the Financial Penalty as follows:

Low Culpability/Low Harm	£500.00
<u>Motivated by Financial Gain</u>	<u>£1,000.00</u>
Sub Total	£1,500.00
Less:	
<u>No Previous convictions</u>	<u>£1000.00</u>
	£499.90
Plus:	
Not in receipt of benefit	£49.99
Rental income > £3,000.00	£49.99
<u>Property value above Coventry average</u>	<u>£49.99</u>
Total Financial Penalty	£650.00

15. The Tribunal noted that the figures have been rounded up and down without any explanation being given.

16. In respect of the alleged breach of Regulation 4 the Respondent calculated the Financial Penalty as follows:

Medium culpability/High Harm	£19,999.00
<u>Motivated by financial gain</u>	<u>£1,000.00</u>
Sub Total	£20,999.00
Less:	
No previous convictions	£1,000.00
Medical conditions	£1,000.00
<u>Voluntary action taken to address problem</u>	<u>£1,000.00</u>
	<u>£3,000.00</u>
	£17,999.20

Plus:	
Not in receipt of benefit	£1,799.92
Rental Income > £3,000.00	£1,799.92
Property value above Coventry average	£1,799.92
Total Financial Penalty	£23,399.00

17. Again, the Tribunal noted that the figures have been rounded up and down without any explanation being given.

THE HEARING

18. At the Inspection, one of the Tribunal members, Mr P Wilson confirmed to those present that as an Environmental Health Officer, he had, in the past had professional dealings with Mr Chowns, the Respondents Representative. Both parties confirmed at the inspection, and again at the commencement of the hearing that they were prepared for the matter to proceed and did not consider that there was a conflict of interest.

19. A hearing was held later that same day at Coventry Magistrates Court.

20. Present at the hearing were those who had attended the inspection.

21. The submissions made on behalf of the parties in writing and in person at the hearing were briefly as follows:

THE RESPONDENT'S SUBMISSIONS

22. The Respondent submitted that in 2018 Coventry City Council began working in conjunction with Warwick University on a project to improve the quality of the off-campus housing in the area around Canley and Cannon Park. The project focused primarily on proactively inspecting houses in multiple occupation.

23. The subject property came to the Respondent's attention as part of a programmed inspection of HMOs in the area.

24. The Respondent submitted that it has a duty under section 3 (1) and section 3 (2) of the Act to keep the housing conditions in its area under review with a view to identifying any action that may need to be taken. It was further submitted that under section 234 (1) and (2) of the Act a person managing a property is required to ensure that every house in multiple occupation has in place "satisfactory management arrangements" and that they are being observed.

25. The Respondent further submitted that the Applicant had failed to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 contrary to section 234 (3) of the Act. In particular, the property was an HMO being let to students and had the following breaches of the Regulations:

- 1) Regulation 3 –Duty of Manager to provide information to occupier
- 2) Regulation 4 –Duty of Manager to take safety measures
- 3) Regulation 6 - Duty of Manager to supply and maintain gas and electricity
- 4) Regulation 7 - Duty of manager to maintain common parts, fixtures, fittings and appliances

26. The alleged breaches in respect of Regulations 6 and 7 were subsequently withdrawn following representations from the Applicant.
27. Mr Steven Chantler, an Enforcement Officer employed by the Respondent made written submissions and stated that he worked in the Housing Enforcement Team with responsibility to enforce housing standards in properties in the private rented sector in Coventry. Mr Chantler submitted that he had extensive experience of housing enforcement work with local authorities.
28. It was further submitted that on 18th October 2018 Mr Chantler inspected the subject property and identified at least 4 tenants living in the house. It appeared that at least 2 of them were not related to each other and that they shared a kitchen on the ground floor.
29. During the inspection it was noted that there were multiple contraventions of the Regulations. In particular it was noted that the means of escape was compromised on the ground floor due to the need to use keys to egress the individual rooms and the final exit door which was in contravention of Regulation 4 (4) (a). It was also noted that a door frame had been damaged and was insecure which is a contravention of Regulation 7; that there was no notice displayed in a prominent position detailing the name, address and a contact telephone number for the manager of the property which is a contravention of Regulation 3 (a) and that a smoke/heat detector had been removed in the kitchen and there was no fire blanket both of which are a breach of Regulation 4 (4)(a).
30. On 20th November 2018 Mr Chantler wrote to the Applicant advising him of the management breaches and requested copies of the electrical installation condition report and gas safety certificates. At the same time of the Applicant was invited to an interview under caution on 6th December 2018. The Applicant failed to attend the interview and subsequently failed to attend two further invitations to an interview.
31. It was further submitted that on 14th March 2019 a further inspection of the property was undertaken and that on that date there were several contractors on site carrying out work to install hardwired smoke detectors in the entrance hall and first floor landing plus a heat detector to the kitchen. Although it was noted that the front door now contained a thumb turn lock the individual letting rooms still required a key to vacate them which, in the Respondent's opinion, compromised the tenants' escape in the event of a fire. At the same time, it was also noted that there was still no notice displayed in a prominent position detailing the name, address and a contact telephone number for the manager of the property. There was however a fire blanket at the property which was due to be fitted that day. The Respondent submitted that this inspection was undertaken five months after the original breaches were identified.
32. The Respondent submitted that the Applicant had failed to attend each of the three invitations to an interview and therefore the case was assessed for further action based on the information that the Respondent was in possession of at that time. Using the Council's Matrix, the level of fine was calculated at £2,100.00 in relation to Regulation 3 and £29,399.00 in relation to Regulation 4. The Notices of Intention to Issue a

Financial Penalty were posted to the Applicant on 8th April 2019. The Notice gave the Applicant 28 days to make representations which he did by letter dated 7th May 2019.

33. It was further submitted that as a result of the representations made a reduction in the Financial Penalty was made and on 12th July 2019 in accordance with schedule 13A of the Act a Decision Notice was served on the Applicant with a reduced penalty of £650.00 in respect of the breach of Regulation 3 and a reduced penalty of £23,999.00 in respect of the breach of Regulation 4. It was noted that the Notice in respect of the Regulation 4 breach was actually dated 12th June 2019 although under questioning by the Tribunal both parties accepted that it should have been 12th July 2019 and that the Applicant had not been prejudiced by what was described as ‘a clerical error’. As both parties agreed, the Tribunal was not required to make a determination on the validity, or otherwise of the Notice in respect of Regulation 4.

THE APPLICANT’S SUBMISSIONS

34. The Applicant submitted that he was forthcoming with the Respondent in accepting responsibility. Upon becoming aware of the Respondent’s concerns about the need for works to be undertaken at the property, the Applicant immediately contacted his contractor to complete same. The Applicant was in contact with the tenants of the property at that time.
35. Unfortunately, the Applicant’s wife suffered a period of serious ill-health which had diverted his attention and significantly reduced the family’s income with his wife being unable to work.
36. It was further submitted that the Applicant jointly owned the property with his mother, Mrs T Sandhu and both have equal shares in the equity of the property which was estimated at approximately £22,250.00 each. Although the Land Registry Certificate confirms that the property is owned solely by the Applicant, it was accepted at the hearing by the Respondent that it was in fact jointly owned; there is an error on the Land Registry Certificate. The Applicant confirmed that there was a joint mortgage and that the Tenancy Agreements (some of which were seen by the Tribunal) also confirmed the joint ownership.
37. The Applicant submitted that the Respondent now accepted that the Applicant was not in breach of Regulation 4 (3) as alleged in the June Notice. As such it was submitted that the appeal against the decision to impose that penalty should be upheld and the June Notice varied to reflect that admission by the Respondent.
38. It was submitted that the aggregate total of both Decision Notices was £24,649.00 which the Applicant would have to pay in full within 28 days if both Decision Notices were confirmed. The applicant submitted that both Decision Notices should be varied by reducing the respective amounts and relied upon the following:
- 1) The amount of the June Notice is inconsistent with the Government Guidance. Local Housing Authorities must have regard to in issuing associated civil penalties a landlord’s assets and any income they receive in determining an appropriate penalty. The maximum amount (£30,000.00) should be reserved “for the very worst offenders”.

- 2) The starting point under the Respondent's policy is too high. The civil penalty charging policy of Birmingham City Council recommends a starting point of £4000.00 for a medium culpability, high harm breach whereas the Respondent's policy suggests a starting point of £22,500.00 for the same. It was submitted that the Government's guidance was never intended to lead to such variations in starting points for civil penalties between different Local Housing Authority areas.
- 3) The amounts of the June Notice exceed what the Applicant would have been fined if prosecuted.
- 4) The amount of the June Notice should be reduced to reflect the Regulation 4 (3) breach being withdrawn by the Respondent. The Respondent accepts that the Applicant was not in breach of the above since there were only four tenants in the property. It was therefore submitted that the concession should be fairly reflected by an appropriate reduction in the amount of the June Notice.
- 5) The amounts of both decision notices are inconsistent with the Respondent's own policy on enforcing standards in private sector housing. In respect of the July Notice the Respondent has assessed both culpability and harm as being low. Under the policy, that should give a starting point for a penalty of £2500.00 but a range of £0 - £4,999.00. In the circumstances the July Notice makes clear that the Respondent has deemed a starting point of £500.00 to be appropriate. That Notice identifies just one aggravating factor (renting houses for financial gain) and one mitigating factor (no previous convictions). The Respondent's policy suggests that equal weight should be applied to both aggravating and mitigating factors in which case there appears to be no justification for why the amounts of the penalty (£650.00) exceeds what the July Notice identifies as being the appropriate starting points (£500.00).

The June Notice assesses culpability as medium and harm as high and the Respondent's policy suggests a starting point of £22,500.00 with a range of between £20,000.00 – £24,999.00. Although the June Notice makes clear that a starting point of £19,999.00 has been deemed appropriate for the Applicant this Notice identifies just one aggravating factor (renting houses for financial gain) but this time two distinct mitigating factors (no previous convictions and voluntary action taken to address the problem). As such it was submitted that it is unclear why the Respondent has moved up from its starting point of £19,999.00 to £23,999.00 which is close to the top of this category. It was submitted that this was excessive.

39. It was further submitted that the Respondent's policy accepted that the Applicant's financial means should be considered in reaching a proportionate amount. In this case the Applicant had sent to the Respondent's details of his personal and property bank accounts in order to demonstrate that he was financially strained and that he expected to be so for the next year at least. It was therefore submitted that the Respondent failed to properly reflect the Applicant's Financial means in the amount of the June Notice in particular and that this was disproportionate to the Applicant as a result.
40. The Tribunal questioned the Applicant as to his financial position. The Applicant confirmed that he was self-employed as a mortgage broker and estate agent and that he took £1,000.00 per month salary from his business although for the last three months he has been unable to take any salary due to the market conditions. In addition to this

he earned £1,400.00 per month as his 50% share of the properties he owned jointly with his mother. His expenses, including mortgages, Council Tax, Insurance, Travel expenses, utility bills, telephone and television came to approximately £1688.00 per month.

41. The Respondent questioned the accuracy of the figures given but after careful consideration the Tribunal determined that they had no reason to disbelieve them.

THE LAW

42. Paragraphs 1 to 10 of Schedule 13A to the Housing Act 2004 state as follows:

Notice of intent

1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").

2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

(3) For the purposes of this paragraph a person's conduct includes a failure to act.

The notice of intent must set out—

(a) the amount of the proposed financial penalty,

the reasons for proposing to impose the financial penalty, and

information about the right to make representations under paragraph 4.

Right to make representations

4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ("the period for representations").

Final notice

5 After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and

if it decides to impose a financial penalty, decide the amount of the penalty.

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.

The final notice must set out—

(a) the amount of the financial penalty,

the reasons for imposing the penalty,

information about how to pay the penalty,

the period for payment of the penalty,

information about rights of appeal, and

the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

(1) A local housing authority may at any time—

withdraw a notice of intent or final notice, or

reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

the decision to impose the penalty, or

the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

is to be a re-hearing of the local housing authority's decision, but

(b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Section 263 of the Act states

263 Meaning of “person having control” and “person managing” etc.

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

THE TRIBUNAL’S DETERMINATION

43. The Tribunal then considered the appeal in three parts:

1) Whether the Tribunal was satisfied, beyond reasonable doubt, that the Applicant’s conduct amounted to a “relevant housing offence” in respect of premises in England (see sections 249A (1) and (2) of the Housing Act 2004);

- 2) Whether the Local Housing Authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act); and/or
- 3) Whether the financial penalty was set at an appropriate level, having regard to any relevant factors, including:
 - i. the offender's means;
 - ii. the severity of the offence;
 - iii. the culpability and track record of the offender;
 - iv. the harm (if any) caused to a tenant of the premises;
 - v. the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
 - vi. the need to remove any financial benefit the offender may have obtained as a result of committing the offence.
44. Did the Applicant's conduct amount to a relevant housing offence?
45. It was not contested by the Applicant that he owned the Property although it was jointly owned with his mother and not entirely owned by him as originally believed by the Respondent.
46. The Tribunal is therefore satisfied beyond reasonable doubt that the alleged offence was committed and that the Applicant was the "manager", notwithstanding that he only owned 50% of the property.
47. Whether the Local Housing Authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty?
48. There was no challenge by the Applicant in this element of the appeal and the Tribunal determines that the procedural requirements for the imposition of the Financial Penalty were satisfied.
49. Whether the financial penalty was set at an appropriate level?
50. The methodology by which the penalty amount was calculated was by the Respondent Council's Civil Penalties Policy which includes a matrix which had been set in partnership with other Local Authorities in the UK to establish a consistent framework. This sets out the penalty amount for each type of offence and adjustments for particular circumstances some of which are not relevant to this matter. The Tribunal considers this policy simplistic. For instance, the penalty for the First Offence having low culpability and low harm is set between £0 - £4,999.00. For medium culpability and low harm, it is set between £5,000-£9,999.00 with a starting point of £7,500.00.
51. These figures can be increased to reflect any previous action taken against the Applicant, negligent or deliberate concealment of evidence, lack of co-operation, obstruction and whether the Applicant was motivated by financial gain. Some mitigating factors are taken in account such as previous convictions, medical conditions, co-operation and voluntary action. There are then further adjustments to reflect the income of the Applicant, the rental income derived and the value of the property in relation to the average value in Coventry.

52. Having determined that the Respondent had submitted no evidence to prove that the value of the property was above the 'Coventry average' the Tribunal determined to disregard this adjustment. In any event the Tribunal is not convinced that this element to the calculation is in any way just and equitable. At the same time the suggestion that the Applicant has equity in the property and can therefore obtain a further mortgage to pay the Financial Penalty is not accepted as being realistic, particularly having regard to the fact that the penalty is payable in 28 days which gives insufficient time to obtain mortgage finance under normal conditions.
53. Similarly, we disregard that part of the penalty 'Motivated by Financial Gain'. The Respondent has not submitted anything to the Tribunal to support this item which appears to the Tribunal to be particularly arbitrary and increases the financial penalty without any clear justification. The Tribunal is conscious that the works required have all been acknowledged and completed by the Applicant; the concept of 'Financial Gain' as expressed by the Respondent appears somewhat nebulous.
54. In addition, the starting point at £2,500.00 (£4,999.00 in this case) appears very high. Comparable policies in other local housing authorities have a significantly lower starting point. One city authority has a starting point of £250.00 (although this is in cases where there is low culpability and low likelihood of harm). Furthermore, the policy sets the penalty for income over £25,000.00 per annum at 10% with a further 10% for both having a property value above the Coventry average and rental income of over £3,000.00. These appear both arbitrary and high given that the policy has no room for discretion on these points.
55. The Tribunal entirely accepts that part of the purpose in imposing Financial Penalties is punitive; they should punish the offender to deter repetition and remove any financial benefit from failure to comply with statutory requirements whilst also protecting the tenant of the premises. It is an alternative to prosecution. It would however, seem wholly inappropriate if the level of financial penalties levied were substantially greater than the level of fine(s) that might reasonably be expected had the local housing authority opted for the alternative of prosecution. The Tribunal recognises that in putting in place the legislation permitting local housing authorities to levy civil penalties the Government was no doubt seeking to make those responsible for committing breaches of statutory housing requirements contribute towards the cost of enforcement. However, the Tribunal would also express the view that local housing authority civil penalty notices should be carefully drafted and sufficiently flexible to allow penalties levied to properly reflect all the circumstances of a particular case. They have a proper place in the overall legislative framework aimed at dealing with unsatisfactory housing conditions and in drafting and reviewing them local housing authorities should bear in mind their prime purpose and most certainly policies should avoid any temptation to regard them as a potential income stream.
56. In this case the Tribunal is not persuaded by the Respondent's submission in respect of all the additional 'add on' amounts of the penalty. Neither is it persuaded that the amounts demanded are in any way reasonable or reflect the actual failures of the Applicant. The Tribunal accepts that there was a breach of Regulation 3 but it is obvious that notwithstanding the absence of a formal Notice at the property all the tenants were well aware who their landlord was and how to contact him.

57. In respect of the breach of Regulation 4 the Tribunal accepts the submission of both parties that there were two battery powered smoke detectors in the property at the initial inspection and in view of the tenancy arrangement (this is a joint tenancy), although the Tribunal recognises that a risk assessment approach properly regards an automatic fire detection system that is mains powered (with battery back-up) and interlinked with additional detector heads as appropriate in a property of this type, the Tribunal does accept the presence of standalone detection at the initial inspection as a mitigating factor.
58. The Applicant has submitted that the Financial Penalty levied considerably exceeds what would be expected if the Applicant were to be prosecuted which he assesses at a maximum of around £4,000.00. The Respondent did acknowledge that the penalties were higher than might be anticipated with fines levied by a Magistrates Court.
59. In this case it is evident to the Tribunal that the Applicant does not have ready access to substantial funds and the relatively minor although important works required by the Respondent Authority have been completed.
60. The Tribunal accepts entirely that the Applicant owns 50% of the property although that does not affect the responsibility of the Applicant in any way. The Tribunal also fully accepts that the Applicant's income is not as high as the Respondent assessed and that the serious illness of his wife would have affected his ability to deal with the issues relating to this property as quickly as they should have been.
61. The Tribunal also accepts that the Respondent arranged three interviews with the Applicant which he did not attend. It would have been preferable if the Applicant had co-operated in attending an interview. However, it was accepted by the Respondent at the hearing that there is no legal requirement for the Applicant to have attended and the Applicant submits that a letter inviting him to at least one of the interviews was sent to his previous address and he did not receive it. We take these matters into account. Nevertheless, we are also conscious that the Applicant, as joint owner of three properties and, more importantly, an estate agent by profession responsible for the management of other residential properties should have been aware of the requirements of the relevant legislation and complied with it.
62. All these matters are relevant considerations which, in the Tribunal's view, the Local Authority should have taken into account in the exercise of its discretion in determining the amount of any Financial Penalty rather than simply following its Civil Enforcement Policy in a somewhat blinkered fashion without giving any consideration to the circumstances surrounding the offence and applying appropriate discretion.
63. It is not for the Tribunal to indicate the specific starting point for any offence but it is noted that some other City Authorities do have a significantly lower starting point, as low as £250.00 as indicated above.
64. We have considered the matters listed above and for the Financial Penalty in respect of the Regulation 3 breach we determine that the starting point for an offence with low culpability and harm in these circumstances should be £500.00. However, we reduce this by 50% as there is no previous offence but add on 10% as due to the Applicant's

profession and ownership of other properties as 'he should have known better'. The penalty is therefore reduced to £300.00 as follows:

Starting Point	£500.00
<u>Less 50% for no previous convictions</u>	<u>£250.00</u>
Penalty	£250.00
<u>Plus 10% to reflect Applicants profession/ assumed knowledge</u>	<u>£50.00</u>
Financial Penalty	£300.00

65. For the Financial penalty in respect of the Regulation 4 breach we determine that the starting point for an offence with medium culpability and high harm in these circumstances should be £5,000.00. We apply the same criteria as in the previous Notice and reduce the penalty to £3,000.00 as follows:

Starting Point	£5,000.00
<u>Less 50% for no previous conviction</u>	<u>£2,500.00</u>
Penalty	£2,500.00
<u>Plus 10% to reflect Applicant's profession/assumed knowledge</u>	<u>£500.00</u>
Financial Penalty	£3,000.00

DECISION

66. The Tribunal varies the Financial Penalties under paragraph 10(4) of Schedule 13A Housing Act 2004 to £300.00 (Three Hundred Pounds) and £3,000.00 (Three Thousand Pounds) respectively.

APPEAL

67. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Graham Freckelton FRICS (Chairman)
First-tier Tribunal (Property Chamber) (Residential Property)