FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UL/HNA/2021/0046**
HMCTS code (paper, video, audio)	:	**V: CVP REMOTE**
Property	:	**9 Birchwood Avenue Hatfield Hertfordshire AL10 0PL ("the Property")**
Appellant/applicant	:	**Mr Abid Hussain**
Representative	:	**In person**
Respondents	:	**Welwyn Hatfield Borough Council**
Representative	:	**Mr Petrit Berisha**
Type of Application	:	**Appeal under s.249A and schedule 13A of the Housing Act 2004**
Tribunal Members		**Judge Professor Robert Abbey and Mr Roland Thomas MRICS**
Date of Hearing	:	**21 April 2022**
Date of Decision	:	**25 April 2022**

DECISION

- This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice CVP platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in two bundles of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it a pair of electronic/digital trial bundles of documents prepared by the applicant and the respondent, in accordance with previous directions.

Decision

1. The decision by the respondent to impose a financial penalty is upheld but subject to a reduction in the total sum. The total of the penalty amounted to a gross sum of £10000 but reduced by the local authority by 50% to £5000. For the reasons set out below the Tribunal has determined that the penalty of £5000 should be subject to a reduction of 50% to £2500. This makes a final total financial penalty of £2500.
2. In the light of the above, the appeal by the appellant against the imposition of a financial penalty issued by the respondent under section 249A and schedule 13A of the Housing Act 2004 is therefore allowed in part as set out above.

Introduction

3. This is the hearing of the applicant's application regarding **9 Birchwood Avenue Hatfield Hertfordshire AL10 0PL** ("the Property"), pursuant to Schedule 13A of the Housing Act 2004 ("the 2004 Act"), to appeal against a financial penalty imposed by the respondent under s249A of the 2004 Act.
4. The financial penalty arises from purported breaches of the Licensing and Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Regulations"), which would amount to an offence under section 243(3) of the 2004 Act. The applicant was responsible for the managing of the property and the respondent is the local authority responsible for the locality in which the property is situate.

The Hearing

5. The appeal was set down for hearing on 21 April 2022 when the applicant was in person and Mr Berisha from the local authority appeared for the respondent. This hearing is a re-hearing of the local authority decision, see paragraph 10(3)(a) of Schedule 13A to the 2004

Act. The Tribunal is therefore to consider whether to impose a financial penalty afresh, and is not limited to a review of the decision made by the respondent.

6. The breaches purportedly identified by the respondent fall into two categories, first, breach of 'Regulation 4: Duty of manager to take safety measures. In particular, the applicant had to ensure that all means of escape from fire in the Property were kept free from obstruction and maintained in good order and repair. The applicant also had to ensure that any firefighting equipment and fire alarms were maintained in good working order. The breach(es) related in particular to ill-fitting fire doors.

7. Secondly, breaches of 'Regulations 3 7 and 8: Disrepairs issues and a lack of management.

8. At the hearing the applicant maintained that no financial penalty should have been imposed at all. On the other hand, the respondent considers that the financial penalties should remain as imposed but discounted to take account of remedial works completed by the applicant. As the respondent has an enforcement policy in place the Tribunal must take that as its starting point and implement that policy, (see *Marshall v Waltham Forest London Borough Council* [2020] UKUT 35 (LC) at §52 and §74.)

Decision and Reasons

9. The Tribunal noted that the applicant advanced various grounds for the appeal. These will be considered below.

10. In the recent case *of I R Management Services Limited v Salford City Council* [2020] UKUT 81 (LC) Martin Rodger QC the Deputy Chamber President wrote at paragraph 27 "*The offence of failing to comply with a relevant regulation is one of strict liability, subject only to the statutory defence*."

11. This Tribunal must be bound by the decisions of the Upper Tribunal and as such these are therefore strict liability offences and if they existed and were identified at the time of an inspection by the respondent then at the point a notice is issued the strict liability arises there and then. This is what occurred in this case.

12. Furthermore, the Tribunal had the benefit of receiving evidence from Adam Wotherspoon and from Christina Cooper (both employed by the respondent as Private Sector Housing Technicians) who gave details of the breaches they saw when they attended the property. The applicant chose not to cross examine either witness and as such the evidence provided by the respondent was apparently accepted as submitted. (Apart from the applicant himself, there were no other witnesses in attendance before the Tribunal for the applicant). Consequently, the

Tribunal accepts that there is clear evidence of breaches on the part of the applicant contained within the statements from the two Officers that carried out the inspection of the property.

13. In the light of this the Tribunal took time to carefully consider the local authority enforcement policy. In particular the Tribunal carefully considered the financial penalty matrix to ascertain how the penalty had been calculated.

14. It was apparent to the Tribunal that the respondent had properly considered this policy in its dealings with the property and the respondent. The applicant complained that there had been no informal activity prior to the serving of the notice of intent. It seemed to the Tribunal that the policy did not require this to take place. The policy was not prescriptive in this respect and as such the way the respondent progressed this matter was entirely in compliance with the Policy.

15. On 2 June 2021 Mr Wothersoon and Ms Cooper attended the Property and found apparent breaches of the Regulations. Thereafter, on 11 August 2021 the respondent served a Notice of Intent to impose a financial penalty at £10000. After representations on the proposed penalty were made by the applicant and in the light of his remedial works at the property a final notice confirming the fine at the level of £5000 was issued on 14 October 2021

16. Turning now to the defence of reasonable excuse. The applicant did not expressly seek to rely on the statutory defence contained within s234(4) of the 2004 Act:

> "*In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation*."

17. The applicant did however assert that there were issues or factors that provide support for a defence namely that he had complied with the schedule of works. He conceded that there were some slight problems at the property but they were not serious and he had all the necessary certificates in place that were obtained on an annual basis.

18. The tribunal could not find anything in his assertions that might affect the requirement for a financial penalty. The Tribunal took the view that there were problems at the property that were clearly demonstrated in the evidence from the respondent and that this had not been countered by the applicant. Indeed, by completing the schedule of works he had clearly appreciated that work was required to the property to bring it up to the necessary standards. In particular there were issues with the fire doors. The Tribunal were shown pictures of Ms Cooper inserting her fingers in a gap at the top of the fire door from the kitchen to the hallway that meant that the fire door would have been ineffective in the

case of fire. There were also other less significant issues such as a broken floor tile.

19. In the light of the fore-going, the Tribunal considered the level of the penalty. The applicant says the level of the penalty is excessive as the offences were not severe. On culpability the applicant says his actions were not deliberate and that with regard to harm the offences were not severe and several tenants had submitted statements in support of him. (No such witnesses attended at the hearing.) Accordingly, the applicant said that the level of the penalty was disproportionate to the offences. The applicant says that all the issues were remedied following the initial contact.

20. The applicant also highlighted the fact that the applicant had not been involved in any previous Housing Act cases with the respondent. So, it was apparent to the Tribunal that there was indeed no history of failure on the part of the applicant to comply with appropriate and important management regulations.

21. Accordingly, the Tribunal turned to the financial penalty matrix to seek to set the penalty in accordance with the policy. This matrix had factors that included culpability, assets/profit made, offence history and harm or potential harm to the tenants. The scores then spread across a range for each of these factors. So, as an example, for culpability points from nought to five were scored for a low assessment for this factor. Five to ten points might be calculated for low to medium, ten to fifteen for medium to high and sixteen to twenty-four for high.

22. The respondent had scored each factor and had set culpability at 20, assets/profit made at 5, offence history at zero and harm at 40. In each case some limited reasoning was shown for the assessments and scores set by the respondent.

23. The Tribunal in its duty to rehear and revisit the level of the penalty adopted the same approach but came to different scores. The Tribunal set culpability at the reduced level of 10, assets/profit made were at the same mark of 5. The Tribunal could also agree the mark for offence history at zero as there was no previous offence to consider. Finally, the Tribunal looked again at harm/potential harm and set this at the reduced level of 20.

24. So, the Tribunal reduced two scores for the first and fourth factors. The first was reduced because the Tribunal on the evidence before it thought that a low to medium bracket should apply. The manager in evidence before the Tribunal came across as someone prepared to address concerns raised by tenants and was prepared to make regular visits to the property to ensure standards were achieved. Similarly, the fourth item was reduced because it was thought that the score of 40 by the respondent was unduly harsh and that a score of 20 was proportionate given the evidence before the Tribunal. It was correct

that there were issues with a fire door but other fire safety provisions were in place at the property and were working properly.

25. In the light of these changes the total score set by the Tribunal was thirty-five. Using the respondent's score range fee table at thirty-five points this meant a substituted fee of £2500. Therefore, using the respondent's own matrix, the Tribunal substitutes this sum for the original financial penalty of £5000

26. Consequently, the appeal by the appellant against the imposition of the financial penalty by the respondent under section 249A and schedule 13A of the Housing Act 2004 is allowed in part.

27. Rights of appeal available to the parties are set out in the annex to this decision and relevant statutory provisions can be found in a subsequent appendix to this decision.

Name:	Judge Professor Robert Abbey	**Date:**	25 April 2022

Annex

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

249A Financial penalties for certain housing offences in England

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

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

(a)section 30 (failure to comply with improvement notice),

(b)section 72 (licensing of HMOs),

(c)section 95 (licensing of houses under Part 3),

(d)section 139(7) (failure to comply with overcrowding notice), or

(e)section 234 (management regulations in respect of HMOs).

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

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

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

(a)the person has been convicted of the offence in respect of that conduct, or

(b)criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6)Schedule 13A deals with—

(a)the procedure for imposing financial penalties,

(b)appeals against financial penalties,

(c)enforcement of financial penalties, and

(d)guidance in respect of financial penalties.

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

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

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

254 Meaning of "house in multiple occupation"

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

(a)it meets the conditions in subsection (2) ("the standard test");

(b)it meets the conditions in subsection (3) ("the self-contained flat test");

(c)it meets the conditions in subsection (4) ("the converted building test");

(d)an HMO declaration is in force in respect of it under section 255; or

(e)it is a converted block of flats to which section 257 applies.

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

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

(b)the living accommodation is occupied by persons who do not form a single household (see section 258);

(c)the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d)their occupation of the living accommodation constitutes the only use of that accommodation;

(e)rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f)two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3)A part of a building meets the self-contained flat test if—

(a)it consists of a self-contained flat; and

(b)paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4)A building or a part of a building meets the converted building test if—

(a)it is a converted building;

(b)it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c)the living accommodation is occupied by persons who do not form a single household (see section 258);

(d)the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(e)their occupation of the living accommodation constitutes the only use of that accommodation; and

(f)rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

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

(6)The appropriate national authority may by regulations—

(a)make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b)provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c)make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

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

(8)In this section—

“basic amenities” means—

(a)a toilet,

(b)personal washing facilities, or

(c)cooking facilities;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

“self-contained flat” means a separate set of premises (whether or not on the same floor)—

(a)which forms part of a building;

(b)either the whole or a material part of which lies above or below some other part of the building; and

(c)in which all three basic amenities are available for the exclusive use of its occupants.

Schedule 13A

Notice of intent

1Before 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.

3The notice of intent must set out—

(a)the amount of the proposed financial penalty,

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

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

Right to make representations

4(1)A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2)Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

5After 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.

6If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty.

7The 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.

8The 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.

Withdrawal or amendment of notice

9(1)A local housing authority may at any time—

(a)withdraw a notice of intent or final notice, or

(b)reduce the amount specified 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.

Appeals

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.

Recovery of financial penalty

11(1)This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2)The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3)In proceedings before the county court for 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.

Guidance

12A 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