



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

Case Reference : **MAN/OOCX/HNA/2019/0128**

Property : **13 St Margaret's Place, Bradford, BD7 3AW**

Applicant : **Mr Mohammed Kamran Khalil**
Representative : **Mr Zaf Shah**

Respondent ; **Bradford Metropolitan District Council**

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

Tribunal Members : **Tribunal Judge J. E. Oliver**
Tribunal Member W. Reynolds

Dates of Determination : **22nd February and 1st April 2021**

Date of Decision : **8th April 2021**

DECISION

Decision

1. The Final Notice, being the subject of this appeal is varied; Mr Mohammed Kamran Khalil must pay a financial penalty of £15,750 to Bradford Council.

Background

2. This is an application by Mr Mohammed Kamran Khalil (“Mr Khalil”), to appeal a financial penalty in the sum of £16500 issued by Bradford City District Council (“the Council”) pursuant to section 249A and Schedule 13A of the Housing Act 2004 (“the Act”) in respect of 13 St. Margaret’s Road, Bradford (“the Property”).
3. The Council issued the financial penalty for housing offences arising from breaches of Regulations 4,7 & 8 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the Regulations”).
4. Mr Khalil submitted his appeal application out of time, having filed it on 30th December 2019, the deadline being 24th December 2019, but the time for the filing of his appeal was extended.
5. The Tribunal issued directions on 22nd October 2020 providing for the filing of statements and bundles and for the matter to be determined upon the written submissions and evidence, as requested by both parties. The matter was thereafter listed for determination on 22nd February 2021.
6. Mr Khalil received advice and assistance from Mr Zaf Shah, legal consultant, during the course of the application.
7. On 17th February 2021, the Upper Tribunal, in ***Raza v Bradford Metropolitan District Council [2021] UKUT 0039 (LC)*** determined that all financial penalty cases should only be determined only after a hearing. This case had been listed for a paper determination before that decision had been made.
8. On 22nd February 2021, the Tribunal considered the application and determined it had sufficient information with which to make a decision, but, in the light of ***Raza***, contacted the parties to offer the opportunity for the application to be listed for a hearing. The Applicant confirmed he did not require a hearing and the Council indicated it was content to proceed either by way of a hearing or paper determination. The Tribunal determined to proceed by way of paper determination having taken into account the parties’ wishes, the sufficiency of information in the papers, the parties’ recourse to legal advice and the probability of further delay associated with a hearing.

Chronology

9. On 20th March 2019, the Council received a complaint from a tenant of the Property regarding the bathroom floor collapsing following a leak from the WC and also holes in the kitchen ceiling. The complaint was allocated to Mrs Nazima Javed, Environmental Health Officer.
10. On 3rd April 2019 Mrs Javed visited the Property and was provided access by one of the tenants, Ms Julie Carr. In her statement to the Tribunal, Mrs Javed said she found the first floor toilet was leaking into the ground floor kitchen and the automatic fire alarm was faulty. Ms Carr confirmed to Mrs Javed the Property was occupied by four unrelated tenants and Mrs Javed therefore determined the Property was a House in Multiple Occupation. Following the visit attempts were made to contact Mr Khalil, without success.
11. On 3rd April Mrs Javed's search of the Council Tax records showed the Property was occupied by five tenants who were jointly liable for the Council Tax.
12. On the same date, Mrs Javed attended the Property to hand deliver a notice pursuant to section 239 of the Act ("section 239 notice"). She advised she met Mr Khalil's father who was waiting for a plumber to repair the toilet. She also hand delivered a copy to Mr Khalil's home address where it was accepted by his wife.
13. On 10th April, the Council's officers, Mrs Javed and a colleague, Mr Khizar Yaseen carried out an inspection at the Property in the presence of Ms Julie Carr. The Officers found the Property to have five bedrooms with a shared bathroom at first floor, a shared kitchen on the ground floor and an unoccupied basement. On the second floor, one of the two bedrooms was vacant and empty of furniture.
14. The Council stated that at this inspection, several issues were found, including:
 - (1) A fault on the fire alarm which was bleeping and was compromising the safety of the occupants.
 - (2) The final exit doors did not have thumb turn locks and were locked with a key.
 - (3) On the second floor the electrical sockets in the unoccupied bedroom were in the skirting boards, presenting a potential electrical hazard.
 - (4) A shoe rack was situated on the second floor landing, causing a hazard in the event of a fire.
 - (5) There was no two way lighting between the second and first floor, increasing the likelihood of a fall, especially in the night.

- (6) The first floor front bedroom, had polystyrene ceiling tiles and electrical sockets in the skirting boards with one “hanging off the wall exposing bare wires”. Seals to the windows had failed causing condensation and there were threadbare carpets that were considered to be a tripping hazard. The top opener window could not be reached from floor level such that any tenant would have to climb onto the window sill to open it.
 - (7) The first floor rear bedroom had a rotten skirting board.
 - (8) The cold water tap in the shared bathroom was not working, the lino was torn, there was a hole in the ceiling where a pendant had been dislodged and the top window opener was not accessible from the floor. The bath and hand basin had no watertight sealant; the WC had been repaired.
 - (9) The glass to the fire alarm on the first floor was broken and the landing was unclean.
 - (10) On the ground floor no access could be obtained to the bedroom that was said by Ms Carr to be occupied by “Tom”. The kitchen floorboards had gaps and were sagging due the leak from the bathroom. The kitchen sink was leaking and the ceiling was covered in polystyrene tiles. There were inadequate work surfaces for the four occupants and the kitchen top opener window could not be opened from floor level and there was no mechanical ventilation.
 - (11) The fire doors did not have self-closing devices or smoke seals and the fire alarm panel either had no power or had shown faults.
15. The Council concluded the Property was occupied by four tenants forming 2 or more households. Those tenants, as advised by Ms Carr were her, Mr Brendan Dunne who occupied the first floor front bedroom, Andreus on the second floor and Tom on the ground floor.
 16. On 3rd May 2019 Mr Khalil was served with an Informal Notification of Works Required requiring remedial work to remove more than 20 Category 2 hazards.
 17. On the same date a Council tax search showed the Property to be occupied by five tenants and the responsible party for the Property was Mr Khalil.
 18. On 8th May the Council invited Mr Khalil to attend an interview under caution.
 19. On 22nd May 2019 Mr Khalil did not agree to attend for interview but requested the PACE questions be sent to him by post; they were sent by both post and e-mail on 4th June and were returned on 7th July.

20. On 4th July 2109 the Council carried out a further search of the Council Tax records to verify who had notified the Council of the tenancies and their type. The records stated Mr Khalil's brother, Mr Mohammed Kamran notified the department in February 2018 of four tenants who were Mr Brendan Dunne, Mr Nicholas Hemingway, Miss Aurelia Iwanczok and Mr Dimitrij Parchomenko. Their tenancies commenced on 28th February 2018. The Council Tax records showed no tenancy for Ms Julie Carr but its records showed she had moved in in November 2018.
21. On 2nd August 2019 two senior Environmental Officers, Mrs Denise Robson and Ms Thurza Graham attended the Property following a complaint from Mr Brendan Dunne that Mr Khalil's family were trying to evict him from the Property. At that inspection it was said all the tenants, other than Mr Dunne had vacated the Property.
22. On 11th September 2019 further PACE questions were sent to Mr Khalil to be answered by 20th September 2019. A request for an extension to allow time for Mr Khalil to seek legal advice was given until 23rd September 2019. Mr Khalil did not respond.
23. On 4th October 2019 the Council served a Notice of Intention to Impose a Financial Penalty under sections 234 and 249A of the Act at Mr Khalil's home address allowing 28 days for any representations to be made. Those representations, dated 28th October 2019, were received on 5th November 2019.
24. On 14th November 2019 the Council advised that, having considered the representations, their next step would be to issue a fixed penalty notice.
25. On 26th November 2019 the Council served a Final Notice of the Imposition of a Financial Penalty Schedule 13A(6) Financial Penalties under Section 249 of the Act upon Mr Khalil at his home address.
26. The Final Notice states Bradford Council has issued the Notice for the following reasons:
 - (1) Breach of Regulation 4- the fire alarm panel was not operational and showing a fault. Items of furniture were stored on the landings and bedroom fire doors had missing smoke seals and self-closers. The shared kitchen had polystyrene ceiling tiles
 - (2) Breach of Regulation 7- the shared kitchen floor was sagged and water-logged causing a tripping hazard and a possible collapse. There was no evidence of routine cleaning and the second floor landing was obstructed by a shoe rack.
 - (3) Breach of Regulation 8-an electrical socket was hanging off the skirting board in the first-floor front bedroom, polystyrene tiles to the ceiling and rotten skirting board in the first floor rear bedroom. All electrical sockets were located in the skirting boards within the bedrooms presenting a fire risk.

27. The Civil Penalties Determination Records (“the Records”) show the Council’s assessment of the Mr Khalil’s culpability and harm. Culpability is assessed as high, with harm as medium for the breaches of Regulations 4, 7 and 8, giving rise to a penalty of £15000. The aggravating factors are then listed as:
- (1) Number of items of non-compliance-“these are said to be approximately 27 as set out in the Notification of Works Required”
 - (2) Motivated by financial gain –“with the number of works required the person managing the Property is motivated by financial gain.”
 - (3) Obstructive of investigation
 - (4) Others-“Mr Khalil who manages another property 1 St Margaret’s Place and when an officer visited initially the property was occupied however when visited with the manager’s brother the property was vacant with the basement flat was occupied”.

The mitigating factors are given as follows:

- (1) Voluntary steps to address issues- “Mr Mohammed Kamran Khalil did ask a family member to repair the leaking toilet and this was witnessed by the officer on 3rd April 2019”.
 - (2) No previous convictions-“Mr Mohammed Kamran Khalil has no previous convictions”.
 - (3) Element of tenant responsibility-“Mr Mohammed Kamran Khalil has stated in his PACE answers the tenant is responsible for not allowing him access to the property”.
28. The aggravating and mitigating factors resulted in an additional penalty of £1500, giving rise to the final penalty of £16500.

The Law

29. Section 249A (1) of the Act provides that “a local 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...”
30. Section 249 (2) sets out what amounts to a housing offence and includes at s 249(e) an offence under section 234 of the Act, namely a breach of management regulations in respect of HMOs. Section 234(4) further provides that a person does not commit the offence if he has a reasonable excuse for not complying with the relevant regulation.
31. Section 249 (3)-(4) further provides that only one financial penalty can be imposed for each offence and that cannot exceed £30,000. The imposition of a financial penalty is an alternative to criminal proceedings.

32. The Management of Houses in Multiple Occupation (England) Regulations 2006 contain those regulations that govern the management responsibilities of a manager in respect of an HMO.
33. Regulation 4 imposes a duty upon a manager to take safety measures to ensure means of escape from a fire. This includes ensuring all means of escape are free from obstruction, there is adequate fire-fighting equipment and adequate notices to advise of means of escape.
34. Regulation 7 imposes a duty upon a manager to maintain the common parts of a HMO, including ensuring they are in clean and decorative repair, maintained in a safe and working condition and kept reasonably clear from obstruction. The Regulation sets out further the standards required to achieve this.
35. Regulation 8 imposes a duty on the manager to maintain living accommodation and that any internal structure is maintained in good repair, any fixtures, fittings or appliances are maintained in good repair and clean working order.

Procedural requirements

36. Schedule 13A of the Act sets out the procedural requirements a local authority must follow when seeking to impose a financial penalty. Before imposing such a penalty, the local authority must give a person notice of their intention to do so, by means of a Notice of Intent.
37. A Notice of Intent must be given within 6 months of the local authority having sufficient evidence of the conduct to which the financial penalty relates. If the conduct continues beyond that date, then the Notice of Intent may be given at any time when the conduct is continuing or within 6 months of the day when the conduct last occurs.
38. The Notice of Intent must set out:
 - the amount of the proposed financial penalty
 - the reasons for imposing the penalty
 - Information about the right to make representations regarding the penalty
39. If representations are to be made, they must be made within 28 days beginning with the day after that on which the Notice of Intent was given. At the end of this period the local authority must then decide whether to impose a financial penalty and, if so, the amount.
40. The Final Notice must set out:
 - the amount of the financial penalty
 - the reasons for imposing the penalty
 - information about how to pay the penalty
 - the period for the payment of the penalty

- information about rights of appeal
- the consequences of failure to comply with the notice

Guidance

41. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties. The Ministry of Housing issues such guidance (“the HCLG Guidance) in April 2018 : *Civil penalties under the Housing and Planning Act 2016-Guidance for Local Authorities*. This requires a local authority to develop their own policy regarding when or if to prosecute or issue a financial penalty.
42. Bradford City District Council has developed its own guidance (“the Bradford Guidance”) that follows the HCLG Guidance in setting out the criteria to be taken into account when determining any penalty:
- Level of culpability
 - Level of harm
 - Severity of the offence
 - Aggravating factors
 - Mitigating factors
 - Penalty to be fair and reasonable
 - Penalty to be such as to be a deterrent and remove the gain derived through the failure to comply
43. The Bradford Guidance states any financial penalty is determined using culpability and harm factors set out in the Guidance.
44. Culpability is on three levels, these being high, medium and low:

High level of culpability

- they have a history of non-compliance
- despite a number of opportunities to comply they have failed to comply
- have been obstructive as part of the investigation
- failure to comply results in significant risk to individuals
- they are member of a recognised landlord association or accreditation scheme
- are an experienced landlord/agent with a portfolio of properties who is failing to comply with their obligations
- serious and systematic failure to comply with their legal duties

Medium level of culpability

- it is a first offence-with no high level of culpability criteria being met
- failure is not a significant risk to individuals
- the landlord/agent had systems in place to manage risk or comply with their legal duties but they were not sufficient or adhered to or implemented

Low level of culpability

- no or minimal warning given to offender
- minor breaches
- isolated occurrence
- a significant effort has been made to comply but was inadequate in achieving compliance

45. The same categories apply to harm and the following are given as examples:

High

- serious effect on individual(s) or widespread impact
- Harm to a vulnerable individual
- High risk of an adverse effect on an individual

Medium

- adverse effect on an individual-not a high level of harm
- medium risk of harm to an individual
- low risk of a serious effect

Low

- low risk of harm or potential harm
- little risk of an adverse effect on individual(s)

46. Once the appropriate levels have been determined a schedule is given to fix the level of penalty. The Bradford Guidance then goes on to give examples of aggravating factors and mitigating factors from which the Council may choose to deviate from the prescribed level of penalty.

47. The aggravating factors are given as follows:

- Previous relevant convictions and the time elapsed since those convictions
- motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance-greater the number the greater the potential aggravating factor
- record of letting substandard accommodation
- record of poor management/inadequate management provision
- Lack of a tenancy agreement/paid in cash.

48. The mitigating factors are exemplified as follows:

- Co-operation with the investigation e.g. turns up for PACE interview
- voluntary steps taken to address issues e.g. submits a licence application
- Acceptance of responsibility e.g. accepts guilt for the offence(s)
- Willingness to undertake training

- Willingness to join a recognised landlord accreditation scheme
- Health reasons preventing reasonable compliance-mental health, unforeseen health issues, emergency health concerns
- No previous convictions
- Vulnerable individual(s) where their vulnerability is linked to the commission of the offence
- Good character and/or exemplary conduct

Submissions

49. In his submissions to the Tribunal, Mr Khalil gave the following ground for his appeal:
- (1) The Property was not an HMO.
 - (2) Mr Khalil was not the manager of the Property.
 - (3) The Council failed to take into account the Fire Detection and Alarm System Inspection and Servicing Report completed on 12th April 2019 (4)The s.239 Notice was not properly served.
 - (5) Mr Khalil was refused access to the Property for the purpose of carrying out repairs and some damage was caused by a tenant.
 - (6) The Police and Criminal Evidence Act 1984 does not apply.
 - (7) The Council has not adequately shown how the financial penalty has been calculated.
 - (8) The Council has not proved the alleged breaches of the Regulations to the standard required

Property not an HMO

52. Mr Khalil stated that for the Property to be an HMO it must either be a house occupied by at least 3 tenants, forming more than one household and sharing common facilities or, for a large HMO at least 5 tenants sharing common facilities. He challenged the Property had five tenants and consequently was a large HMO. In her statement, Mrs Javid had referred to the Property having at least three tenants which was an inaccurate description of an HMO.
- 53 The Council had relied upon the word of Ms Julie Carr regarding the number of tenants in the Property; the Council had never verified this by contacting the other tenants. Further, Ms Carr was not a tenant of the Property but the partner of Mr Dunne. The Property had only ever been let to Mr Brendan Dunne on a single AST. Whilst the Council tax records showed five tenants, Mr Khalil was only ever aware of Mr Dunne and Ms Carr living at the Property and the payment of the Council tax was Mr Dunne's responsibility

- 54 For the Council, Mr Moinul Islam, a Council Tax Senior Officer provided a statement, dated 6th November 2020 on behalf of the Council, in which he confirmed that, on the 27th February 2018, the Council Tax department had been notified by Mr Mohammed Kamran that four new tenants were in occupation of the Property with effect from 26th February 2018 and all of whom were on a 12 month tenancy. The note of the call confirmed those tenants to be Mr Brendan Dunne, Mr Nicholas Hemingway, Miss Aurelia Iwanczok and Dimitri Parmchomenko. Mr Kamran had notified himself as the brother of the owner and confirmed he dealt with the lettings on the owner's behalf. A copy of a tenancy agreement with Mr Dunne's signature dated 6th July 2018 was provided to the Tribunal by the Applicant. The Tribunal notes this tenancy agreement, at a rent of £70 per week, contains provisions for there to be one or more tenant(s) of the Property and that it states that "*Council Tax or Community Charges are independent of the rent and are paid by the tenants to Bradford Council*"
- 55 In a separate e-mail from the Council Tax section dated July 2019, the Council said it had been contacted by Ms Carr, in June 2019, to say she had previously lived in a "*rented room in a multi occupancy from November 15th 2018 till April 25th 2019*" and had a separate tenancy agreement to the other tenants. At the time of the e-mail, in July 2019, the responsibility for the Council tax had reverted to the registered owner, Mrs Rukhsana Parveen, Mr Khalil's sister.
- 56 The Council filed a statement signed by Ms Carr on 10th April 2019 confirming she moved into the first-floor rear bedroom of the Property on 16th November 2018 and that she was the partner of Mr Brendan Dunne. When she first moved in there were five residents, but now four, the others being Brendan Dunne, Anthony Matmondu and Andreus. In the same statement it was said that since the Housing department had become involved, Mr Khalil (referred to as Mohammed Kamran) had tried to move 2 tenants out of the Property, had asked her not to allow access to the Environmental Officer and had asked her to say "we live as a family" or "myself and Brendan have sublet the house-which is not the case". Ms Carr also identifies that she pays "a rent of £35 to my landlord Mr Mohammed Kamran every week including bills on top of this rent".
- 57 The Council filed a statement by Mrs Denise Dobson a Senior Environmental Health Officer at the Council, relating to her visit to the Property on 2nd August 2019 that followed a complaint of illegal eviction of Mr Brendan Dunne. It was confirmed that, on 2nd August 2019, Mr Dunne was the only occupant of the Property. He had advised that he had moved to the Property approximately 5 years earlier in 2014 and the Property had been one in multiple occupancy. Difficulties arose when Ms Carr had contacted the Council and tenants had then been moved by the landlord to another property before an inspection undertaken by Mrs Javed.

Mr Khalil is not the manager of the Property

- 58 Mr Khalil stated he was not the manager of the Property and consequently the Regulations are not applicable.
- 59 The Council advised that, on 14th August 2019, Mrs Rukhsana Parveen, accompanied by her brother, Mr Mohammed Lukman provided a statement in which she confirmed her brother, Mr Khalil, managed the Property on her behalf.

Failure to take into account the Fire Alarm Service Report dated 12th April 2019.

- 53 Mr Khalil stated that when the Council issued the Notice of Works Required on 3rd May 2019 they included work required to the fire alarm (identified as being in respect of a break glass call point with certification to be provided once rectified) despite having received a Fire Detection and Alarm System Inspection and Servicing Report dated 12th April 2019. Mr Khalil advised it had been sent by first class post to the Council. Mr Khalil further advised a full rewire and full circuit designation was completed on 30th July 2020.
- 54 In her statement dated 11th November 2020 Mrs Javed stated the certificate has not been received as at that date.

Section 239 Notice not properly served

- 55 Mr Khalil submitted the Council had improperly served the s.239 notice. The requirements of s239(5) require the notice to be served upon the owners and occupiers. On the date the notice was served by Mrs Javed at the Property she met the Mr Khalil's father, who has severe mental health problems. She then served the notice at Mr Khalil's home address, upon his wife. Neither his father or wife are owners or occupiers of the Property. Consequently, Mr Khalil submits the notice was not served properly and in accordance with the Act.
- 56 Mrs Javed advised the s.239 notice had been prepared on 3rd April 2019 for service upon the "occupiers" of the Property and Mr Khalil as the person responsible for the Property. This was delivered by hand to the Property on the same date. Whilst there Mrs Javed met Mr Khalil's father who advised he was waiting for a plumber to attend to repair the toilet. Mrs Javed also attended Mr Khalil's home address, 24 St. Margaret's Place and handed the notice to Mr Khalil's wife.

Mr Khalil was refused access to the Property to undertake repairs and damage was caused by a tenant

- 57 In his statement, Mr Khalil advised Mr Dunne refused him access to the Property and had barricaded it from the inside. He says that on 19th April 2020 a kitchen fitter could not gain access to replace the kitchen. Mr Khalil believed Mr Dunne was responsible for this. However, he also identifies that Mr Dunne had been evicted from the Property some four months earlier in December 2019.

58 Mr Khalil provided photographs to support his allegation that Mr Dunne was selling double glazed windows and doors, ladders and a cement mixer from the Property, caused damage which the Council failed to take into consideration. Mr Khalil asserts these heavy items, were stored at the Property. Further, Mr Dunne damaged the door to the Property and this incident was reported to the police on 1st August 2019 and given a crime number.

The Police and Criminal Evidence Act 1984 does not apply.

59 Mr Khalil questioned the training received by Mrs Javed to implement the Police and Criminal Evidence Act since “this is reserved in the main for Police constables”. No response to the question had been received.

60 Mrs Javed stated that offences under the Regulations are criminal offences and consequently the Police and Criminal Evidence Act applies.

The Council has not adequately shown how the financial penalty has been calculated

61 Mr Khalil submitted the relevant sections of the Civil Penalty Calculator had not been sufficiently completed to enable him “to determine with a degree of accuracy the level of the penalty”. He argued the Council had not completed the Public Interest Matrix fully by “ringing” the response to each criterion and that this evidence should be omitted from the Tribunal’s consideration.

62 Mrs Javed stated Mr Khalil had failed to adequately answer the PACE questionnaire sent to him and did not respond to the second questions sent by post at all. She had calculated the penalty after taking into account all the factors and circumstances in accordance with it’s Enforcement Policy. In addition, a Civil Penalty Notice calculator had been used to determine the fine.

The Council had not proved the alleged breached of the Regulations to the standard required.

63 Mr Khalil said he challenged the witness statement of Ms Carr and believed she had been coerced into making it. He produced a copy of a text message from Ms Carr, said to date from April 2020, to say she had been the subject of domestic violence and had been coerced by Mr Dunne. Further, the Council had not provided any evidence Mr Khalil had notified the Council four tenants were living in the Property in February 2018.

64 Mrs Javed confirmed that, in determining Mr Khalil was in breach of the Regulations, the Council had relied upon the witness statement of Ms Carr, the signed statement of Mrs Parveen, the signed tenancy agreement and the telephone call from Mr Khalil to the Council Tax department in 2018 when he confirmed for tenants were residing in the Property.

Determination

- 65 Schedule 13A of the Act provides that before a local authority can impose a financial penalty, it must give the relevant person a Notice of Intent, setting out the amount of the proposed penalty, the reasons for imposing it and allow the relevant person the opportunity to make representations in respect of it. If the local authority decided to impose the penalty it must give a final notice imposing that penalty.
- 66 Mr Khalil submitted the Council did not give the necessary notice to inspect the Property as required by section 239 of the Act and consequently, all the subsequent proceedings must fail.
- 67 Section 239(5) of the Act requires a local authority to give 24 hours notice to both the owner and occupier(s) of a property before it may enter it for the purposes of carrying out a survey or examination. However, Section 239(6) & (7) provide a local authority may enter premises at any reasonable time, without giving notice, for the purpose of ascertaining whether an offence has been carried out under section 234(3). Here, the offence for which the financial penalty has been imposed is for the breach of the Regulations, as provided for in Section 234(3). Consequently, the Council did not need to give notice of their inspection and Mr Khalil's argument in this respect therefore fails.
- 68 The Tribunal finds that the Council did comply with the procedural requirements of the Act in relation to its inspection of the Property when imposing the financial penalty.
- 69 A Tribunal may only uphold the decision to impose a financial penalty if it satisfied, beyond reasonable doubt, that the relevant housing offence has been committed. In ***Opara v Olasemo [2020] UKUT 0096(LC)*** it was said:
- “For a matter to be proved to the criminal standard it must be proved “beyond reasonable doubt”; it does not mean “beyond any doubt at all”. At the start of a criminal trial the judge warns the jury not to speculate about evidence they have not heard, but also tells them it is permissible for them to draw inferences from the evidence they accept”*
- 70 The Tribunal notes that in the submissions made by Mr Khalil to the Tribunal he did not challenge the findings of the Council with regard to the condition of the Property when initially inspected. He did not deny there had been a breach of the Regulations with regard to the condition of the Property, but rather that they did not apply to him for the reasons given.
- 71 The Tribunal considered the submissions and evidence given by both parties and determined a relevant housing offence had been committed.
- 72 Mr Khalil averred the Property was not an HMO and the only tenant was Mr Brendan Dunne; the Council had not provided any evidence to show otherwise. The Tribunal did not accept this argument and determined the

weight of evidence by the Council did show the Property was occupied by four tenants at the relevant date. The Property had previously been occupied by four tenants as shown in the statement of Mr Islam from the Council Tax department. He confirmed the record of a telephone call by Mr Mohammed Kamran of four tenants living at the Property in 2018, including Mr Dunne and those tenants were responsible for the payment of the Council Tax. The Tribunal considered this to be evidence of an intention to let the Property to more than one tenant which is also reflected in the terms of the tenancy agreement provided. It also relied upon the written statement of Ms Carr regarding those living at the Property in April 2019 and the statements of Mrs Javed and Mrs Dobson who had spoken with both Ms Carr and Mr Dunne. All confirmed the presence of four tenants living at the Property in April 2019. Whilst Mrs Javed did not see the other tenants, the evidence of locked doors to their rooms and an open empty bedroom lends support to the evidence given by both Ms Carr and Mr Dunne who had both confirmed the presence of other tenants. The Tribunal also notes that the Fire Detection and Alarm System Inspection, dated 12th April 2019, references the system being a “2 zone fire panel to hmo building”. The Tribunal therefore finds the Property was one in multiple occupation at the time of the Council’s inspection in April 2019.

- 73 Mr Khalil had also argued the house was not an HMO; it was not clear to the Tribunal whether this was because it was said only Mr Dunne was the tenant or, whether it was not a large HMO because there were less than five tenants. An HMO is a house occupied three or more tenants forming more than one household with shared toilet kitchen or bathroom facilities. A large HMO, having five or more tenants is one that requires a licence. The Tribunal have found the Property to be an HMO, by satisfying the requirement that it was occupied by three or more tenants, to which the Regulations apply and consequently Mr Khalil’s argument in this respect fails.
- 74 Mr Khalil stated he was not the manager of the Property. The Tribunal notes that Mr Khalil telephoned Mrs Javed on 11th April 2019 enquiring whether an inspection of the Property had been undertaken and that during that conversation, Mrs Javed asked for the fire alarm to be repaired and certificated. Whilst Mr Khalil asserts within the written answers he provided to the PACE questions, that he does not manage the Property, he identifies that arrangements were in place in relation to relevant individuals’ contact details responsible for tenants complaints and queries. The Tribunal noted the Fire Detection and Alarm System Inspection dated 12th April 2019 is addressed to “M Kamaran”. The Tribunal also noted that Mr Khalil submits that he requested the kitchen be refurbished in April 2020. The Tribunal considers these circumstances to be suggestive of the fact that Mr Khalil was responsible for managing the Property. However, the Tribunal finds the statement signed by the owner of the Property, his sister, Mrs Rukhsana Parveen, that he did manage the Property on her behalf, to be conclusive in this regard.

75 The Tribunal therefore finds the Property was a HMO and Mr Khalil was its manager. There is a defence of reasonable excuse, for which the standard of proof is the balance of probabilities. In ***IR Management Services v Salford [2020] UKUT 0081 (LC)*** the UT observed:

“The issue of reasonable excuse is one which may arise on the facts of a particular case without an appellant articulating it as a defence (especially where an appellant is unrepresented). Tribunals should consider whether any explanation given by a person ... amounts to a reasonable excuse whether or not the appellant refers to the statutory defence.”

76 Here, the Tribunal does not find anything within the submissions made to give rise to a defence of reasonable excuse. Mr Khalil has not offered any reasons for his failure to comply with the Regulations, just that they do not apply to him.

77 The Tribunal is therefore satisfied the Council was entitled to impose a financial penalty and must consider the amount of it. When doing so, the Tribunal should make its own decision as to the appropriate amount and, in this, it should consider the factors referred to in paragraph 43 above.

78 In ***London Borough of Waltham Forest v Marshall & Another [2020] 0035 UKUT (LC)*** the UT said the starting point for a Tribunal should normally be to apply the policy from the Council’s perspective and said:

“If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision”.

The decision also stated the Tribunal could depart from the Council’s policy but only in certain circumstances, for example, where it had been applied too rigidly. It should also afford great respect to the decision and a Tribunal should be slow to disagree with any decision that is made in accordance with the local policy. Despite this, the Tribunal is conducting a rehearing and not a review and can vary any decision where it disagrees with it.

79 The factors taken into account by the Council when imposing a penalty are outlined in paragraphs 45 to 49 above.

80 The Council determined Mr Khalil’s failure to comply with the Regulations was medium in terms of harm and high in terms of culpability. The Council’s policy stipulated the penalty is therefore £15,000.

81 The penalty reflects that when the Council inspected the Property it found inadequate protection against fire, a hazard of falling, personal hygiene and sanitation, excess cold, food safety, lighting, damp and mould. The potential harm, especially with regard to one of fire, justify a finding of medium and could not be any less.

- 82 In respect of culpability, the Council determined this to be high, giving three reasons for doing so.
- 83 The first reason was that Mr Khalil had been asked to repair the fire alarm but had not submitted a fire alarm certificate. This is disputed, Mr Khalil saying he obtained the certificate and posted a copy to the Council by first class post. A copy of the certificate has been provided to the Tribunal, but Mrs Javed, in her statement of 11th November 2020, denies having received it. The Tribunal notes that in his replies to the PACE questionnaire first sent to Mr Khalil in June 2019 it was said that on the inspection carried out on 3rd April the fire alarm, inter alia, was not working. Mr Khalil made no mention then of having sent in a fire certificate.
- 84 The second reason was that having served Mr Khalil with a section 239 notice, he failed to attend any of the arranged meetings. It was therefore said Mr Khalil had been obstructive as part of the investigation, albeit that, as already determined, the offence for which the Council ultimately proceeded to impose a penalty did not, of itself, require a section 239 notice to be served.
- 85 The third reason was that Mr Khalil had failed to carry out the works specified in the Notice of Works Required and the Property was then empty. A tenant had complained of harassment.
- 86 Whilst there was evidence that Mr Khalil had obtained a Fire Detection and Alarm System Inspection and Servicing Report dated 12th April 2019, the Tribunal accepts the evidence of Mrs Javed that this had not been received by the Council. The Tribunal also accepts, from the evidence produced to it, the majority of the replies given by Mr Khalil to the PACE questionnaire sent in June 2019 were either unanswered, incomplete or lacking in appropriate detail. The Tribunal does not accept the assertions that the PACE questions by the Council were inappropriate, nor that it was necessary for Mrs Javed to show she had been trained to ask them. A second questionnaire sent to him was not answered at all. At the time the penalty was imposed, in November 2019, there was no evidence the works required by the Notice had been carried out. The photographs sent by Mr Khalil showing work completed at the Property were dated June 2020. There was evidence of harassment of Mr Dunne.
- 87 The Tribunal considered the factors in the Bradford Guidance and does not consider the process adopted by the Council to be fundamentally flawed. Furthermore, in dealing with this application, the Tribunal is required to consider for itself what penalty is merited by the offence with reference to the terms of the Bradford Guidance. When doing so, the Tribunal determined culpability to be high. The Tribunal agreed Mr Khalil has been obstructive in the investigation by failing to co-operate with the meetings and PACE questions requested by the Council. There was a high risk to the tenants, given the remedial work required. Whilst Mr Khalil had produced photographs to the Tribunal to show remedial work had been completed at the Property, that work was only shown to have been completed in 2020.

- 88 The Tribunal therefore agrees the financial penalty is £15000 before considering both the aggravating and mitigating factors.
- 89 The Council imposed a total penalty of £16500 after taking into account both aggravating and mitigating factors.
- 90 The aggravating factors giving rise to an additional penalty of £3750, calculated at 25% are listed as:
- (1) Number of items of non-compliance-it stated there to be approximately 27 items of work specified on the Notice of Works Required whilst the Tribunal noted that the Final Notice itself identifies breaches of 3 regulations and itemises 11 individual items. This has been charged at 10%, in accordance with the Bradford Guidance due to the number of items of work required.
 - (2) Motivated by financial gain-it is said with the number of works required the person managing the property is motivated by financial gain. This has been charged at 5%.
 - (3) Obstructive of investigation-this is said to have a penalty of 5%, but is neither marked as an aggravating factor, nor are there any comments in relation to it.
 - (4) Others-it is said Mr Khalil manages another property 1 St Margaret's Place and when the officer visited initially the property was occupied however when visited with the managers brother the property was vacant with the basement flat was occupied. This also has a penalty of 5%.
- 91 The Tribunal considered the comments made by Mr Khalil regarding the inadequacy of the completion of the Civil Penalty Calculator but do not consider the Council Officer's failure to circle certain points to be fundamental to the basis upon which their Civil Penalty Calculator was utilised to conclude that it was appropriate to issue a Civil Penalty. The Tribunal also noted that with respect to aggravating factors, the bullet point for "Obstructive of Investigation" was scored by the Council at 5% addition but the bullet point itself was not highlighted. However, the Tribunal does not consider this to be relevant to their own determination which is by way of re-hearing and in accordance with its findings at paragraph 88. It therefore determines a 5% addition for obstructiveness to be appropriate.
- 92 However, the Tribunal found the Council could not justify the information in "Others" relating to Mr Khalil's management of another property. It had not provided any clear evidence to support this. Accordingly, the rate for aggravating factors is reduced to 20%, equivalent to an additional charge of £3000.

93 The Tribunal thereafter considered the mitigating factors that were listed by the Council as follows:

- (1) Voluntary steps to address issues-Mr Khalil did ask a family member to repair the leaking toilet and this was witnessed by the office on 3rd April 2019.
- (2) No previous convictions-Mr Khalil has no previous convictions
- (3) Element of tenant responsibility-Mr Khalil stated in his PACE answers the tenant is responsible for not allowing him into the Property.

94 The Tribunal considered the mitigating factors to be fair and reasonable and in accordance with the Bradford Guidance. It noted that whilst Mr Khalil had said all the necessary works at the Property had been completed, this would not give rise to any further mitigation, other than that already given for the remedial work to the toilet as stated at paragraph 94(1) above. The element of tenant responsibility also reflected Mr Khalil's complaint that he had not been allowed access to the Property in order to effect repairs whilst Mr Dunne remained in residence. However, it did not accept Mr Khalil's allegation that the kitchen fitter had been unable to access the Property in April 2020 given the remaining tenant had been evicted in December 2019. The Council had calculated each of the mitigating factors at the rate of 5%, this being the maximum identified in their policy and reduces the penalty by £2250.

95 The amount of financial penalty payable by Mr Khalil is in the sum of £15,750.

J. E. Oliver
Tribunal Judge
8th April 2021