FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00BR/HNA/2020/0049** **MAN/00BR/HNA/2020/0050** **MAN/00BR/HNA/2020/0051**
Properties	**:**	**17 Valencia Road, Salford, M7 3TD** **4 Green View, Salford, M7 4GH** **39 Romney Street, Salford, M6 6DR**
Applicant	**:**	**Blueprint Estates Limited**
Applicant's Representative	**:**	**Keoghs Nicholls Lindsell and Harris LLP**
Respondent	**:**	**Salford City Council**
Type of Application	**:**	**Appeal against a financial penalty - Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal Member	**:**	**J A Platt FRICS (Chairman)** **P Mountain**
Date of Decision	**:**	**19 July 2022**

DECISION

The Applications

1. The Applicant made three applications on 27 July 2020 relating to financial penalties issued by the Respondent, in respect of the letting of three separate properties. All three cases raise common issues relating to the letting of three properties in the same ownership, situated within two selective licencing areas. The Tribunal decided to consolidate the three sets of proceedings, in accordance with Rule 6. (3)(b) of The Tribunal Procedures (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") .

2. Directions were issued on 9 March 2021. Both parties have complied with those directions.

Agreed Facts

3. 4 Green View, Salford M7 4GH is situated within the Broughton area of Salford which was designated a selective licensing area on 21 January 2016.

4. 17 Valencia Road, Salford M7 3TD and 39 Romney Street, Salford M7 3TD are situated within the Kersal and Lower Charlestown area of Salford which was designated a selective licensing area on 15th November 2017.

5. The Applicant was (at the appropriate time) the registered proprietor of all three properties since being acquired on 15 March 2019.

6. All three properties were continually let from the date of acquisition until (at least) 5 October 2020.

7. Licences were granted in respect of all three properties on 5 October 2020. All three properties were unlicensed between 15 March 2019 and 5 October 2020.

8. The Applicant accepts that all three properties should have been licensed between 15 March 2019 and 5 October 2020. The Applicant accepts that offences have been committed under Section 95(1) Housing Act 2004 ("the Act") in respect of all three properties.

The Law

9. The relevant sections of the Housing Act 2004 are appended.

The Respondent's Case

10. The Respondent wrote to the Applicant on 14 May 2019 informing it of the requirement to apply for a licence for each property. Reminder letters were sent to the Applicant on 28 May 2019 in respect of each property. Warning letters were issued on 12 June 2019 in respect of each property and advising the Applicant that Rent Repayment Orders may be sought. Final warning letters were issued on 1 July 2019 advising that the Applicant would consider imposing Interim Management Orders against the said properties as there

appeared to be no reasonable prospect of them being licensed.

11. Invitations to attend formal interviews were sent to the Applicant to give the Applicant an opportunity to explain why it had not submitted a valid application for a licence. The invitation letters explained that, in the absence of a reasonable excuse, a report would be submitted to the Strategic Director Place, seeking authority to commence legal proceedings for an offence in respect of each property, of having control of or managing a house which is required to be licensed, but is not so licensed. Invitations were sent on:

	Letter of invitation	**Date of interview**
4 Green View	16 July 2019	1 August 2019
39 Romney Street	31 July 2019	5 September 2019
17 Valencia Road	18 September 2019	3 October 2019

12. The Applicant failed to respond to any of the reminder / warning letters, failed to attend any of the interviews and all three properties remained unlicensed.

13. On 16th December 2019, the Applicant commenced the licence application process by registering Blueprint Estates Limited with the Respondent as Managing agents. Following this registration, no applications for a licence were submitted.

14. A Notice of Intent to Issue a Civil Penalty (Financial Penalty) was served in respect of each property on 15th May 2020.

15. No representations were made, and a case review determined a Civil Penalty was still the most appropriate course of action for the offences.

16. Final Civil Penalty Notices were served in respect of each property on 1st July 2020. The Financial Penalty imposed was £7,500 in respect of each property. The total of all three financial penalties being £22,500.

The Applicant's Case

17. The Applicant's case was largely based on two points of law:

17.1. Firstly, that the concurrent failure to obtain licences in relation to the three properties amounts to 'the same conduct'. It is, therefore, maintained that only one penalty should have been imposed in respect of that conduct, in accordance with section 249A(3) of the Act.

17.2. Alternatively, that if more than one penalty is deemed appropriate, the Respondent has failed to consider the proportionality of the cumulative penalty imposed.

18. In respect of the 'proportionality' point, the Applicant averred that:

18.1. the Respondent has failed to consider the Guidance and the Policy in relation to the totality principle and the proportionality of the cumulative penalty.

18.2. such a cumulative penalty is entirely disproportionate to an administrative offence of failure to license, where no harm has been caused. It further averred that the Respondent had failed to take into account relevant factors in the consideration of fairness and proportionality. The Respondent's assessment and the level of cumulative penalty shows no regard for these requirements.

18.3. it also averred that no harm has been caused by the Applicant's failure to licence and that the Respondent's assessment should have factored this into the starting point and rather than the starting point being the mid-point of the band, it should have been at the lowest point of the band. It, therefore, maintained that the starting point should have been £5,000, not £7,500.

The Hearing: 7 December 2021

19. A video hearing was held on 7 December 2021. The Applicant was represented by Ms Wood of counsel and the Respondent was represented by Mr Whatley of counsel. Both counsel had helpfully prepared skeleton arguments, made available to the Tribunal in advance of the hearing.

20. The Applicant's Director, Mr Parry failed to attend the hearing on its behalf to present his witness evidence. The hearing was adjourned for a short while to allow Mr Parry's solicitor and counsel to attempt to contact him. Both legal representatives failed to contact Mr Parry and the hearing was, therefore, adjourned until a later date. The Tribunal gave oral directions for both parties to provide dates of availability / unavailability for a hearing in January / February 2022.

21. No Dates were received from the Applicant in response to this oral direction nor in response to subsequent email requests from the Tribunal. On 13 April 2022 the Tribunal invited the parties to make representation under Rule 4 of the Rules, on the Tribunal's proposal to strike out the applications under Rule 9(3)(b).

22. Subsequent to the receipt of representations from the Applicant providing availability dates, the Tribunal determined that it could deal with the case 'fairly and justly', in accordance with the Rules. A video hearing was arranged for 5 July 2022.

The Hearing: 5 July 2022

23. A reconvened video hearing was held on 5 July 2022. The Respondent was again represented by Mr Whatley of Counsel. The Applicant was represented by its Director Mr Parry, without legal representation.

24. Mr Parry confirmed that the Applicant admits to committing three offences under Section 95(1) of the Act, of being a person having control of or managing a house which is required to be licensed under Section 85(1) but is not so licensed.

The Respondent's Case

25. Mr Whatley addressed in turn the two legal points averred by the Applicant.

The conduct issue

26. For reasons which will become apparent when detailing the Applicant's case, it is not necessary to go into Mr Whatley's arguments in great detail. He carefully took the Tribunal through the wording of the legislation and relevant case law on statutory construction and interpretation. He averred that the natural reading of the Act can only lead to one conclusion: that each failure to licence is a separate offence, three separate offences had been admitted, each offence gives rise to a separate Penalty Notice and the Respondent has proceeded correctly by issuing three Penalty Notices.

The Proportionality issue

27. Ms Chilton, the Respondent's Landlord Licencing Officer, provided evidence detailing the Respondent's attempts to ensure that licence applications were received from the Applicant for all three properties throughout the period 14 May 2019 to 1 July 2020. That evidence is detailed within the agreed facts above and was not challenged by Mr Parry.

28. Ms Chilton's evidence goes on to explain how, following the Applicants failure to attend three different interviews, a case review concluded that the most appropriate action for the Respondent to take was to issue a Financial Penalty in respect of each property.

29. Notices of Intent were issued on 14 May 2020 in respect of all three properties. Each of the Notices of Intent proposed, having regard to the Association of Greater Manchester Authorities (AGMA) Policy On Civil Penalties As An Alternative To Prosecution Under The Housing and Planning Act 2016 ("the Policy"), Financial Penalties of £7,500. The Respondent assessed the offences as low harm and medium culpability. The Notices provided the Applicant a period of 28 days in which to make representations in respect of the Respondent's proposals to issue the said Financial Penalties.

30. In response to the Notices of Intent, the Applicant emailed Ms Chilton and was provided with detailed advice as to how to submit the necessary licence applications. Ms Chilton also advised the Applicant that the Notices of Intent were still applicable and that any representations should be made within 28 days.

31. No licence applications nor representations were received from the Applicant in response to any of the three Notices of Intent. The Respondent, therefore,

proceeded to issue three Final Civil Penalty (Financial Penalty) Notices on 1 July 2020.

32. Mr Whatley addressed the proportionality (and totality) issue by averring that the Respondent had followed the relevant policy correctly and he averred that where there are three separate offences relating to three separate properties and each penalty is correct, there is no immediately apparent basis upon which the cumulative penalty amount is either unjust or disproportionate. He also suggested the Tribunal may find the Magistrate's Sentencing Guidelines helpful in considering the totality effect of several fines for several distinct offences.

33. Mr Whatley made the further point that the Applicant had made no representations to the Respondent i.e. it had provided no financial evidence upon which the Respondent could be expected to apply any totality / affordability assessment. He referred the Tribunal to the Applicant's last publicly available filed accounts which show, at 31 March 2020, a solvent company with a balance sheet surplus of £626,050. He averred that the Respondent could not consider the justice and proportionality of the cumulative penalties within a 'vacuum of information' i.e. having received no financial representations from the Applicant.

The Applicant's Case

34. Mr Parry attended the hearing without a copy of the Applicant's statement of case and without a copy of his own witness statement. He made comments to the effect that they were drafted so long ago that he couldn't remember what was in them. He, therefore, made very limited representation on behalf of the Applicant and did not highlight any aspects of the Applicant's case or his own witness evidence. He made no reference to the skeleton argument previously prepared by Ms Wood in advance of the 7 December 2021 hearing.

35. In response to Mr Whatley's submissions on the legal points brought by the Applicant, Mr Parry stated that he was unable to make legal representations.

36. The Tribunal considers it appropriate to note, at this point, that the legal points were raised by the Applicant, the hearing was requested by the Applicant within its applications and the Applicant had made representations in April 2022 that the Tribunal should not strike out the applications and that the 5 July 2022 hearing should be arranged.

37. Mr Parry averred that the level of the Financial Penalties was unfair, was unjustified and outweighed the value of the properties, being more than 2 years' worth of profit on the rental income. He gave evidence that the Applicant had been the landlord of 19 properties at the time of the offences, but the portfolio was now only 5 properties.

38. He said the current financial position of the Applicant was not, as described by Mr Whatley but the Tribunal noted that no financial information had been put in evidence before it and therefore, declined to request Mr Parry to provide any further detail. Mr Parry was heard to respond "nobody has asked me for any" so, for the avoidance of doubt, the Tribunal takes this opportunity to point out that it is for the Applicant to identify and put

forward its own relevant evidence and not for the Tribunal (nor any other party) to request it.

39. He made the point that the Applicant's Registered Address is not its place of business and alluded to difficulties having been encountered receiving post in general and specifically post sent to the Registered Address. The Tribunal declined to explore this comment further as no such evidence had been presented nor was it a mitigating factor mentioned within the Applicant's statement of case.

The Role of the Tribunal

40. These appeals are by way of re-hearings of the local housing authority's decisions to impose the penalties and / or the amount of the penalties. They may be determined having regard to matters of which the authority was previously unaware. When deciding whether to confirm, vary or cancel the final notices imposing the financial penalties, the issues for the Tribunal to consider initially include:

40.1. Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of premises in England (under section 95(1) of the Act), and

40.2. Whether the local housing authority, has complied with all of the necessary requirements and procedures relating to the imposition of the Financial Penalty (under Section 249A and paragraphs 1 to 8 of Schedule 13A of the Act).

41. The Applicant accepts, in relation to each property that, at the relevant time, an offence under s95(1) of the Act had been committed. We, therefore, find that it is beyond reasonable doubt that the Applicant's conduct amounts to a relevant housing offence in respect of each Property.

42. The Tribunal finds that the Respondent has fully complied with the necessary requirements and procedures relating to the imposition of a Financial Penalty.

Imposition of a Financial Penalty

43. The local housing authority in exercising its functions under Schedule 13A or section 249A of the Act must have regard to any guidance given by the Secretary of State.

44. Such guidance ("the Guidance") was issued by the Ministry of Housing Communities and Local Government in April 2018 and is entitled "Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities".

45. Paragraphs 3.3 and 3.5 of the Guidance confirm that the local housing authority is expected to develop and document its own policies on when to prosecute and when to issue a civil penalty and the appropriate levels of such penalties and should make such decisions on a case-by-case basis in line with those policies.

46. The Guidance states "Generally we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. Local housing authorities should consider the following factors to help ensure that the… penalty is set at an appropriate level:

- severity of the offence,…
- culpability and track record of the offender,…
- the harm caused to the tenant,…
- 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…

47. In partnership with other local authorities, the Respondent has documented its own "Policy on Civil (Financial) Penalties as an Alternative to Prosecution under the Housing and Planning Act 2016" ("the Policy") and included a copy of that in the papers.

The Tribunal's Deliberations and Conclusions

48. The Tribunal had no regard to the skeleton argument previously prepared by Ms Wood which was not in evidence.

49. It was unfortunate that, having made an application based on two points of law, the Applicant proceeded to a hearing at which it made no representations on those points of law.

50. The Tribunal did, however, concur with Mr Whatley's analysis of the statute, its construction and interpretation, that it is correct for three Financial Penalties to be issued in respect of three concurrent offences relating to three unlicenced properties. The Tribunal does not consider the conduct of concurrently failing to obtain selective licences at three separate properties amounts to the same conduct.

51. The Tribunal is satisfied beyond reasonable doubt that the Applicant has committed a "relevant housing offence" in respect of each property and that the authority has complied with all the necessary procedural requirements relating to the imposition of the financial penalties.

52. It is, therefore, necessary for the Tribunal to consider whether financial penalties are appropriate and if so, have been set at the appropriate level.

53. The Applicant admits that it did not have a licence for each of the properties at the times when they should have been licensed. The Tribunal agrees with the Respondent that the Applicant has provided no good reasons for not applying for a licence when first requested to do so in May 2019 nor on each of the subsequent (reminder) occasions prior to 1 July 2020.

54. The Tribunal is satisfied that it is appropriate to impose a Financial Penalty in respect of each offence. We considered whether rather than impose a Financial Penalty a caution would have been sufficient but decided that such a sanction would be inadequate in terms of its likely punitive and deterrent effect.

55. The Tribunal then went on to consider the amount of each penalty. In so doing we had particular regard to the 7 factors specified in the Guidance.

56. In *Waltham Forest LBC v. Marshall* [2020] UKUT 0035 (LC) the Upper Tribunal gave the following guidance in relation to the respect which is to be given to a local authority's policy and decisions that are based upon it:

'The court is to start from the policy and it must give proper consideration to arguments that it should depart from it. It is the appellant who has the burden of persuading it to do so. In considering reasons for doing so it must look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed'.

'Nothing in these cases, or in the present appeals detracts from the court's or a tribunal's ability to set aside a decision that was inconsistent with the decision-makers own policy.'

57. Although not bound by it, the Tribunal has reviewed the Respondent's policy ("the Policy") and found that it broadly provides a sound basis for quantifying financial penalties on a reasonable, objective and consistent basis.

58. The Policy is itself based on factors specified in the Guidance, and the Respondent went through a checklist before calculating the Financial Penalties of £7,500. In assessing culpability and harm it concluded, for each property, that there was a low harm rating and a medium culpability rating. This resulted in an assessment that the penalty should be in Band 2. The policy states that: *"The starting point for the Civil Penalty will be the mid-point of the relevant band level"*. The mid-point of Band 2 is £7,500. The Policy provides for increases or decreases of £1,000 for each aggravating or mitigating factor. The Respondent found no aggravating or mitigating factors and made no adjustment to the mid-point level of £7,500.

59. The Tribunal, in making its own decisions has regard to the Guidance previously referred to above and the Policy. Having regard to the Applicant's submissions, the Tribunal sees no reason to divert from the Policy.

60. The Tribunal concurs with the Respondent's assessment that the offences are in the low harm category.

61. The Tribunal has regard to the categories of culpability within the Policy. The two mid-categories are referred to as:

- 'negligent' (medium): *"Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding committing of the offence…",*

- 'reckless' (high): *"Serious or systematic failings, actual foresight of or wilful blindness to risk of offending but risks nevertheless taken by the landlord …"*.

62. In his witness statement, Mr Parry states: "*I found the process daunting and I didn't find the Respondent particularly helpful when I did send emails*". The Applicant provides no evidence of email conversations to support this statement. The only email conversation presented in evidence is appended to Ms Chilton's witness statement. Mr Parry emailed on 14 May 2020, in response to the Notices of Intent to issue Financial Penalties: *"Apologies as I thought I had done everything. Please advise what I need to do to fully comply"*. In response to a detailed reply from Ms Chilton, Mr Parry replied by email on 15 May 2020: *"Apologies for the delay, I will get onto this straight away"*.

63. The Tribunal notes that the Respondent had been attempting to obtain licence applications from the Applicant for a full year prior to that email. There is no evidence before the Tribunal that the Applicant struggled with the application process nor that it had sought assistance from the Respondent (apart from the said email) nor that the Respondent had been unhelpful.

64. At the hearing Mr Parry alluded to difficulties with his post and stated that the Registered Address of the Applicant is not its operating address. The Applicant has, however, made no reference within its evidence to any difficulties encountered with receipt of any of the Respondent's correspondence. The Tribunal also notes from Ms Chilton's witness statement that the Applicant used its Registered Address as its correspondence address within its application to be registered as a managing agent. The Tribunal also notes that the three appeal applications are made from the Registered Address of the Applicant with no alternative correspondence address detailed. The Tribunal, therefore, dismisses this assertion and proceeds on the basis that the Applicant received all correspondence from the Respondent in a timely manner.

65. Inadvertently omitting to submit a licence application upon acquisition of the properties might be construed as an administrative offence and might be correctly categorised as a "*Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding committing of the offence*.

66. The Tribunal does not consider ignoring and failing to act upon 3 notifications that licences are required, 3 x 3 follow up / warning letters and 3 invitations to attend interviews constitutes an administrative failure. The Tribunal particularly notes that the invitations to attend interviews were three separate invitations sent on different dates with three different interview dates i.e. the Applicant failed to respond and failed to attend three separate interviews not one cumulative one.

67. The Applicant clearly had actual foresight of the failings and appears to have adopted a wilful blindness to risk of offending. The Applicant only taking any action in response to the Financial Penalties and seemingly only upon realisation of the level of those Financial Penalties. The Tribunal considers

these actions to be correctly categorised as: *"Serious or systematic failings, actual foresight of or wilful blindness to risk of offending but risks nevertheless taken by the landlord …"*.

68. The Tribunal, therefore, categorises the culpability, within the Policy, as High.

69. High culpability / low harm places the offences within Band 3; £10,000 - £14,999. The policy states that: *"The starting point for the Civil Penalty will be the mid-point of the relevant band level"*. The mid-point of Band 3 is £12,500.

70. The Applicant avers that the Respondent (and by substitution the Tribunal) should have regard to a number of additional factors in determining the cumulative size of the Financial Penalties:

70.1. That it is a good landlord with a history of compliance and no record of previous offending

70.2. The Applicants assets and income

70.3. Whether a lower penalty would achieve the policy aim of preventing further offending

71. The Tribunal has no evidence before it that the Respondent is not a 'good landlord who provides decent well maintained homes'. For that reason, the Tribunal does not apply any 'aggravating factor' addition to the level of Financial Penalties.

72. The Tribunal concurs with the Respondent's submissions that it cannot be expected to have regard to the Applicants financial circumstances in any detail, within an 'evidential vacuum'. Despite a re-hearing and a second opportunity for the Applicant to present evidence of its financial circumstances, that were not available to the Respondent, no such evidence has been provided. The best the Tribunal can do is to have regard to publicly available records provided by the Respondent which show, at 31 March 2020, the Applicant to be a solvent company with net assets of £626,050. The Tribunal notes the Applicant's evidence that these assets are not available as cash to immediately meet the Financial Penalty obligations and also Mr Parry's evidence that the Applicant has now disposed of 14 out of 19 properties held at the date of his witness statement. The Tribunal, therefore, assumes (within an evidential vacuum) that the Applicant is currently in a more liquid position having presumably disposed of assets for cash and / or reduced its borrowing.

73. Finally, the Tribunal considers the Applicant's assertion that a lower penalty would achieve the policy aim of preventing further offending. The Tribunal notes that the Policy provides for discretionary reductions of up to 30% where the local authority has assessed the category of culpability as being low or medium and corrective action has been taken prior to the service of the Final Notice. The Respondent assessed the culpability as being medium. The Respondent made no submissions on receipt of the Notices of Intent and

took no corrective action i.e. submitting licence applications, prior to the service of the Final Notices. The Applicant, therefore, through its own inactivity, lost the opportunity of a discretionary reduction of up to 30%. The Tribunal has assessed the culpability as being high and therefore, this section of the Policy does not apply.

74. The Policy also provides for the local authority to consider whether issuing multiple penalties at the same time would result in an excessive cumulative penalty.

75. The maximum Financial Penalty the Tribunal can impose for any one offence is £30,000. The Tribunal has already considered and determined that the offences are three separate offences, committed concurrently at the three properties, for which three separate Financial Penalties should be issued and has assessed the appropriate level of Financial Penalty for each offence.

76. Having regard to the identical and concurrent nature of the three offences, the Tribunal considers it reasonable to conclude that the multiple penalties do result in an excessive cumulative penalty which (in this case) should not exceed the maximum penalty for one offence. The Tribunal, therefore, determines the cumulative Financial Penalties to be £30,000. The Financial Penalty in respect of the offence for each of the three properties to be £10,000.

77. In the opinion of the Tribunal, the resultant cumulative Financial Penalty is at a high enough level to:

- Punish the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences and
- Remove any financial benefit the offender may have obtained as a result of committing the offence

Financial Penalties

78. Under Sch 13A Para 10(4) of the Act:

On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

79. The Tribunal determines the following Financial Penalties and the final notice in respect of each property is varied accordingly:

- In respect of 17 Valencia Road, Salford, M7 3TD - £10,000
- In respect of 4 Green View, Salford, M7 4GH - £10,000
- In respect of 39 Romney Street, Salford, M6 6DR - £10,000

Costs

71) In accordance with Rule 13, the Tribunal can make an order in respect of

costs on an application or on its own initiative. The Tribunal may make an order in respect of costs only …

(a) Under section 29(4) of the Tribunals, Courts and Enforcement Act 2007 (wasted costs) and the costs incurred in applying for such costs:

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in … (ii) a residential property case…

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

72) The Tribunal is minded to consider, in accordance with the guidelines laid down by The Upper Tribunal in *Willow Court Management Company Limited and Mrs Ratna Alexander* (1985) LRX/90/2015, whether the Applicant and / or Mr Parry as the Applicant's Representative, has acted unreasonably in *bringing or conducting* these proceedings and whether it should make an order for costs against either party or both.

73) The Tribunal invites all parties: The Applicant, the Respondent and Mr Parry to make representations on these matters together with representations on the quantum of any costs order the Tribunal should consider making. All representations to be received by the Tribunal within 14 days of the date of this decision.

J A Platt (Chairman)

ANNEX - RIGHTS OF APPEAL

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

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

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

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

Appendix 1

Housing Act 2004

95Offences 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).

s249AFinancial 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

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.

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.