



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

**Case reference** : **LON/00AT/HNA/2021/0026**

**Property** : **20 Lampton Avenue,  
Hounslow TW3 4EN**

**Applicant** : **Bashdar Jamel Mahmud**

**Representative** : **MT UK Solicitors**

**Respondent** : **London Borough of Hounslow**

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

**Tribunal members** : **Judge Nicol  
Mr C P Gowman MCIEH MCMi BSc**

**Date and venue of  
hearing** : **16<sup>th</sup> November 2021  
and 13<sup>th</sup> January 2022  
By video conference**

**Date of decision** : **14<sup>th</sup> January 2022**

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**DECISION**

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- 1. The Tribunal determines that the Applicant shall pay penalties of:**
  - **£3,000 for letting a room which had been prohibited for occupation by the licence; and**
  - **£3,750 for failing to maintain smoke/heat detection units.**
- 2. The Respondent's application for costs is refused.**

Relevant legislation is set out in the Appendix to this decision.

## **Reasons**

1. The subject property is a 2-storey, 6-bedroom semi-detached house. The Applicant let the property to tenants. The Respondent inspected the property on 6<sup>th</sup> November 2020 and allegedly found a number of problems. On re-inspection on 22<sup>nd</sup> January 2021 they found two issues had not been addressed and they decided to impose financial penalties on the Applicant:
  - £3,750 for letting a room which had been prohibited for occupation by the licence; and
  - £3,750 for failing to maintain smoke/heat detection units.
2. The final penalty notice was served on 30<sup>th</sup> April 2020, with a reduced penalty of £3,000 for the first offence. The Applicant appealed to this Tribunal on 28<sup>th</sup> May 2021.
3. In accordance with the Tribunal's directions issued on 25<sup>th</sup> June 2021, each party produced a bundle of documents.
4. The Applicant's appeal was initially heard by the Tribunal by video conference on 16<sup>th</sup> November 2021. The attendees were:
  - The Applicant
  - Mr Jibreel Trambo, counsel for the Applicant
  - Miss Iqra Mohideen, paralegal from MT UK Solicitors
  - Ms Oliva Davies, counsel for the Respondent
  - Mr Jeff Smyth, Housing Regulatory Officer with the Respondent (due to video issues, he connected to the hearing by phone)
  - Miss Jabou Kinteh, Respondent's lawyer
5. The Tribunal heard evidence from Mr Smyth and the Applicant, who were both subjected to cross-examination. During the lunch adjournment, the Applicant made it clear to his counsel that he had not understood some of the questions he had been asked. This was consistent with his responses which conveyed a lack of understanding. The Tribunal was satisfied that he needed an interpreter and adjourned the hearing for one to be obtained.
6. The hearing resumed on 13<sup>th</sup> January 2022. The attendees were the same, save that there was an interpreter for the Applicant, Mr Arin Banirad. The Tribunal ignored the Applicant's previous evidence and he gave evidence again through the interpreter in Kurdish.
7. The Applicant says he bought the property for his own occupation but found it expensive and began letting rooms to friends. The Respondent then explained to him that he needed an HMO licence. He applied for one and it was granted on 15<sup>th</sup> May 2017. He then asked for a greater number of residents to be allowed. An amended licence was issued on 5<sup>th</sup> October 2017, increasing the total permitted occupancy from 5 to 10 but subject to conditions which included:

- An occupancy table showed the maximum number of persons allowed in each room. For the First Floor Rear Middle Room, the maximum was “0”, meaning that he was not permitted to let it.
  - In section 4 on Fire Safety, it stated, “The Licence Holder must ensure that appropriate smoke alarms are installed in the house and keep them in proper working order” and “the licence holder should maintain the system”.
8. In his evidence, the Applicant conceded a number of matters:
    - a. At the time of Mr Smyth’s first inspection of the property on 6<sup>th</sup> November 2020, Mr Ali Khalid Ahmed had been in occupation of the First Floor Rear Middle Room as a tenant for about 10 days and that he was still there when Mr Smyth inspected for a second time on 22<sup>nd</sup> January 2021.
    - b. Photos taken by Mr Smyth correctly showed the cover of the kitchen heat detector was detached on both inspections.
    - c. The photos also correctly showed that detectors were missing in two rooms on both inspections.
    - d. He had not implemented any system for checking on or maintaining the heat and smoke detectors and did not check on them between visits, save in relation to the kitchen heat detector which he tried to fix at Mr Smyth’s prompting and which he said was operable in any event.
  9. Under section 72(3) of the Housing Act 2004, a person commits an offence if they fail to comply with restrictions or obligations imposed on them in a licence. The Applicant’s concessions are sufficient to establish beyond any reasonable doubt that this offence has been established in relation to both the letting and the condition of the smoke detectors.
  10. However, the Applicant claimed the defence of reasonable excuse under section 72(5). While the Respondent has the burden of proving the offences to the criminal standard, beyond a reasonable doubt, the Applicant has the burden of establishing the defence of reasonable excuse to the civil standard, on the balance of probabilities.
  11. In relation to the first offence, the Applicant said in his witness statement that he found that one of his tenants, Ms Leila Tomar, had left her keys in the kitchen. Since she had not paid rent for over a year, he assumed she had left and set about re-letting her room. He was able to find a new tenant, Mr Ali Khalid Ahmed, within a few days. However, in his oral evidence, he also claimed to have received a phone call from Ms Tomar saying she had left.
  12. The Applicant was then phoned by Ms Habo Mohammed, an officer at the Respondent, querying why he had evicted Ms Tomar. He explained that he had not but thought she had left. Ms Mohammed asked him to accommodate her again on the basis that council housing was not ready for her to occupy. The Applicant understood that, unless he acceded, Ms Tomar and her daughter would be homeless and that he may be accused of evicting her unlawfully.

13. Therefore, the Applicant allowed Ms Tomar back in. He gave Mr Ahmed the room which his licence said was not to be occupied. Mr Ahmed told Mr Smyth he paid £300 per month in rent – the Applicant said it was actually £280 for the first month and he then allowed him to stay rent free until he moved out at the end of January.
14. The Applicant said he knew but did not tell Ms Mohammed that it would be a breach of his licence to allow Ms Tomar back in. His excuse was that he was afraid it would confirm the allegation of unlawful eviction. The Tribunal is not convinced that this makes sense, not least because it is difficult to see why the Applicant should think it preferable to break the law for certain in order to avoid an allegation of breaking the law in a different way.
15. Further, the Applicant did not get her job title or department. At no time did he ask Ms Mohammed to confirm their conversation in writing. Mr Smyth reminded him at his first inspection on 6<sup>th</sup> November 2020 that letting the room was in breach of licence but he made no effort to remedy the breach.
16. The Tribunal is not satisfied that events happened in the way the Applicant describes. It would have been easy to find out Ms Mohammed’s job title and department and to ask her for confirmation. The Applicant’s evidence as to what she said also appears confused.
17. Even if the Applicant’s account is accurate, he had the power and obligation to refuse Ms Mohammed’s request. Moreover, he could have held off from re-letting the room until he had ensured that Ms Tomar’s tenancy had been properly terminated rather than making assumptions on thin evidence.
18. In the circumstances, the Applicant has failed to establish a reasonable excuse for letting the room to Mr Ahmed.
19. As for the smoke detectors, the Applicant said he had installed them in all rooms when he was first granted his license but blamed the tenants for damaging or removing them. The problem with this is that he had no system for checking on them more regularly than as part of an electrical check every two years. He also said he took no action to try to stop the tenants damaging or removing the detectors other than a brief conversation with each tenant on one occasion.
20. The Applicant’s obligation is not just to install detectors but to maintain them and keep them in working order. This requires regular checks to ensure they are working and taking action against anyone who interferes with that. The Applicant is not fulfilling his obligations when he throws up his hands and allows others to damage equipment without doing anything about it.
21. The Applicant claimed that he was prevented from implementing such checks by restrictions arising from the COVID pandemic but, as far as the Tribunal is aware, even during the most restricted lockdown

periods, landlords were permitted to arrange such inspections, subject to taking suitable safety measures such as social distancing. The Applicant admitted that he never sought to arrange appointments with the tenants whereby he could attend safely.

22. Again, in the circumstances, the Tribunal is not satisfied that the Applicant has established a reasonable excuse.
23. This leaves the question of the quantum of the financial penalty to be imposed on the Applicant for each offence. Although the appeal is a rehearing and the Tribunal needs to reach its own conclusion on this issue, the Tribunal is entitled to have regard to the Respondent's views (*Clark v Manchester CC* [2015] UKUT 0129 (LC)) and must consider the case against the background of the policy which the Respondent has adopted to guide its decisions (*R (Westminster CC) v Middlesex Crown Court* [2002] EWHC 1104 (Admin)).
24. The Respondent's policy is in line with Government guidance and provides a careful balance, within the objectives of the legislation, between the various elements which make up the offences and their context. Considering all the circumstances of this case and the degree of the Applicant's culpability, the Tribunal is satisfied that the amount of each penalty determined by the Respondent was appropriate. Therefore, the Tribunal confirms that the Applicant is subject to the penalties referred to in paragraphs 1 and 2 above.
25. Between the hearing dates, the Respondent applied for an order for costs thrown away by the adjournment under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. They alleged that the Applicant acted unreasonably or alternatively that his legal representatives acted negligently or unreasonably in failing to identify the need for an interpreter earlier.
26. The Tribunal is not satisfied that the Respondent has established that the standard of "unreasonableness" has been met. The Applicant runs his own business and appeared to both solicitor and counsel able to provide instructions without the assistance of an interpreter. It was apparent to the Tribunal that, understandably and in common with many witnesses, he found giving evidence stressful, circumstances which would impede any person's ability to process information and articulate themselves, let alone when working in a second language. It is entirely credible that the need for an interpreter would only become apparent in these circumstances. It would be beyond harsh to label the failure to identify this need earlier as unreasonable or negligent. Mr Tramboo is to be commended for bringing this need to the Tribunal's attention as soon as he became aware of it.
27. Therefore, the Tribunal refuses the application for costs.

**Name:** Judge Nicol

**Date:** 14<sup>th</sup> January 2022

## **Rights of appeal**

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

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

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

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

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

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

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **72 Offences in relation to licensing of HMOs**

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

(2) A person commits an offence if–

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

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

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

(3) A person commits an offence if–

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

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

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

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

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

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

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

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

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

(c) for failing to comply with the condition,

as the case may be.

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

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

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

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

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

(9) The conditions are–

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

- (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

#### **249A Financial penalties for certain housing offences in England**

- (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
- (2) In this section “relevant housing offence” means an offence under—
- (a) section 30 (failure to comply with improvement notice),
  - (b) section 72 (licensing of HMOs),
  - (c) section 95 (licensing of houses under Part 3),
  - (d) section 139(7) (failure to comply with overcrowding notice), or
  - (e) section 234 (management regulations in respect of HMOs).
- (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
- (4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.
- (5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—
- (a) the person has been convicted of the offence in respect of that conduct, or
  - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
- (6) Schedule 13A deals with—
- (a) the procedure for imposing financial penalties,
  - (b) appeals against financial penalties,
  - (c) enforcement of financial penalties, and
  - (d) guidance in respect of financial penalties.
- (7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.
- (8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.
- (9) For the purposes of this section a person's conduct includes a failure to act.

### **SCHEDULE 13A FINANCIAL PENALTIES UNDER SECTION 249A**

#### **6**

If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

#### **10**

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



- (a) the decision to impose the penalty, or
- (b) the amount of the penalty.
- (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (3) An appeal under this paragraph—
  - (a) is to be a re-hearing of the local housing authority's decision, but
  - (b) may be determined having regard to matters of which the authority was unaware.
- (4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.
- (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

## **Management of Houses in Multiple Occupation (England) Regulations 2006**

### **4.— Duty of manager to take safety measures**

- (1) The manager must ensure that all means of escape from fire in the HMO are—
  - (a) kept free from obstruction; and
  - (b) maintained in good order and repair.
- (2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.
- (3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.
- (4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—
  - (a) the design of the HMO;
  - (b) the structural conditions in the HMO; and
  - (c) the number of occupiers in the HMO.
- (5) In performing the duty imposed by paragraph (4) the manager must in particular—
  - (a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and
  - (b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.
- (6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.