FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

HMCTS code (audio, video, paper)		**V: CVPREMOTE**
Case reference	**:**	**CAM/00JA/HNA/2021/0007**
Property	**:**	**178 Clarence Road Peterborough PE1 2LE.**
Applicant	**:**	**Tariq Khan**
Representative	**:**	**In person**
Respondent	**:**	**Peterborough City Council**
Representative	**:**	**Mr Snelling of Counsel**
Date of Application	**:**	**7 July 2020**
Type of application	**:**	**Appeal against financial penalty, pursuant to s.249A and Sch.13A to the Housing Act 2004,**
The Tribunal	**:**	**Tribunal Judge S Evans Mrs Michele Wilcox BSc MRICS**
Date/ place of hearing	**:**	**24 May 2021, By cloud video platform**
Date of decision	**:**	**18 June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which was not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before us were in a bundle of 66 pages, plus an email from the Applicant dated 8 May 2021.

1. **The appeal is allowed, to the extent that the Tribunal determines that the appropriate financial penalty in this case should be reduced to £9102.86.**

2. **The appeal has been partially successfully, so the Tribunal determines that the Respondent should reimburse the Applicant 50% of his application and hearing fees, namely a sum of £150.**

REASONS

Introduction

3. By his application, the Applicant appeals against the imposition of a financial penalty of £9862.86 imposed by the Respondent in respect of an alleged offence under s.95(1) of the Housing Act 2004.

Background

4. On 28 January 2002 the Applicant became the freehold owner of the Property.

5. At all material times the Applicant has rented the Property to an individual named Ms Nagy.

6. On 1 December 2016 the Respondent began to impose a selective licensing scheme for houses in the area in which the Property is situated.

7. On or about 17 February 2017, the Applicant sent an email to the Respondent, making an application for licensing of the Property under the selective licensing regime. It was rejected, the Respondent alleges, for lack of payment of the correct fee.

8. In or about August 2018 the Respondent created a civil penalty policy.

9. From about July 2019 the Applicant began to see his General Practitioner for depression. In a doctor's letter dated 21 October 2019, it is recorded that the Applicant was taking a high dose of antidepressants, that he could not work, and that he needed to see a psychologist and to undergo talking therapy.

10. On or about 3 February 2020 the Respondent wrote to the Applicant indicating that he still required a licence for the Property.

11. On 12 February 2020, the Applicant's son wrote to the Respondent, enclosing the medical note of October 2019, and stating that his father was not in a correct state of mental health to handle the application at that time.

12. On the same day, the Respondent wrote back to ask who was managing the Property, and then sent a chaser letter on 14 February 2020.

13. It would appear that on 20 February 2020 the Applicant called the Respondent to say that he was unwell, that he was in financial difficulties, and that he could not afford a licence for the Property. The Respondent asked the Applicant to put these matters in evidence by way of email.

14. It would appear that the Applicants response was to email on 21 February 2020, to indicate that he was going to give his tenant notice to quit the Property, citing his inability to pay the £900 licence fee.

15. On 25 February 2020 the Respondent emailed back, to give the Applicant until 1 March 2020 to apply for a licence.

16. On 28 February 2020 the Applicant wrote to the Respondent to request payment by instalments, and it seems on the same day he started but failed to complete an application for selective licensing.

17. On 2 March 2020 the Respondent replied to the Applicant to indicate that he needed to pay in full.

18. On 3 March 2020 the Respondent attended the Property. The occupier stated that she had lived in the Property for 6 years with her sons. An occupation questionnaire was completed, indicating potential disrepair in the Property.

19. On 24 June 2020 the Respondent wrote to the Applicant requesting an update/ evidence of any change in circumstances. It indicated that it was looking to issue a financial penalty against the Applicant.

20. It would appear to be common ground that there was no response to the above email, so on 19 August 2020 the Respondent served the Applicant a notice of intent to impose a financial penalty. This was served through the letterbox of the Property at 9:40 AM.

21. On 20 August 2020, the Applicant emailed the housing enforcement department at Peterborough City Council. This email was addressed to whom it may concern. He stated that he was writing following receipt of

the notice of intent to request an interpreter to discuss his case, because he had re-registered with a landlord body called NRLA.

22. It would appear that this email did not come to the attention of those dealing with the licensing matter until much later, because the email was misfiled.

23. On 14 January 2021 the Respondents served on the Applicant a final notice of financial penalty, in the sum of £9862.86. This notice was handed to the Applicants daughter by Ms Blake of the Respondent at 11:04 AM.

The Application

24. On 20 January 2021 the Applicant filed his appeal notice, in which he complains of a lack of support in applying for the licence; that he was repeatedly refused help, including a payment plan for the fee; that he was not educated and that he faced a language barrier. He also cited his mental health impairment and extenuating circumstances.

25. On 19 February 2021 the Tribunal gave directions which included provision for the Applicant to provide a written case.

26. The Applicant did not provide any such documents, but on 23 February 2021 the Respondent gave its response to the grounds of appeal and a witness statement from Ms Helen Blake.

27. On 23 April 2021 the Tribunal emailed the Applicant to indicate that he may be barred from bringing his application if he did not send documents to the Tribunal and to the Respondent.

28. On 8 May 2021 the Applicant sent a single email to the Tribunal in the following terms:

"Dear whomever it concerns,

I just wanted to let you know in writing my situation regarding the £10,000 fine. I had never said I will not give the £900, I had emailed then as well asking if I can pay the £900 in instalments instead as I could not afford it. However, after that I did not hear any reply and only now a few months ago I've been given a £10,000 fine for not paying the £900. The period of time that was taken to give me the £10K fine, if that time was given to me to give the £900 in instalments, I would have paid it all by now. I'm financially and mentally suffering at the moment which I have evidence for. My English is not that good, I can't read or write English and am dependent on others for it. I apologise for the late email."

Relevant Law

29. The statute law applicable to this matter is set out in the Appendix attached.

30. The Tribunal is mindful of the cases of *Sutton v Norwich CC* [2020] UKUT 90 (LC) and *London Borough of Waltham Forest v Marshall* [2020] UKUT 0035 (LC), in which the Upper Tribunal emphasised that the First Tier Tribunal should give due deference to the Council's decision, and not depart from a local authority's policy in determining the amount of a financial penalty, except in certain circumstances (e.g. where the policy was applied too rigidly), albeit that the Tribunal's task is not simply a matter of reviewing whether a penalty imposed was reasonable: it must make its own determination as to the appropriate amount of the penalty, having regard to all the available evidence.

31. The Tribunal also bears in mind *Opara v Olasemo* [2020] UKUT 0096 (LC) at paragraph 46, in which the Upper Tribunal warned that, when applying the criminal standard to their fact finding, Tribunals should avoid being overcautious about making inferences from evidence. It observed that, for a matter to be proved to the criminal standard, it must be proved beyond all reasonable doubt; it does not have to be proved beyond all doubt at all.

32. The Tribunal also bears in mind *IR Management Services v Salford City Council* [2020] UKUT 0081 (LC) where on appeal, the Upper Tribunal confirmed that, whilst a Tribunal must be satisfied beyond reasonable doubt that each element of the relevant offence had been established on the facts, an appellant who pleads a statutory defence must then prove on the balance of probabilities that the defence applies.

Issues

33. The issues are:

    (1) Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of the Property;

    (2) Whether the Local Housing Authority has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty;

    (3) Whether the financial penalties are set at an appropriate level having regard to all relevant factors.

Hearing

34. No inspection took place before the hearing, and the Tribunal considers none was necessary in the circumstances of this case, which concerns the failure to license the Property over a year ago.

35. The Tribunal was greatly assisted by an interpreter Mr Iqbal, who patiently translated throughout in Urdu, given the Respondent's obvious language difficulties. We would like to record our thanks for his assistance.

36. At the commencement of the hearing, we reminded the Applicant that whilst he could not be prosecuted for any offences for which a financial penalty had been imposed, he could be prosecuted for other matters admitted by him or in respect of which we made findings of fact. He was reminded that he did not have to answer any question or make any statement which might tend to incriminate him, although the Tribunal might draw an adverse inference from his failure to answer. He indicated that he wished to proceed.

37. Shortly after commencement of the hearing it became clear the Applicant had not had the benefit of statement of Ms Blake being translated to him, so the matter was adjourned for a sufficient period to enable Mr Iqbal to read the statement to the Applicant.

38. With the agreement of the parties, we then heard the Respondent's evidence first, this being a rehearing of its decision to impose a financial penalty.

39. The Applicant was given full opportunity to ask questions of the Respondent's witness Ms Blake, before stating his case orally.

40. In summary, the Applicant informed the Tribunal that he had been suffering mental health issues for the last two and a half years because of financial difficulties. He explained that he asked the council for a face-to-face meeting but they just asked him to pay. He claimed to have applied for a licence in 2016, but for the last two to three years the council had just kept quiet. He did not understand what they expected from him. He complained that, rather than helping him in a difficult situation, they used their powers against him. He claimed that he had a very good relationship with the tenant and that about four months ago the tenant's son had informed him that a Council officer named Peter Besant was causing trouble for him; that Mr Besant visited the Property and had a conversation with the tenant behind his back. The Applicant claimed to be a member of NLA, a landlords' association. He said that he had financial difficulties in 2018; that the Council did not send him any letters in 2018, only in 2020. He explained that he went to a solicitor to seek legal advice. He claimed he did not receive all the alleged letters in respect of the licence from the council, only when they asked for £900, to which he responded immediately to ask for a face-to-face-meeting.

(1) Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of the Property

41. The Tribunal is satisfied beyond reasonable doubt that the requirements of section 95 of the Housing Act 2004 have been made out by the Respondent.

42. Firstly, it is not in dispute that the Applicant has never held the requisite licence for the Property, as required by section 85 of the Housing Act 2004.

43. Secondly, while it was suggested by the Applicant to Ms Blake that 90% of her statement was incorrect, we reject that assertion of the Applicant, and found her evidence cogent as regards proving the essential elements of the offence.

44. It was also put to Ms Blake that an officer called Peter Besant had a vendetta against the Applicant. She replied that it was correct Mr Besant had had ongoing communications with the Applicant concerning the Property, but that related to matters of repair and not licensing. Whilst both Ms Blake and Mr Besant work within the housing enforcement team, their roles are accordingly quite different.

45. The Tribunal rejects any assertion of a vendetta, or other mala fides on the part of the Respondent. It is clear the Respondent has reminded the Applicant of the need for licensing, but the friction between the parties has been the issue of how/when to pay the £900 licence fee.

46. The Tribunal is mindful that it is a defence pursuant to section 95(2) of that Act that the relevant person had a reasonable excuse for having control of or managing the house in circumstances mentioned in subsection (1).

47. The Tribunal has carefully considered whether the Applicant has such a defence on balance of probability. There are 4 matters of which the Applicant has consistently asserted: firstly, that he has suffered at all material times from a mental impairment; secondly, that it was unreasonable for the Respondent to insist on the whole licence fee in one go; thirdly, that he was a member of a recognised landlord's association and should have been offered a licence at a reduced fee; fourthly, that he was unaware his application for a licence in 2017 had been rejected.

48. As regards the first allegation, the Tribunal pays special attention to the doctor's letter of 21 October 2019. This evidences that the local surgery had been seeing Mr. Khan since July 2019, feeling low, depressed and tired and unable to sleep; that unfortunately his mental health had been so poor that he was suicidal, such that the crisis team had to be involved. It confirms that he was on a high dose of antidepressants as of October 2019, that he felt very distressed and worried regarding his current situation; and that he found it difficult to deal with the entire situation. The letter confirms that the doctor had recently advised him to contact a psychologist for counselling, and talking therapy. The letter concludes by saying that the doctor strongly feels that his mental health issues are related to his ongoing financial situation and other factors.

49. The Tribunal determines that, whilst it cannot be anything but unsympathetic to the Applicant's plight, his mental impairment is not a reasonable excuse for not having the Property properly licensed. There is no evidence of any mental impairment between 2017 (when the licence application was first rejected) and July 2019. Moreover, we accept the Respondent's submission that they would appear to be no causal link explained on the doctor's letter between the failure to licence at any time and the Applicant's condition after July 2019.

50. As regards the Applicant's alleged impecuniosity, we do not consider that this, even if proven, amounts to a reasonable excuse for having control of a house which is required to be licensed under Part 3 of the 2004 Act but is not so licensed. Nor do we consider it to be a reasonable excuse that the local authority would not accept payments by instalments. We accept the Respondent's evidence from Mr Blake that the Applicant is running a business, and that he has legal requirements to license the Property; and that accepting payments by instalments would impose an unreasonable financial burden on the Council, and result in increased fees for other persons.

51. Moreover, on questioning by the Tribunal, the Applicant eventually accepted that he has sufficient equity in the 2 houses he owns (one of which is the Property) in the amount of several tens of thousands of pounds. He also receives £160 in cash every week from the tenant. He is further in receipt of universal credit. Whilst not of significant means, the Applicant does not appear to be a man without any means.

52. As regards the Applicant's alleged membership of a landlords' association, we are satisfied he was not an accredited member of such a body, as required by the Respondent, so as to be entitled to a reduced licence fee of £50. Such a matter could have been easily demonstrable by documentary evidence if it were true, but no document was ever supplied to the Respondent at any time.

53. As regards the fourth matter, the Tribunal resoundingly rejects the Applicant's contention. He would not have offered in 2020 to pay for a licence in instalments, if he genuinely and honestly believed that he already held a licence. The email sent to him in 2017 rejecting his application for a licence was sent to his standard email address, and the Tribunal simply does not believe that a person in his position would not have expected something in writing from the Council to confirm the grant or refusal of a licence. This cannot be a reasonable excuse, in the Tribunal's judgment, because a reasonable person would not have failed to follow the matter up with the Council.

(2) Whether the local Housing Authority has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty

54. The Tribunal accepts the Respondent's evidence that it sent the requisite statutory notices by post to the Applicant, and that they were not returned undelivered.

55. Moreover, it appears that the final notice was served personally on the Applicant's daughter.

56. Insofar as the Applicant has alleged that he did not receive either of the statutory notices, we reject that assertion. The Tribunal found the Applicant to be evasive and inconsistent in much of his evidence. By way of illustration, he was adamant that he had not received the initial letter from the Respondent dated 3 February 2020, requesting that he obtain a licence, yet there is within the bundle an email from his son dated 12 February 2020 which states that he was writing on behalf of his father

concerning the "letter we received regarding the Housing Act 2004 selective licensing" for the Property.

57. Whilst we are concerned that the Applicant's email of 20 August 2020 was misfiled, such that it did not come to the attention of Ms Blake, we are satisfied that no prejudice has been occasioned to the Applicant as a result: firstly, his email did not contain any representations as such to which the Respondent failed to have regard. Secondly, having received no response, it is remarkable that the Applicant did not follow the matter up. Thirdly, the Upper Tribunal has confirmed that irregularities in the procedure relating to notices is capable of remedying by the appeal process itself.

(3) Whether the financial penalties are set at an appropriate level having regard to all relevant factors.

58. In considering this issue, the Tribunal has had regard to the MHCLG Guidance for Local Authorities issued under paragraph 12 of Schedule 13A to the 2004 Act. The Guidance encourages each Local Authority to develop their own policy for determining the appropriate level of penalty. The maximum amount (£30,000) should be reserved for the worse offenders. The amount should reflect the severity of the offence as well as taking into account the landlord's previous record of offending, if any. Relevant factors include:

    - Punishment of the offender
    - Deter the offender from repeating the offence
    - Deter others from committing similar offences
    - Remove any financial benefit the offender may have obtained as a result of committing the offence
    - Severity of the offence
    - Culpability and track record of the offender
    - The harm caused to the tenant

59. As noted above, the Respondent does have such a policy, to which the Tribunal must give due deference.

60. Ms Blake explained that the decision to impose the penalty was one made by her senior manager, Jo Besant, following a meeting of a "panel" of officers consisting of herself and Mr Gareth Brighton.

61. As to culpability, the Respondent had assessed the offence as being medium, on the basis that he had failed to apply for a selective licence, despite being made aware of his obligation to do so by the Council in numerous letters, telephone calls and emails; that from 3 February 2020 the Respondent offered the Applicant several opportunities to apply for a selective licence, yet he failed to do so; that neither the "very high", "high", or "low" categories reflected the reality of the case.

62. However, the Respondent considered that there were aggravating factors as follows: motivation by financial gain, lack of tenancy agreement and rent paid in cash, and deliberate concealment of the activity or evidence.

63. Mitigating factors were considered to be evidence of health reasons. Ms Blake confirmed that medical circumstances come into the Policy at this point, i.e. deciding culpability. She also confirmed that consideration is given to a person's means, but only at the stage when the person concerned gets the notice of intent, and has the opportunity to make representations. At this point the Council may exercise a discretion to reduce the financial penalty.

64. When considering the harm caused to the tenant, the Respondent assessed this at level C, being the lowest possible level on the scale.

65. Combining both culpability and seriousness of harm led to a penalty level 2 on the council's Policy. This results in a penalty banding between £1200 and £3000. Miss Blake informed the Tribunal that it was standard in cases of failure to licence to begin at the bottom end of any range of penalty. Hence the Respondent had decided on a figure of £1200 under this head.

66. The Policy further allows for consideration of income and track record. Ms Blake was taken by the Tribunal to this part of the calculations, and accepted that it was incorrect, with the figure of £320 being incorrectly stated. It should have been £160.

67. The Policy then goes on to consider the financial benefits obtained from committing the offence, by looking at the rental income obtained by the landlord during the period of the offence. Whilst it was the Respondent's case that the Applicant had failed to license since 1 December 2016, when applying its policy it sensibly applies a cap of 12 months maximum, which in this case led to a calculation of £8342.86 (£160/7 x 365).

68. At the hearing, therefore, the accepted revised sum claimed was £1200 + £160 + £8342.86 = £9702.86.

69. In the Tribunal's determination, punishment of the offender, deterrence of the offender repeating the offence, and deterrence of others from committing similar offences speak for themselves in all cases. These are a given.

70. However, whilst giving appropriate consideration to the Respondent's decision and Policy, the Tribunal determines that the penalty should be varied, for the following reasons:

71. The Tribunal considers this was a case of low, not medium culpability. The Tribunal disagrees that motivation by financial gain and deliberate concealment of the activity or evidence were present in the instant case.

There was little evidence of the same in Ms Blake's statement, and we now know that the Applicant had tried to arrange a meeting in August 2020. Furthermore, the Tribunal cannot see how payment in cash or lack of a written tenancy agreement are aggravating factors: a tenancy by parol, or where rent is paid in cash, is not illegal.

72. The Tribunal also considers that the Respondent has overlooked somewhat the Applicant's inability to read or write in English, and his language difficulties, as well as his mental impairment. Whilst these do not, on the facts, amount to a reasonable excuse for failure to licence, they do have significance in consideration of any penalty. They are powerful mitigating factors.

73. Applying the lowest harm level to a low culpability results in a level 1 band of £600 to £1200. Adopting Ms Blake's indication that licensing offences commence at the start of the band, we consider this part of the penalty should be reduced to £600.

74. The Tribunal considers the financial benefit aspects and income/track record elements are reasonable. The Tribunal is also mindful that the Applicant will still need to apply for, and pay for a licence, if he continues to rent out the Property.

75. Accordingly, the Tribunal determines that the appropriate penalty in this case should be reduced to £9102.86.

76. The appeal has been partially successfully, so the Tribunal determines under rule 13 of the Tribunal's procedural rules that the Respondent should reimburse the Applicant 50% of his application and hearing fees, i.e. £150.

77. The Tribunal has no power to reduce the penalty determined by the figure of £150, but if the parties were to take the sensible approach of doing that, the sum owed by the Applicant to the Respondent is a net figure of £8952.86.

78. Equally, we have no power to order the sum to be paid by instalments. However, given the Applicant's health issues, the Tribunal expresses its sincere wish that the Respondent might accommodate the Applicant in this regard.

Name: Tribunal Judge S Evans **Date**: 18 June 2021.

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

95 Offences in relation to licensing of houses under this Part

(1)A person commits an offence if he is a person having control of 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.

(3)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 86(1), or

(b)an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(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.

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

(6)A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B)If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(7)For the purposes of subsection (3) 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 (8) is met.

(8)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.

(9)In subsection (8) "relevant decision" means a decision which is given on an appeal to the Tribunal and confirms the authority's decision (with or without variation).

S.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.

S.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

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

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

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

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

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

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

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.

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").

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 reasons 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.

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 in a notice of intent or final notice.

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

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.

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 the 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.

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