



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

**Case reference** : **LON/OOBD/HNA/2022/0055**

**Property** : **51 Ellesmere Road**

**Applicant** : **Mukund Patel**

**Representative** : **Vikash Patel**

**Respondents** : **Hounslow Council**

**Representative** : **Mr Smyth**

**Type of application** : **Appeal against financial penalties**

**Tribunal** : **Judge Shepherd**  
**Stephen Mason FRICS**

**Date of Decision** : **24th February 2023**

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**DETERMINATION**

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1. This case concerns a challenge to penalties imposed by the local authority in relation to offences under the Housing Act 2004. The penalties were imposed by the local authority under section 249A of the Housing Act 2004 the relevant sections of which state the following:

*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—*

*...(b) section 72 (licensing of HMOs),*

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

*...(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.*

2. Under s.72(1) Housing Act 2004 :

*(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.*

3. Under s. 234 of the same Act :

*234 Management regulations in respect of HMOs*

*(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—*

*(a) there are in place satisfactory management arrangements; and*

*(b) satisfactory standards of management are observed.*

*(2) The regulations may, in particular—*

*(a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;*

*(b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.*

*(3) A person commits an offence if he fails to comply with a regulation under this section.....*

4. The relevant regulations are Management of Houses in Multiple Occupation (England) Regulations 2006/372. These impose on HMO managers a duty to ensure that properties are safe and amongst other things that shared appliances are maintained.
5. The Appellant Mukund Patel is the owner of 51 Ellesmere Road, Chiswick, London, W4 3EA (“The Premises”). There is no dispute that this is a house in multiple occupation. It is a six - bedroom house with lounge, dining room and two reception rooms. The Respondents are the London Borough of Hounslow.
6. The relevant history of this case is as follows. The premises were licensed as a mandatory HMO from the 6th of April 2006 until the 5th of April 2011 and from the 12th September 2011 to 11th of September 2016 and again from the 12th of September 2016 to 11th of September 2021. The premises were licenced for eight households and 10 persons. Prior to the expiry of the licence on the 11th of September 2021 a letter was sent to remind the landlord to renew his licence before it expired. The letter was sent as a mail merge batch using a Microsoft Excel application.
7. Mr Smyth the witness for the local authority at the hearing gave evidence to the effect that the local authority had a number of possible addresses for Mr Patel and sent notification to all of these addresses including his home at 99 Chertsey Road, St Margarets, Twickenham, TW1 1ER. On the 26th of October 2021 the local authority were informed by a tenant at the premises that the hot water and heating boiler was not functioning and it had been broken since the beginning of the summer. They asked for an officer to attend. Mr Smyth went to the premises on the 29th of October 2021. He was let into the premises by a gentleman who lived on the ground floor rear middle room. He was shown the boiler which was partially disassembled and turned off at the power switch. He found parts of the boiler on the top of it. The tenant said the gas man had been and put a “do not use” sticker on it and the landlord had removed the sticker. The tenant said that the fixed heating did not work and they used electric heaters but these were inconvenient and dangerous. Mr Smyth noted a variety of fan and convection portable electric heaters in the premises. While he was inspecting the kitchen he found that although the hot water was working the kitchen sink did not drain. He asked about the functioning of the hob on the left of the boiler the tenant said it did not work. He checked underneath where the oven is located and found a power cable going to the hob which on testing had a power supply however the wiring was very poor insecure and dangerous. The oven also did not work. He found no power in the cable.

8. Mr. Smyth told the tenant that as there were works in progress and the initial complaint regarding hot water and heating was being dealt with by the landlord he would not take any action at that point. In other words he gave the Appellant the benefit of the doubt. He returned to the premises on the 14th of December 2021. He noted that the boiler had been changed and the heating was working and the sink was draining. However, the hob and oven were still not working. Upstairs he found the shower units which were electrically powered were not functioning. In evidence he was quite clear that all of the shower units were out of order, although the Appellant said that one of them was working. The tenant at the premises told Mr Smyth that the showers had not been working for some time. He asked the tenants to give written statements but they did not want to give evidence against their landlord.
9. On the 19th of January 2022 a Local Government Miscellaneous Provisions Act 1976, section 16 notice was sent by post and e-mail to the Appellant at 99 Chertsey Rd. No response was received. On the 19th of January 2022 a notice under the Management of Houses in Multiple Occupation (England) regulations 2006 Reg 6 (duty of a manager to supply and maintain gas and electricity) was served requiring the manager to provide gas and electricity certificates was sent to the Appellant at 99 Chertsey Rd. On the 19th of January 2022 a notice under the Housing Act 2004 section 249A Notice of Intention to Impose a Financial Penalty was sent by first class post to the Appellant at 99 Chertsey Road.
10. Mr Smyth said that the Appellant was the person managing the premises - this was not in dispute. He said that the Appellant had failed to renew his licence and comply with the licence conditions and committed offences under section 72 of the Housing Act 2004. As a result of these failings a financial penalty was imposed for the breaches of the HMO licence namely the two electrically powered shower units were not functioning, parts of the electrical installation in the property were unsafe and the oven in the kitchen did not function as it was not wired to the mains. These hazards reduced the available facilities in the premises and increased the risk of fire and electrocution which was in breach of regulation 7 duty of manager to maintain common parts fixtures fittings and appliances.
11. In calculating the penalty to be imposed Mr Smyth referred to the local authority's housing enforcement policy.
12. The relevant parts of the policy state the following:

### ***3. Deciding on the Level of Civil Penalty***

3.1 The council will take into consideration paragraph 3.5 of the Guidance when deciding on the level of civil penalty to impose. The following factors will be considered to ensure that the civil penalty is set at the appropriate level; The severity of the offence; the culpability and track record of the offender; the harm caused to the tenant; the punishment of the offender; to deter the offender from repeating the offence; to deter others from committing similar offences and to remove any financial benefit the offender may have obtained as a result of committing the offence.

3.2 When setting the amount of civil penalty the council will have regard to the following two stage assessment.

Stage 1 - banding the offence in accordance with the penalty matrix in table 1 below.

Stage 2 - adjusting the level of fine to take account of other aggravating or mitigating factors

3.3 Table 1 matrix £0 – 2,499 ASP  
below combines £1250

the culpability of the offender with the severity of the offence and harm caused to give a starting point for the level of civil penalty to be issued. The following banding has been applied;

Band 1 =

Band 2 = £2,500 – 4,999  
ASP £3,750

Band 3 = £5,000 - 9,999  
ASP £7500

Band 4 = £10,000 – 14,999  
ASP £12,500

Band 5 = £15,000 - 22,499  
ASP 18,500

Band 6 = £22,500 – 30,000  
ASP £26,250

Table 1 Penalty Matrix to band offence

3.4 The council will have regard to the following factors when considering the band level and other aggravating or mitigating circumstances. These examples are not mandatory or exhaustive and are for indicative purposes only.

### **3.5 Factors to be considered for Level of Culpability**

1) The degree of wilfulness and or negligence. The extent to which the actions or offence were deliberate.

2) The extent to which the actions or offence were concealed.

3) Knowledge of legal requirements. landlords who have a significant portfolio of properties and where renting properties is their main occupation, they would be expected to know their legal responsibilities.

4) How much control did the person have over the event or circumstances? 5) Did they take reasonable precautions?

### **3.6 Factors to be considered for level of harm and severity**

1) Was more than one tenant affected?

2) Was the actual or potential physical or psychological impact on victim(s) particularly serious?

3) Was the actual or potential physical or psychological impact on the victim(s) long-term, life-altering or potentially fatal?

4) Was the victim(s) vulnerable, as per the guidance on CPS (a family with children, a vulnerable adult, someone with language issues)?

5) Was there actual or potential harm caused for the surrounding area or community?

### **3.7 Aggravating and Mitigating Circumstances**

1) Where the offence was carried out by portfolio landlords or letting agents who are expected to know requirements the penalty may be adjusted upwards.

2) Where an offender has a history of non-compliance the penalty may be adjusted upwards.

3) Where the offender has gained financially the penalty may be adjusted upwards.

4) Where there are links to other crimes the penalty may be adjusted upwards

5) Where the offence impacts adversely on the council's priorities the penalty may be adjusted upwards

6) Where there has been no action taken to remedy the offence or cooperation in the investigation of the offence the penalty may be adjusted upwards.

7) Where there has been a degree of cooperation in remedying the offence or cooperation in the investigation of the offence the penalty may be adjusted downwards

8) The burden to demonstrate inability to pay as with the burden on demonstrating mitigating circumstances rests on the offender.

## **4. Factors to be considered for each of the Relevant Offences**

The examples given in respect of each of the relevant offences are not mandatory or exhaustive and are for indicative purposes only.

### **4.2 Offences for Failing to Licence**

*Houses in Multiple Occupation (HMOs) under part 2 [section 72]  
Selective Licensing of 'houses' under part 3 [section 95]*

**Culpability**

- 1) Where the offender tried to conceal the offense by obstructing access or providing false information on occupancy the level of culpability may be high.*
- 2) Where multiple warning letters had been sent on the licensing requirements and the offender had knowledge of offence but failed to act in a timely manner the level of culpability may be medium.*
- 3) Where offender had reason to believe that it was the responsibility of another person to apply for the licence the level of culpability may be low.*

**Harm**

- 4) Severe overcrowding in respect of space and amenities, multiple beds in rooms, and occupied by vulnerable persons may have a higher level of harm.*
- 5) The presence of substantial Category 1 and 2 hazards and serious breaches of HMO Management Regulations which have a serious impact on the health and safety of tenants may have a higher level of harm.*
- 6) Failure to address property and or tenancy management issues which causes substantial harm and disturbance to neighbours from ASB, noise and other nuisance may have a higher level of harm.*
- 7) The longer the continuance of the offence may have a higher level of harm.*

**Aggravating and mitigating circumstances**

- 8) Where the landlord has gained financially due to non-payment of licence fee and increased rental income from overcrowded conditions the civil penalty may be adjusted upwards.*
- 9) See Generic aggravating features/factors set out in 3.7 above.*

**4.5 Failure to comply with a regulation in respect of an HMO [section 234]**

**Culpability** 47

- 1) Where the offender is acting wilfully or negligently in total disregard of legal requirements the level of culpability may be high. For example actions or omission of actions contribute to illegal harassment and or eviction.*
- 2) Where offender has evaded their legal obligations the level of culpability may be medium. For example omitted to take all necessary steps to comply with the regulations such as initiate proceedings against a tenant for not complying with the terms of their tenancy.*
- 3) Where the offender did not have complete control or responsibility for ensuring compliance or had taken reasonable precautions the level of culpability may be low.*

4) *Where some arrangements were in place for cleaning and maintaining common parts but they were not adequate the level of culpability may be low.*

**Harm**

5) *Failure to display notices and or relatively minor property management issues may have a lower level of harm.*

6) *Failure to address property management issues that have a significant harm impact on the tenants such as failing to maintain fire safety precautions, failing to maintain essential services, failing to maintain common parts and amenities in a safe condition and working order may have a higher level of harm.*

7) *Failure to comply with Management Regulations that causes substantial harm and disturbance to neighbours such as waste and refuse accumulations, overgrown vegetation, poorly maintained external areas, pest infestations and other nuisance may have a higher level of harm.*

**Aggravating and mitigating circumstances**

8) *Where the landlord has gained financially due to lack of management arrangements in place and cost of required works the civil penalty may be adjusted upwards.*

9) *See Generic aggravating features/factors set out in 3.7 above.*

13. A Notice of intention to impose the penalties was served on the 19th of January 2022 and a final notice was served on the applicant on the 12th of July 2022. The penalties assessed by the local authority using their matrix were £12,500 for each offence on the basis that each offence was assessed as being of medium culpability and harm.
  
14. The Appellant's son prepared his defence and represented him at the hearing. He said that there were procedural errors by the local authority which meant that the Appellant did not get the opportunity to rectify the breach. He said that the Appellant first became aware of the lapse in the HMO licence in April 2022. The notice of intent was provided on the 6th of April 2022 by e-mail. He claims that the Appellant never received a copy of the notice which was sent on the 19th of January 2022 because it was incorrectly addressed to an address at 30 Broad St, Teddington TW1 18RF. He said that the Appellant has no connection with this address. During the hearing it transpired that this is an address that is connected with the Appellant's cousin. Mr. Smyth said as indicated earlier that every address where the landlord was potentially connected with was written to and this included 30 Broad St because somehow the local authority had been alerted to the fact that the Appellant



was connected to that this address. However he was clear that the Appellant was also served by post at his home address at 99 Chertsey Road.

15. The Appellant said he should have received a warning letter in May 2021 but he didn't receive it because it was also incorrectly addressed. The Appellant claimed that on discovering the situation he promptly rectified it by submitting an application to obtain a licence on the 11th of April 2022. He said that if he'd received the warning letter he would have made the application sooner and avoided the penalty. Similarly if he'd received a notice of intent when it was first issued he would have had time to make representations within 28 days of the 19th of January 2022. By the time he received the notice these opportunities had been lost and the financial penalty was inevitable.
16. As well as this the Appellant claims that the local authority did not follow their own guidelines in terms of their enforcement policy. In particular he says that the local authority should not have found that the Appellant had demonstrated medium culpability because this was based on warning letters being sent and he had not received them. He said therefore a low level of culpability was appropriate.
17. In relation to the regulation 7 breach the Appellant said the penalty was too high. It should not have been a medium penalty in terms of culpability. He argued that a penalty of £1,250 per offence was appropriate.
18. In relation to the electrical showers he said that one shower was working and there were alternative showers functional. It transpired at the hearing that these were showers in a bath albeit with a glass surround. He said that the hob had been disconnected so that boiler repairs could be carried out and it was therefore unfair for the local authority to consider this. He also said that the condition of the property was such that the repairs were being undertaken as needed and the issues were being addressed without delay.
19. At the hearing the Appellant raised a further argument in relation to the failure to licence. He said through his son that a variation of his property licence had caused confusion. The previous license lasted for a period of five years from the 12th of September 2016. It was originally for five households. It was extended by variation to 8 households on the 3rd of June 2019. According to the Appellant he thought that this meant he had another five years from 3rd of June 2019 and that was the reason why he hadn't automatically renewed the licence. The Appellant's son accepted on his behalf that it was a mistake.

## Determination

20. The tribunal has no hesitation in rejecting the argument put forward by the Appellant to the effect that he did not receive warnings before the financial penalty was imposed. Firstly, it was for him to keep tabs on his licencing affairs and ensure the renewal took place at the correct time. Secondly the tribunal found Mr. Smyth to be an entirely honest witness and believed his evidence that he served the Appellant at his home address as well as other addresses. The tribunal believes and finds that the Appellant received the notices but failed to act on them. Accordingly the offence in relation to the failure to licence is made out. In relation to the management offence whilst the Tribunal accepts that there was some efforts to carry out repairs at the premises Mr Smyth had been told by the tenant that the heating system had not been working since the summer and the Tribunal accepts that this was the case and when he reinspected there were still items of disrepair in evidence. There was no challenge to the fact that these items came within the regulations in terms of the landlord's responsibilities. Taking a snapshot of events when Mr. Smyth first inspected the premises he found a property which was patently in disrepair and unsafe. When he revisited some improvements had been made. The tribunal does not accept the suggestion by the Appellant and his son that they were closely monitoring and responding to disrepair in the premises. The tribunal finds that the showers were not working when Mr Smyth revisited. There may have been an alternative means of showering but the shower units were defective. It is important to remember that the reason that the process was initiated in this case was a complaint by a tenant.
21. In relation to the failure to licence applying the Respondent's matrix the Tribunal finds that culpability was low because there was only one reminder sent on the local authority's evidence. However the level of harm or potential harm was still medium as were serious breaches of the regulations and there was a failure to address property issues. This means that a band 3 penalty was appropriate and the Tribunal sets this penalty at **£7,500**. In relation to the second penalty the Tribunal considers its appropriate to maintain the same penalty imposed by the local authority. It is accepted that there was medium culpability and a medium risk of harm. The Appellant had evaded his responsibilities as a landlord and there were significant property issues evident. A penalty of **£12,500** is imposed.

Judge Shepherd

24<sup>th</sup> February 2023

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.