



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

**Case Reference** : **LON/00BB/HNA/2020/0078**

**HMCTS Code** : **V: CVP REMOTE**

**Property** : **61 Kelland Road, Plaistow, London  
E13 8DS**

**Applicant** : **Ms Tolu Olubanjo**

**Representative** : **In person**

**Respondent** : **London Borough of Newham**

**Representative** : **Ms Clara Zang (Counsel)**

**Type of Application** : **Appeal against a financial penalty –  
Section 249A & Schedule 13 to the  
Housing Act 2004**

**Tribunal Members** : **Judge Donegan  
Ms S Coughlin MCIEH  
(Professional Member)**

**Date of Hearing** : **01 March 2021**

**Date of Decision** : **24 March 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

**This has been a remote video hearing, which has not been objected to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held due to the current lockdown restrictions and all issues could be determined at a remote hearing. The Tribunal was referred to a 170-page bundle of documents, produced by the respondent and emails exchanged by the parties on 22 October 2019, the contents of which were noted.**

## **Decision of the Tribunal**

**The Tribunal confirms the financial penalty notice issued by the respondent on 22 May 2020.**

## **The background**

1. This appeal concerns a financial penalty notice ('FPN') issued to the applicant on 22 May 2020, pursuant to section 249A of the Housing Act 2004 ('the 2004 Act'). The amount of the penalty is £750. The FPN relates to 61 Kelland Road, Plaistow ('the Property'), which is a one-bedroom, ex-local authority flat. The applicant is the leaseholder of the Property, which she sublets. The respondent is the freeholder of the Property.
2. The Property is in a designated area of selective licensing within the London Borough of Newham. The applicant was granted a licence on 06 September 2018, for five years from 01 March 2018, under reference 18/22115/HOSELE. This was addressed to her at 1112A High Road, Essex RM6 4AH. The permitted occupation is a maximum of four people living as one household.
3. Various conditions are attached to the licence, including:
  - "3) *The Licence Holder shall inform the Council's Property Licensing Team directly, in writing or by email, of the following within 28 days of the change occurring:*
    - a) *Any change in the ownership or management of the property.*
    - b) *Any change in address, email or telephone number for the licence holder and/or agent.*
  - 4) *The address of the Licence Holder given on the application form shall be used as the address for the proper service of any letter, notice or other document by the Council's Property Licensing Team on the Licence Holder. It is the Licence Holder's responsibility to ensure that they take all reasonable steps to receive and act upon any letter, notice or other document sent to that address.*

...

6) *The Licence Holder shall supply the occupiers of the property with a written statement of the terms on which they occupy the property, details of the arrangements in place to deal with repair issues and emergency issues and a copy of this licence and its condition. Copies of the written statement of terms must be provided to the Council within 7 days upon demand.*

...

9) *The Licence Holder shall obtain references from persons who wish to occupy the property, or a part of a property, before entering into any tenancy or licence or other agreement with them to occupy the property. No new occupiers shall be allowed to occupy the property if they are unable to provide suitable references.*

*(References should be as a minimum, checks to ensure the tenants identity, whether they have the right to rent a property [see...], their ability to pay rent and their past tenant history). The Licence Holder must retain all references obtained for occupiers for the duration of the licence and provide copies to the Council within 28 days on demand.*

...

11) *The Licence Holder shall protect any deposit taken under an assured shorthold tenancy by placing it in an authorised tenancy deposit scheme. The tenant must be given the prescribed information about the scheme. The Licence Holder must comply with the requirements of the scheme and the operation of Part 6 in Chapter 4, Housing Act 2004 within the statutory time limit (currently 30 days). A copy of the prescribed information given must be provided to the Council within 28 days on demand.*

12) *The Licence Holder must provide to the Council, in writing, details of the tenancy management arrangements that have been, or are to be, made to prevent or reduce anti-social behaviour by persons occupying or visiting the property. Evidence of these must be provided to the Council within 28 days on demand and amongst other things shall include the following:*

a) *Notification of an emergency 24hr contact number (including out of hours response arrangements)*

b) *Notification of arrangements for the disposal of rubbish and bulky waste*

c) *Written records of property inspections for management and repair issues*

...

20) *The Licence Holder shall ensure that, if they are informed in writing, by email or other form of communication, a complaint of disrepair or pest infestation in the property from the occupier or the Council, they take action to remedy the disrepair and/or infestation. The Licence Holder shall respond in writing to any*

such complaint, within 14 days, stating what action they have or are taking.

...

- 22) *The Licence Holder shall ensure that any repairs, improvement works or treatments at the property are carried out by competent person(s) who is employed directly by the Licence Holder or an agent/employee of the Licence Holder. Copies of receipts and/or invoices for any such works must be provided to the Council within 28 days upon demand.*
- 23) *If gas is supplied to the property, the Licence Holder shall take all reasonably practicable steps to ensure that all gas installations and appliances are in a safe condition. The Licence Holder must keep a current valid gas safety certificate obtained within the last 12 months by a Gas Safe registered Engineer or, if the boiler was installed less than 12 months ago, a Gas Safe Installation Certificate. A copy must be produced to the Council within 28 days on demand. Copies of the certificate must also be provided to all occupiers at the start of their occupation.*
- 24) *The Licence Holder shall take all reasonably practicable steps to ensure that all electrical appliances provided at the property are in a safe condition. The Licence Holder must obtain an electrical appliance test report in respect of all electrical appliances that are provided by the landlord and provide a copy to the Council within 28 days of demand.*

...

- 32) *The Licence Holder shall carry out regular checks and ensure that the common parts, gardens and yards are free from waste, which could provide harbourage for pests and/or is a nuisance and/or is detrimental to the local amenities, other than waste stored in appropriate receptacles for the storage of household refuse and recycling, and that waste such as old furniture, bedding, rubbish or refuse from the property is not left outside the property or in its vicinity.*
- 34) *The Licence Holder shall ensure each smoke alarm installed in the property shall be kept in proper working order and shall submit to the Council, on demand, a declaration by him as to the conditioning and position of any such smoke alarm.*

...

- 47) *The Licence Holder shall provide the Council within 28 days of receiving a written notice with such of the following particulars as may be specified in the notice with respect to the occupancy of the property:*
  - a) *The names and numbers of individuals and households in occupation specifying the rooms they occupy within the property.*
  - b) *The names and numbers of individuals in each household.”*

4. On 22 July 2019, the respondent's Private Housing and Environmental ('PHEH') technical support team received a complaint of a blocked kitchen sink at the Property. An Environmental Health Officer, Ms Grace Afolabi, notified the applicant of the complaint in a telephone conversation on 29 July. The applicant instructed plumbers to investigate the problem and they discovered a blockage in the communal stack. She then reported the matter to the respondent's repairs team, who cleared the stack. She notified Ms Afolabi of these developments in an email dated 10 August 2019.
5. The technical support team sent the applicant a licence conditions audit letter on 01 August 2019. This was sent to her at 1112A High Road, RM6 4AH and requested documents and information by 29 August, including a written statement of terms of occupancy, gas, fire alarm and electrical appliance certificates, tenancy deposit paperwork, tenancy management arrangements, pest control records and tenant references. The letter included the following warnings:

*"All listed items must be supplied or a statement declaring if an item is not applicable including the reason this has not been provided (e.g. the lack of a gas safety certificate for a property with no gas supply).*

*Any submissions received with missing information or documentation will not constitute a satisfactory response and my result in the Council taking enforcement action. A person who fails to comply with any of the licence conditions can, on conviction, be subject to an unlimited fine."*
6. The applicant did not respond to the audit letter and a reminder was sent on 19 September 2019, again to 1112A High Road. This gave a further 7 days to produce the audit documents.
7. Ms Afolabi sent an email reminder on 14 October 2019, attaching copies of the earlier letters and requesting the outstanding documents by 21 October. The applicant immediately rang the technical support team and left a message for Ms Afolabi to call. They spoke later in the day and the applicant said she had not received the audit letter or first reminder, as they were sent to an old address. She had notified the leaseholder service team of a change of correspondence address but not the PHEH team. She also explained the respondent was responsible for the blocked sink, as the problem stemmed from a blocked communal stack. It appears the conversation became fractious, with Ms Afolabi saying she would refer the case to her manager.
8. The applicant sent a follow up email to Ms Afolabi that afternoon, with two photographs of a plumber rodding the sink/stack. She reiterated that the respondent was responsible for the blockage, which had been rectified. She had notified the leaseholder team of her change of address in April 2019, which meant the audit letter had not been served. She queried the basis for this letter and went on to say she would be unavailable for four weeks, as she would be travelling and could not respond until 29 November. She also requested details of Ms Afolabi's manger.

9. Ms Afolabi responded later that afternoon and copied the email to her manager, Mr Paul Mishkin. She relayed her recollection of the telephone conversation and asked the applicant to email her new address to the property licensing inbox. She also stated that four weeks was “quite long” to produce the documents, as they should be readily available.
10. The applicant sent a further email to Ms Afolabi on 15 October, addressing their telephone conversation and reiterating she could not deal with the matter whilst away. Mr Mishkin responded in an email timed at 15:50, endorsing the 7-day deadline for production of the documents and stating, “If the documents are not received our Enforcement Policy would require Ms Afolabi either initiate legal proceedings or serve a Financial Penalty Notice”.
11. The applicant’s emails dated 14 and 15 October were sent from te\_banjo@hotmail.com, as was an email to the property licensing group dated 22 October. This read:
- “Good morning*
- Please note the change of address for Tolu Olubanjo for 61 Kelland Road E138DS*
- Former address*
- 1112a High Road, RM64AH*
- Current Address:*
- Kemp House, 152-160 City Road EC1V 2NX*
- From:*
- 11<sup>th</sup> April 2019*
- Also going forwards please use the alternative email address:*
- [teoproperty@outlook.com](mailto:teoproperty@outlook.com)*
- Please confirm receipt and acknowledge that the change has been made.*
- I am away for 3 weeks with little or no access to email/phone and no access to letters.*
- I’ll only be able to respond when I return*
- Kind regards*
- Ms Tolu Olubanjo”*
12. Ms Crisp, an assistant licensing officer, responded later that day. Her email read:
- “Dear Tolu*
- I can confirm all changes have been made.*
- Kind Regards*
- Sarah Crisp”*

13. The applicant did not provide the audit documents following her return to the UK. Ms Afolabi reviewed the case in December 2019 and January 2020 and drafted a notice of intention to serve a FPN, using the respondent's financial penalty matrix. This was sent to the applicant at the Property, on 20 January. The covering letter included the following note about copies:  
"cc: 1112a High Road RM6 4AH  
Kemp House, 152-160 City Road EC1V 2NX"
14. The notice of intention stated that the proposed penalty was £750 and gave the following reasons:  
*"On or about 26<sup>th</sup> September 2019, being licence holder of the property at 61 Kelland Road Plaistow London E13 8DS, you did fail to comply with any condition of the licence 18/22115/HOSELE and therefore committed an offence under Section 95(2) of Housing Act 2004."*  
The notice identified 9 breaches of licence conditions (conditions 6, 9, 11, 12, 13, 23, 24, 32 and 34). It gave the applicant 28 days to make written representations.
15. There was no response to the notice of intention and the respondent sent a FPN to the applicant on 22 May 2020. This gave the same reasons as the notice of intention and the amount of the penalty was £750. It identified 10 breaches of licence conditions, which were slightly different to those in the notice (conditions 6, 9, 11, 12, 14, 23, 24, 32, 38, and 47). The FPN included details of the applicant's appeal rights and was sent to the Property. The covering letter contained the same cc note.
16. The FPN stated that the respondent *"considered it had medium confidence that the penalty will deter repeat offending"* and referred to the various requests for the audit documents. It noted that the applicant *"had control of only one property in Newham likely to generate moderate profits and have modest capital value."* The licence condition breaches were considered to have little direct health impacts on the tenants.
17. The applicant produced the audit documents on 08 August 2020, as attachments to an email to Mr Mishkin.

### **The appeal and procedural history**

18. The applicant submitted her appeal to the Tribunal on 22 June 2020. In her grounds of appeal (panel 9) she denied committing an offence and said this was her first alleged offence. She also complained of procedural irregularities, disputed the amount of the penalty, and referred to health and family problems.
19. The Tribunal issued directions on 06 November 2020 and the case was listed for a remote video hearing on 01 March 2021. Direction 6 required

the respondent to file and serve a digital bundle by 18 December, which they complied with. Direction 8 required the applicant to file and serve her bundle by 21 January 2021. This was to include an expanded statement of reasons for the appeal and any witness statements of fact. The directions were extended, at the respondent's request, in a Tribunal letter dated 15 December 2020.

20. The applicant did not comply with direction 8 or produce any documents but requested a stay of proceedings/postponement. The relevant correspondence is summarised below:

29/01/21 Email from the applicant requesting an extension/stay based on the latest lockdown measures and the burden of caring for her elderly parents and home-schooling her child. This request was refused by Judge Martynski and notified to the parties in a Tribunal letter dated 02 February 2021.

03/02/21 Letter from the applicant requesting reconsideration of her previous request. She pointed out that she was acting in person and referred to the December variation to the directions and the change of circumstances arising from the current lockdown. She also alluded to mental health issues and said she was suffering from insomnia. The renewed request was refused by Judge Martynski and notified in a Tribunal letter dated 05 February 2021.

12/02/21 Email from the applicant requesting a stay/halt to the proceedings, attaching a brief letter from her GP and a photograph of tablet packaging. The email stated, "*(NOT TO BE SHARED WITH ANYONE OTHER THAN THE JUDGE AND THE CASE WORKER AS I THINK GDPR)*". This request was refused by Judge Nicol and notified in a Tribunal letter dated 15 February 2021.

25/02/21 Email from the applicant stating she was ill and could not attend the hearing on 01 March 2021. She also lodged a separate letter requesting a stay, based on her medical condition. This request was refused by Judge Vance and notified in a Tribunal letter dated 26 February 2021.

21. The relevant legal provisions are set out in the appendix to this decision.

### **The hearing**

22. The hearing took place by remote video conferencing and commenced at 10:05 am on 01 March. The applicant appeared in person and was accompanied by her husband, Mr Olubanjo. Ms Zang appeared for the respondent and was accompanied (virtually) by Ms Afolabi.

23. Mr Olubanjo applied for a postponement of the hearing and a stay of proceedings on the grounds the applicant was unwell. This was opposed



by Ms Zang who referred to the four previous requests; all of which had been refused. The applicant had not provided the respondent with details of her health problems and there was no good reason for a postponement. Further, she had not complied with the directions. The applicant said she was struggling with “*the ongoing pressures of life*”. She found it difficult to focus or concentrate and was not in the right frame of mind to deal with the hearing. On questioning from the Tribunal, she said she had been suffering for a couple of months and had been prescribed tablets by her GP. She had been taking these since 12 February. They were helping but there were some side-effects. She had a further appointment with her GP in two weeks, when the dosage might be increased. She was unable to say when she would be fit to proceed. The GP expects the tablets to help, possibly in conjunction with counselling.

24. The Tribunal considered the application during a short adjournment. On resumption, the Judge informed the parties that the postponement/stay had been refused. There was no new medical evidence and there were inconsistencies in the four previous applications; all of which had been refused. The applicant could not give a timescale for the duration of the postponement/stay and it was in the interests of finality to proceed with the hearing and determine the appeal. The Judge explained that Mr Olubanjo could assist the applicant in presenting her case and the Tribunal would make suitable adjustments, including regular breaks in the hearing.
25. At the Judge’s request, Ms Zang took the Tribunal through the documents in the respondent’s bundle. The Tribunal ensured the applicant located the documents before Ms Zang commented on them. It then heard oral evidence from the applicant and Ms Afolabi, who were cross-examined at some length. Again, it ensured the applicant located and, where appropriate, read the documents she was asked to comment on. Ms Zang and the applicant made closing submissions and the hearing, which had been listed for three hours, concluded at approximately at 3:30pm. There were several short adjournments to assist the applicant. During one of these adjournments the applicant supplied the case officer with copies of the emails dated 22 October 2019, regarding her change of address and email address.
26. The Tribunal decided the appeal on the documents in the respondent’s bundle, the email exchange on 22 October 2019, the oral evidence, and the parties’ submissions.

### **Evidence and submissions**

27. There was no bundle or statement from the applicant, but the Tribunal invited her to expand on her grounds of appeal. She explained that she had notified the leaseholder team of her new address in April 2019. She did not receive the initial audit letter or first reminder, as they were sent to her old address. She had arranged mail redirection for two months, but this ended before the audit letter. She only received the letters when

copies were emailed to her on 14 October 2019. She spoke to Ms Afolabi that day and explained the letters had been sent to an old address. She also explained that she was going away and would need additional time to produce the documents. She expected Ms Afolabi to give a revised timescale. In her follow-up email, she requested an extension to 29 November.

28. Following her return the applicant telephoned Ms Afolabi and explained she was having difficulties in obtaining access to the Property. From recollection, she needed to arrange an electrical appliance certificate. Her relationship with the tenant, Mr Uddin deteriorated after she gave notice to terminate the tenancy.
29. There was a delay in obtaining the appliance certificate due to the access problem and the first lockdown. The applicant was also caring for her mother, who was unwell. She was unsure when she first contacted an electrician, but this would have been late 2019. She was unable to obtain the certificate until the summer of 2020 when the lockdown restrictions were lifted.
30. The applicant denied receiving the notice of intention, which had been sent to the Property. She did not receive a copy at Kemp House or an email copy. The respondent had persisted in using her old email address, despite being given the new address on 22 October 2019 and continued using the old address within the Tribunal proceedings.
31. On questioning from the Tribunal's Professional Member, the applicant said she had received the FPN. She was unsure how this had been delivered but it may have been sent to Kemp House as the respondent started using this address "*towards the end*".
32. In cross-examination, the applicant said she had not produced the other documents, excluding the appliance certificate, in late 2019 as the audit letter stated all documents had to be produced together. She needed the certificate to comply. Ms Afolabi had been unhelpful and refused to listen to her during their October telephone conversation, which led to the manager's involvement.
33. The applicant accessed the Property on 13 December 2019, as evidenced by an email from Mr Uddin dated 23 December. He referred to an inspection on that date, which led to a heated discussion and the involvement of the police. The applicant said Mr Uddin had assaulted her and they both called the police. This led to a complete breakdown in their relationship, which prevented her from obtaining the appliance certificate.
34. The applicant gave details of attendances at the Property in her email to Mr Mishkin of 08 August 2020, including inspections on 14 October and 13 December 2019 and 02 March 2020. Each of these entries referred to

*“tenant not cleaning the flat”*. A gas engineer attended on 13 January 2020 and there was a *“general viewing”* on 23 February 2020. At the time, the Property was being marketed for sale and the estate agent attended. The applicant was unsure whether she also attended.

35. Ms Afolabi spoke to a 7-page witness statement dated 05 January 2021. She holds a B.Sc. in Environmental Health from Middlesex University and has been employed by the respondent since May 2019. In the early part of her statement, she explained how the respondent approved the use of FPNs in 2016 and subsequently developed their financial penalty matrix. This took account of guidance from the Department for Communities and Local Government (‘DCLG’). The matrix has four rows that all need completing: (1) deterrence and prevention, (2) removal of financial incentive, (3) offence and history and (4) harm to tenants with the latter having a weighting of two. The officer must select one of five scores (1, 5, 10, 15 or 20) for each row, depending on severity. These scores are added, and the total determines the financial penalty. The minimum penalty is £250, for a total score between 0 and 5 and the maximum is £30,000, for a total between 90 and 100.
36. Ms Afolabi explained that the original audit letter and reminder were sent to 1112A High Street, as this was the address on the licence and the applicant’s last known address. The property licensing team had not been notified of a change of address, pursuant to condition 3 and the licence address was used in accordance with condition 4. The applicant first mentioned her change of address during the telephone conversation on 14 October 2019.
37. When drafting the notice of intention, Ms Afolabi applied the respondent’s FPN matrix and selected the following scores:
- |                                |   |
|--------------------------------|---|
| Deterrence and prevention      | 5 |
| Removal of financial incentive | 5 |
| Offence and history            | 1 |
| Harm to tenants                | 1 |
- Applying the double weighting to the final criteria gave a total score of 13 and a penalty of £750. Ms Afolabi’s work was peer-reviewed before the notice was served. The notice was sent to three different addresses, the Property, 1112A High Road and Kemp House, by first-class post. Ms Afolabi also emailed a copy to [te\\_banjo@hotmail.com](mailto:te_banjo@hotmail.com), being the applicant’s old email address.
38. The subsequent FPN was also sent to the Property, 1112 High Road and Kemp House. Ms Afolabi was notified of the appeal in an email dated 24 June 2020, in which the applicant repeated her new email address ([teoproperty@outlook.com](mailto:teoproperty@outlook.com)).

39. In her statement, Ms Afolabi referred to emails from Mr Uddin dated 23 December 2019 and 19 April 2020 complaining about the applicant. Ms Afolabi also explained that the FPN was not withdrawn when the audit documents were produced (in August 2020) for public health reasons. The audit process ensures compliance with the licence and the licensing system is in place to protect tenants and the wider public.
40. On questioning from the Professional Member, Ms Afolabi reiterated that the notice of intention and FPN were sent to all three addresses. She had not agreed to give an alternative timescale, for production of the audit documents, during the telephone conversation on 14 October. She had no power to extend the deadline and referred the request for extra time to Mr Mishkin.
41. Ms Afolabi was also questioned about her application of the FPN matrix. She had medium confidence that a penalty would deter repeat offending. The applicant had acted promptly in dealing with the initial tenant complaint but was slow to produce the audit documents. The financial incentive score reflected the value and potential profit from the Property, which could achieve a rent of £1,000-2,000 per month. There were no other properties in the borough belonging to the applicant, so Ms Afolabi selected the second lowest score.
42. In cross-examination, Ms Afolabi explained that the penalty was determined by the matrix and she only selected the scores. The financial incentive score reflected the high property values and rents within Newham. The prevention score could have been higher, reflecting low confidence of deterrence, as the applicant was given several opportunities to produce the audit documents. Ms Afolabi had used her own judgment when selecting the scores.
43. Ms Afolabi was adamant that the respondent's letters had been sent correctly. The first two letters were sent to the address given on the licence and the notice of intention and FPN were sent to all three addresses. There was no requirement to send copies by email.
44. Ms Afolabi said she first saw the applicant's email of 22 October 2019 on the day of the hearing. She accepted the email had been sent to the property licensing team, but only received direct notification of the applicant's new email address on 24 June 2020.
45. Ms Zang submitted that audit and reminder letter had been correctly sent to 1112A High Road, being the address given on the licence. These predated the applicant's email of 22 October, notifying the licensing team of her change of address. There is no requirement to send documents by email, under the terms of the licence.

46. Ms Zang also referred to the telephone conversation between the applicant and Ms Afolabi on 14 October. The applicant was clearly aware of the audit request by that date and had ample time to produce the documents after her return to the UK in late November. This was four months before the first lockdown and there was no reasonable excuse for her delay. She had only raised the access issue at the hearing and she and other parties obtained access to the Property between October and March.
47. Ms Zang contended that the notice of intention and FPN had been correctly served. Ms Afolabi had given clear evidence these documents were sent to all three addresses. The applicant clearly received the FPN, as submitted the current appeal. Further, there is no reason to depart from the £750 penalty. Ms Afolabi had applied the respondent's matrix, which is based on statutory guidance.
48. The applicant made clear and detailed closing submissions, which are summarised below.
- (a) The audit letter and first reminder were invalid, as they were sent to an old address.
  - (b) Given this procedural irregularity, the respondent should have started the procedure again and served a new audit letter at the correct address.
  - (c) Ms Afolabi's email of 14 October 2019 did not correct this irregularity, as the applicant had not agreed to service of documents by email. They should have been sent by post in accordance with the Civil Procedure Rules.
  - (d) The respondent had not proved service of the documents. There were no certificates of posting or recorded delivery slips.
  - (e) She notified the respondent of her 4-week trip in October 2019, and it was unreasonable to require production of the audit documents in 7 days.
  - (f) The applicant notified the licensing department of her new address and email address on 22 October 2019.
  - (g) The notice of intention was incorrectly sent to the Property and was not validly served.
  - (h) The applicant received the FPN but not the notice of intention.
  - (i) She was unable to obtain the electrical appliance certificate following her return to the UK in late November 2019. Mr Uddin became hostile, after she gave notice and refused access.
  - (j) She made further attempts to obtain the certificate in January, February, and March 2020. The gas engineer was able to get into the Property but not the electrician. Mr Uddin remained hostile, as he did not want to vacate.
  - (k) She obtained the certificate as soon as the first lockdown ended and then produced all the audit documents. The original

request made it clear that all documents had to be produced together.

- (l) Based on the respondent's matrix, the penalty should be limited to £250. The deterrence/penalty and financial incentive scores were too high. She responded promptly to the original tenant complaint, which arose from the blockage in the respondent's stack. The Property is a one-bedroom, ex-local authority flat and a rent of £1,000-2,000 per month is unrealistic.
- (m) The penalty is not a small amount to the applicant and would have a big impact on her family.

## **Findings**

- 49. The audit letter and reminder were validly served at 1112 High Road. This was the applicant's address for service at the relevant times. It was the address given on the licence and the applicant only notified the licensing team of her change of address in October 2019. The applicant cannot rely on the notification to the leaseholder team in April 2019, as condition 3 of the licence required her to "*inform the Council's Property Licensing Team directly*".
- 50. The Tribunal accepts Ms Afolabi's evidence that the notice of intention and FPN were sent to the Property, 1112a High Road and Kemp House, by first class post. This is supported by the cc note on the covering letters and the applicant admitted receiving the FPN (but not the notice of intention). The applicant notified the licensing department of her new address and email address on 22 October 2019. From that date on, her service address was Kemp House. The notice of intention and FPN were validly served, as they were sent to this address. The notice of intention was also sent to the old email address but that does not alter the position. The licence makes no provision for email service, which appears to be agreed by both parties.
- 51. The applicant did not produce the audit documents by the original deadline of 20 August 2019 or the extended deadlines of 26 September and 21 October 2019. Rather, she only complied on 08 August 2020. This was a breach of conditions 6, 9, 11, 12, 14, 23, 24, 32, 38, and 47 in the licence.
- 52. There was no reasonable excuse for the applicant's non-compliance with the audit request and she committed an offence under section 95(2) of the 2004 Act. She was given several opportunities to produce the documents and should have complied long before the notice of intention was served. Her overseas trip in October/November 2019 was not a reasonable excuse, as she returned two months before the notice was served. Similarly, the breakdown in her relationship with Mr Uddin was not a reasonable excuse. She had ample time to obtain the electrical appliance certificate between August 2019 and January 2020. The Tribunal notes she visited the Property between October 2019 and March 2020, as did her estate agent

and gas engineer. If access problems prevented compliance, then she should have raised this with licensing department and requested extra time.

### **The Tribunal's decision**

53. The applicant's appeal is dismissed and the FPN dated 22 May 2020 is confirmed.

### **Reasons for the Tribunal's decision**

54. Having satisfied itself that an offence had been committed under section 95(2) of the 2004 Act, the Tribunal considered the respondent's decision to impose a penalty. This was reasonable, given the applicant's prolonged failure to produce the audit documents.
55. The Tribunal then considered the level of the penalty. The respondent correctly applied its matrix, which is based on DCLG guidance. There is no basis to depart from the scores selected by Ms Afolabi, which were eminently reasonable. She gave the lowest possible scores for offence/history and harm to tenants and the second lowest scores for deterrence/prevention and financial incentive. It was reasonable to take account of the prompt response to the initial tenant complaint and the substantial delay in producing the audit documents when scoring deterrence/prevention. It was also reasonable to factor in the value of the Property and the potential rental profit when scoring financial incentive. The leasehold register in the respondent's bundle reveals that the applicant purchased the Property for £54,500 in June 2003. No doubt there has been a substantial increase in value since that time.
56. Based on the matrix and Ms Afolabi's scores, the correct penalty is £750.

**Name:** Tribunal Judge Donegan **Date:** 24 March 2021

### **RIGHTS OF APPEAL**

1. 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.
2. 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.

3. 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.
4. 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.



## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **80 Designation of selective licensing areas**

- (1) A local housing authority may designate either –
  - (a) the area of their district, or
  - (b) an area in their district,as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

...

#### **95 Offences in relation to licensing of houses under this Part**

- (1) A person commits an offence if he is a person having control or managing a house which is required to be licensed under this Part (see section 85(1) but is not so licensed.
- (2) 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 90(6); and
  - (b) he fails to comply with any condition of the licence.

...

- (4) In proceedings against a person for an offence under subsection (1), or (2) 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 failing to comply with the condition,as the case may be.

...

#### **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 224 (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 regulation 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.

## **SCHEDULE 13A**

### **FINANCIAL PENALTIES UNDER SECTION 249A**

#### *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 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.
- 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.

#### *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
  - (b) 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.
- 8 The final notice must set out –
  - (a) the amount of the financial penalty,
  - (b) the reason for imposing the penalty,
  - (c) information about how to pay the penalty,
  - (d) the period for payment of the penalty,
  - (e) information about rights of appeal, and
  - (f) the consequences of failure to comply with the notice.

#### *Withdrawal or amendment of notice*

- 9 (1) A local housing authority may at any time –
  - (a) withdraw a notice of intent or final notice, or
  - (b) reduce the amount specified 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*

- 10 (1) A person to whom a final notice is given may appear 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 authority could have imposed.

*Recovery of financial penalty*

- 11 (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.
- (2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.
- (3) In proceedings before the county court for recovery of a financial penalty or part of a financial penalty, a certificate which is –
  - (a) signed by the chief finance officer of the local housing authority which imposed the penalty, and
  - (b) states that the amount due has not been received by a date specified in the certificate,is conclusive evidence of that fact.
- (4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.
- (5) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

*Guidance*

- 12 A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its function under this Schedule or section 249A.