FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/HNB/2020/0001/2/3**
HMCTS code (paper, video, audio)	**:**	**V: VIDEO**
Property	**:**	**Basement flat, 121 Gloucester Place, London W1U 6JY**
Applicants	**:**	**Annika Helena Ledskog** **Lorenzo Fontanelli** **PML Services Ltd**
Respondent	**:**	**Westminster City Council**
Type of application	**:**	**Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal members	**:**	**Judge Nicol** **Ms S Coughlin MCIEH**
Date of decision	**:**	**12th August 2020**

DECISION

The Tribunal determines that the Applicants shall each pay a penalty as follows:

1) Annika Helena Ledskog - £8,000
2) Lorenzo Fontanelli - £8,000
3) PML Services Ltd - £20,000

Reasons

1. The subject property is a basement flat with 7 bedrooms. The freeholder is Evans Property Ltd whose agents, Golden Eagle International, sub-let the entire flat to the first two Applicants on 10th April 2017 for a 5-year term. The first two Applicants are also directors of the third Applicant which was in business in property management, specialising in flat-shares, and arranged for each of the rooms to be let to tenants. The first two Applicants actively worked in the business, the second Applicant to

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bring in business and the first Applicant to support him with administration alongside the other 4 or 5 employees.

2. The Respondent has sought to impose penalties of £8,000 on each of the first two Applicants and a further penalty of £24,000 on the third Applicant. The Applicants have appealed to this Tribunal.

3. The Applicants' appeal was heard by the Tribunal by video conference on 7th August 2020, 10am-4:45pm. In accordance with the Tribunal's directions issued on 17th June 2020, the Respondents had provided an indexed and paginated bundle. The Applicants apparently compiled a bundle but neither the Tribunal nor the Respondent had a copy, although each of the Applicants' statements of case were available.

4. The attendees at the hearing were:

   For the Applicants:

   - Tim Deal – Counsel
   - The second Applicant, Mr Fontanelli

   For the Respondent:

   - Tazafar Asghar – Counsel
   - Aiysha Rasul – Witness

5. The third Applicant manages the property. At the time the Respondent inspected the property on 16th September 2019, 6 rooms had been let out and the other had been vacated by the tenant the day before, allegedly by the unlawful means of the third Applicant emptying the room and changing the locks to exclude him (although Mr Fontanelli vigorously denied that his company would ever act that way). There is no dispute between the parties that this is a house in multiple occupation which requires to be licensed under the Housing Act 2004 (relevant parts of the Act are set out in an Appendix to this decision).

6. The Respondent's inspection was carried out by Ms Aiysha Rasul. Although the property has a number of bathrooms and most of the bedrooms are large enough to be called double bedrooms, there was only one kitchen to be shared by all the tenants – Westminster's standards for HMOs include that a kitchen should be shared by a maximum of 5 people. She found that the boiler was defective, leaving the tenants without hot water but with excess water on the floor so that one of the tenants had to put down towels to keep the water out of her room. One of the bedrooms had no working lighting. The tenants present said this had been going on for weeks. Mr Mauro Porera, a manager with the third Applicant, happened to be present to look at the boiler and lighting. Ms Rasul took the opportunity to exchange contact details and to raise with him the fact that the property should be licensed. The second Applicant told the Tribunal that Mr Porera had told him about Ms Rasul's comment that the property should be licensed.

7. On 24th September 2019, the Respondent wrote to the third Applicant pointing out that the flat should be licensed as an HMO. Golden Eagle having provided on 27th September 2019 a copy of the first two Applicants' tenancy with Evans Property, the Respondent wrote to all three Applicants on 7th October 2019 cautioning them that they were believed to be committing an offence by failing to have obtained an HMO licence for the property.

8. It was the Respondent's opinion, with which the Tribunal agrees, that the property met the definition of an HMO using the "self-contained flat test" in section 254(1)(b) and (3) of the Act:

   (a) The property is itself a self-contained flat;

   (b) The property has 7 bedrooms and so comprises one more units not consisting of self-contained flats;

   (c) The living accommodation was occupied by persons who do not form a single household – the tenants each had their own separate tenancy or licence agreements;

   (d) The tenants occupied the property as their only or main residence;

   (e) The tenants' occupation of the living accommodation was the only use of that accommodation;

   (f) Rent was payable by each tenant to the third Applicant; and

   (g) The tenants shared the kitchen and some of them shared the communal bathroom (some of the rooms benefitted from en-suite bathrooms).

9. On 14th November 2019 the Respondent sent each of the Applicants a notice of their intention to impose a penalty of £10,000 on each of the first two Applicants and one of £30,000 on the third Applicant. Mr Mauro Porera, the flat manager, phoned to say that the third Applicant thought the building was not licensable because it was purpose-built.

10. The second Applicant applied for a licence on 15th November 2019, putting the third Applicant forward to be the licence-holder. The Respondent asked for further documentation in support of the application, namely an electrical installation report, automatic fire detection and emergency lighting test certificates and floor plans but, to date, the certificates have yet to be provided and no licence has been granted.

11. By email dated 10th December 2019 Mr Porera responded to the notice of intention by making the same point about the building being purpose-built. Neither of the other Applicants sent any representations. None of the Applicants pointed out or objected to the fact that the first Applicant was addressed only by her first two names, "Anika Helena".

12. By letter dated 19th December 2019 the Respondent rejected Mr Porera's representations on the basis that the Applicants should have known better or, if they had been in doubt, they could have asked the Respondent whether the property was licensable. They welcomed the

licence application but pointed out that it only came after the notice of intention. They said they would proceed with penalty notices but with the penalties reduced by 20% to take account of the fact that a licence had now been applied for.

13. Final Penalty Notices were issued to the Applicants on 23rd December 2019, imposing penalties of £8,000 for each of the first two Applicants and £24,000 for the third Applicant, leading to the current appeal.

14. Each of the Applicants submitted an appeal in identical terms and, later, statements of case in identical terms asserting that they are not liable for a penalty under the Housing Act 2004 and, alternatively, that the penalty is grossly disproportionate and excessive.

15. The first two Applicants assert that they are not persons having control of or managing the property within the meaning of section 72(1) of the Act. Under section 263(1) a "person having control" means the person who receives the rack-rent which, in turn, means a rent which is not less than two-thirds of the full net annual value of the premises. Under section 263(3) a "person managing" means the person who, being an owner or lessee of the premises receives (whether directly or through an agent or trustee) rents or other payments from, in the case of an HMO, persons who are in occupation as tenants or licensees of parts of the premises.

16. The second Applicant told the Tribunal in his evidence that this was the fourth or fifth property the third Applicant had agreed to manage for Golden Eagle. The arrangement had been the same in relation to each of the other properties: the third Applicant paid Golden Eagle a fixed amount and sought to make a profit by letting out the rooms in each property by an amount which totalled more than that fixed payment. The third Applicant had been using this business model since its foundation in 2014, expanding by using the profits in one property to provide the basic finance for the next one. Many of the properties were HMOs and the second Applicant said he had a close and ongoing relationship with the Respondent – some of their officers had visited the third Applicant's offices a number of times to discuss aspects of their management of properties in the borough. The third Applicant was convicted of managing an unlicensed HMO in 2016 but the second Applicant insisted lessons had been learned and none of the Applicants had any reason to avoid obtaining a licence for this property.

17. In fact, the Applicants stood to lose if the property were licensed. The amount they paid Golden Eagle was £5,416.66 per month. On the second Applicant's figures as he told them to the Tribunal, at least 6 of the 7 rooms would need to be let to turn a profit. However, with Westminster requiring a maximum of 5 people to use one kitchen, there was a serious risk that they would not have been permitted to let more than 5 rooms.

18. For this property, Golden Eagle asked the Applicants to accept an element additional to their previous arrangements, namely a tenancy

agreement of the whole flat to be held by the first two Applicants personally. According to the second Applicant, Golden Eagle wanted this because they were exposed to the third Applicant across a number of properties and wanted "rent insurance". The second Applicant said that this was an important commercial relationship and he agreed without hesitation or even much thought. To his mind, the tenancy agreement had no particular significance and, in practical terms, the relationship would be the same as before. The third Applicant would collect the rent from its tenants, from which the fixed monthly payment would be paid direct to Golden Eagle. Payments to Golden Eagle were shown on a Barclays account apparently in the second Applicant's name but he explained that it was one of the third Applicant's accounts with his name being on it simply because that is what Barclays's online banking system required.

19. The Applicants' counsel, Mr Deal, submitted that the tenancy agreement between Golden Eagle and the first two Applicants had no relevant effect because the parties did not intend it to. This is a novel legal proposition which the Tribunal rejects. The meaning and effect of a contract is determined in the first instance by looking at its terms, not by a historical analysis of the original parties' intentions. The first two Applicants were granted an interest in the land, for a term of 5 years, to the exclusion of their landlord. They had the power to control the use of the premises, including to receive the rents, even if they did not make use of that power. The fact that rent did not physically pass through their hands is irrelevant. The Tribunal looks at the parties' rights, not the practical arrangements by which it happened to be more convenient to let Golden Eagle and the third Applicant deal directly with each other. If "receives" meant only physical receipt, it would be an open invitation to unscrupulous landlords to avoid responsibility for their tenants with impunity. The Tribunal is satisfied that the first two Applicants were persons having control of and managing the premises.

20. The first Applicant also points to the fact that the notices only addressed her by her first two forenames. However, the Tribunal is satisfied that this does not invalidate the notice. The statutory requirement is no more than to give "the person" the relevant notice – there is nothing express as to how that person is to be addressed. The construction of the notice has to be approached objectively, and the question is how a reasonable recipient would have understood them, bearing in mind their context: *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749. The first Applicant has never claimed to be, nor does the Tribunal think she would have been, under any misapprehension as to whom the notices were directed. The mistake on the name is no more meaningful than if the Respondent had omitted only her middle name.

21. In relation to quantum, it is necessary to look at how the Respondent reached their figures. Although the appeal is a rehearing and the Tribunal needs to reach its own conclusion on this issue, the Tribunal is entitled to have regard to the Respondent's views (*Clark v Manchester CC* [2015] UKUT 0129 (LC)) and must consider the case against the

background of the policy which the Respondent has adopted to guide its decisions (*R (Westminster CC) v Middlesex Crown Court* [2002] EWHC 1104 (Admin)).

22. The Respondent operates an Enforcement Policy in accordance with the Government's "Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities". The Policy sets out a matrix, categorising offences into 6 bands, from moderate (1 and 2), through serious (3 and 4) to severe (5 and 6). A failure to licence is regarded as serious, with penalties starting at £10,000, and where a landlord or agent controls or owns a significant portfolio or has demonstrated experience in letting or management, the failure is pushed into the severe categories starting at £20,000. Aggravating factors include the presence of hazards, a lack of amenities, poor management and a familiarity with the licensing regime. Mitigating factors include good management in accordance with the HMO management regulations and a lack of hazards. Late compliance constitutes grounds for reducing the penalty otherwise payable.

23. The Respondent took into account a number of factors in the Applicants' case:

(a) The third Applicant is a professional landlord with a considerable portfolio both in and outside the Respondent's district and is well aware of the licensing regime.

(b) The third Applicant had been successfully prosecuted for the same offence before.

(c) Management of the property was poor. The tenants were without hot water for over one month due to a defective boiler which eventually leaked into other rooms and, on inspection, one of the rooms had no lighting.

(d) The first two Applicants are directors of the third Applicant and hold a tenancy from the freeholder.

24. The first two Applicants make a number of assertions supporting their submission that the penalties are disproportionate and excessive:

(a) The first two Applicants' only involvement with the management of this property was as director of the third Applicant. However, a director is involved by virtue of their directorship. Being a director is meaningless unless it involves taking responsibility for the actions of the company. Moreover, both of them were active in the general business of the third Applicant.

(b) The first two Applicants have an "almost blameless record". However, the company of which they are directors has been prosecuted for failing to licence a property and has managed the current property poorly. It is beyond complacent to suggest that they are blameless for the third Applicant's failings.

(c) The first two Applicants submit that no prejudice has been caused to anyone. This misunderstands the role of the licensing regime which provides protections for tenants even if those protections are not actually invoked. For example, there was no fire at the premises but it would be nonsense to suggest that the tenants would not benefit from having proper fire safety precautions in place.

(d) The first two Applicants blame the freeholder for the lack of responsiveness to disrepair complaints but it is not possible for the mesne landlords and their agents to do this. The third Applicant was responsible for managing the property of which the first two Applicants were the immediate landlords. The freeholder was neither managing nor the immediate landlord.

(e) The first two Applicants point out that a licence was applied for. However, this was only after the issue of the notice of intention. The Applicants could and should have acted far sooner.

25. The Tribunal was concerned about one issue. The statutory maximum for the penalty is £30,000. This indicates that Parliament thought that this should be the upper end of the range of penalties. Any penalty must be proportionate on that measure. While the Tribunal accepts that the Respondent was correct to put the third Applicant into its highest, "severe" categories, that still leaves a range of £20,000 to £30,000 (before applying the discount for late compliance). In the Tribunal's experience, the third Applicant's defaults are not the worst. In the Tribunal's opinion, the imposition of the maximum fine on the third Applicant was excessive and a more appropriate fine would have been £25,000, putting it at the bottom of the highest category 6 rather than at the top. The Tribunal accepts that a discount of 20% for late compliance was appropriate, reducing the third Applicant's fine to £20,000.

26. In relation to the first two Applicants, the Tribunal agrees with the level of penalty set by the Respondent and confirms them at £8,000 each.

27. The second Applicant told the Tribunal about the impact of the COVID-19 pandemic on the Applicants' business. He said that around 60% of the tenants had left. Initially, clients were persuaded to take deposits in lieu of the amounts owed while he operated for around 3 months without any income for himself but, eventually, he had to accept that the business had ceased to be viable. The first Applicant returned to Sweden. Last week, an administrator was appointed to take the third Applicant into liquidation, although nothing has yet appeared on Companies' House records. If true, this is a tragedy for the Applicants and hinders the Respondent's efforts to maximise the delivery of an affordable rented sector within the borough.

28. The Tribunal considered to what extent the Applicants' financial circumstances should affect the Tribunal's decision to uphold penalties on each of them. Unfortunately, the Applicants had failed to bring forward any evidence whatsoever as to their financial circumstances. The Tribunal would have expected at least to see something from the

company's accountant or the administrator. Without any such evidence, the Tribunal has no basis on which to amend its decision in relation to the penalties. Having said that, the Respondent is well aware of the pointless expenditure of resources involved in chasing someone for money they have no means of paying. The Tribunal has no doubt that they will consider the Applicants' resources before implementing any enforcement processes.

Name: Judge Nicol **Date:** 12th August 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

249A Financial penalties for certain housing offences in England

(1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(2) In this section "relevant housing offence" means an offence under—

(a) section 30 (failure to comply with improvement notice),
(b) section 72 (licensing of HMOs),
(c) section 95 (licensing of houses under Part 3),
(d) section 139(7) (failure to comply with overcrowding notice), or
(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or
(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,
(b) appeals against financial penalties,
(c) enforcement of financial penalties, and
(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

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

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");
(b) it meets the conditions in subsection (3) ("the self-contained flat test");
(c) it meets the conditions in subsection (4) ("the converted building test");
(d) an HMO declaration is in force in respect of it under section 255; or
(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);
(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the self-contained flat test if–
(a) it consists of a self-contained flat; and
(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–
(a) it is a converted building;
(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
(c) the living accommodation is occupied by persons who do not form a single household (see section 258);
(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(e) their occupation of the living accommodation constitutes the only use of that accommodation; and
(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–
(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
(c) make such consequential amendments of any provision of this Act, or any other
(a) enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

"basic amenities" means–

(a) a toilet,
(b) personal washing facilities, or
(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;
"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);
"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;
(b) either the whole or a material part of which lies above or below some other part of the building; and
(c) in which all three basic amenities are available for the exclusive use of its occupants.

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.

SCHEDULE 13A
FINANCIAL PENALTIES UNDER SECTION 249A

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").

3

The notice of intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4

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.

10

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

(a) the decision to impose the penalty, or

(b) 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—

(a) 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.