



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

Case Reference : **LON/00AM/HNA/2022/0077**

HMCTS : **Face-to-Face Hearing**

Property : **Flat 32 Buxton Court, Thoresby Street, London, N1 7TN**

Applicant : **Rent Room Ltd, trading as One Deal Estate**

Representative : **Mohammed Tayeeb Uddin (Director)**

Respondent : **London Borough of Hackney**

Representative : **Dean Underwood (Counsel)**

Type of Application : **Appeal against a financial penalty – Section 249A & Schedule 13A of the Housing Act 2004**

Tribunal Members : **Judge Robert Latham
Anthony Harris, LL.M FRICS
FCI Arb**

Date and Venue of Hearing : **14 March 2023 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **22 March 2023**

DECISION

Decision of the Tribunal

The Tribunal confirms the financial penalty of £11,999.70 imposed by the Respondent in respect of the offence under section 72(1) of the Housing Act 2004.

The Application

1. This is an appeal by Rent Room Ltd, the Applicant, against a Financial Penalty imposed by the London Borough of Hackney (“Hackney”) under Section 249A & Schedule 13A of the Housing Act 2004 (“the Act”). The Final Notice to impose a Financial Penalty is dated 4 October 2022. The offence specified is one under section 72 of the Act, namely an offence of control or management of an unlicensed HMO at 32 Buxton Court, Thoresby Street, London, N1 7TN (“the Flat”). The Applicant has managed the Flat on behalf of the leaseholder, Mrs Jebun Nessa Ahmed.
2. On 14 October 2022, the Tribunal received the Applicant’s application. It was signed by Mr Mohammed Tayeeb Uddin who is the sole director and shareholder of the Applicant Company. The single ground of the appeal is that the Financial Penalty was excessive. Mr Uddin repeated the submissions that he had made in his letter, dated 14 September 2022, in response to Hackney’s Notice of Intention.
3. On 5 December 2022, the Tribunal gave Directions:
 - (i) The Applicant has filed brief written representations in support of its appeal (7 pages). References to this will be prefixed by “A.____”.
 - (ii) The Respondent has filed an extensive bundle of 127 pages. References to this will be prefixed by “R.____”.
4. On 3 September 2022, the Tribunal received an application for a Rent Repayment Order (“RRO”) from Mr Georgi Kolev who has been one of the tenants at the Flat since 3 February 2019.
5. Procedural Judges have decided that both applications should be listed before this Tribunal and that this appeal should be heard first. On 14 March, we heard this appeal and determined our decision. We stated that we would put our decision and our reasons for it in writing. On 15 March, we heard the application for the RRO and made a RRO in the sum of £7,920 against Mrs Ahmed, the landlord. We have issued separate decisions in respect of each application. We have determined this application solely on the basis of the evidence that we heard on 14 March.

The Hearing

6. Mr Uddin appeared for the Applicant Company. He gave evidence.
7. Mr Dean Underwood (Counsel) appeared for the Respondent. He adduced evidence from Ms Anne Reynolds who is a Private Sector Housing Officer and Mr Emmanuel Mfum, her superior. Ms Reynolds explained her reasons for proposing a Financial Penalty of £13,333 in the Notice of

Intention and reducing it to £11,999.70 in the Final Notice, having considered representations from Mr Uddin. Mr Mfum was tendered, and had little to add to Ms Reynolds' evidence. Their Bundle included the agreements and short statements from the three tenants who have occupied the Flat, namely Mr Georgi Kolev, Mr Peter Todorov and Mr Viswas Mohan. The Respondent did not call any of the tenants to give evidence.

8. Mr Uddin is aged 22. He is articulate and intelligent. When alerted to the fact that the Tribunal did not have a general discretion as to the level of Financial Penalty that should be imposed, but was rather was obliged to have due regard to Hackney's policy, he adjusted his argument accordingly. He argued that both the "harm level" and "culpability" should be put in the lowest category.
9. We regret that we did not find Mr Uddin to be a satisfactory witness. He seemed to make up his evidence as he went along, giving the answer that he felt best suited his case. He had no understanding of the obligations that the law imposes on a property manager. He stated that he had never visited the Flat. When Judge Latham suggested that his evidence might be summarised by the comment that he "didn't have the faintest idea of what was happening at the Flat", he agreed that this was a fair assessment.
10. At the commencement of the hearing, Mr Underwood had been content to argue that the Financial Penalty should be affirmed. However, in his closing submissions, he reminded us of our power to increase the Financial Penalty in the light of the new evidence that we had heard and which had not been before the Respondent when it had made its decision.
11. The Tribunal is satisfied that Mr Uddin is what the legislation would categorise as a "rogue property agent". He has sought to operate through two companies.

(i) **Rent Room Ltd:** On 12 April 2019, this company was incorporated by Md Abdul Halim who gave his correspondence address as "1a Holybush Place, Bethnal Green, London, E2 9QX". On 1 January 2020, Mr Uddin acquired the company giving his correspondence address as "1g Holybush Place". The Company has traded under the name "**One Deal Estate**". Mr Uddin stated that he had acquired this company for some £25k. He had borrowed this sum from his father. When he took over this business, he also took over an office at Hollybush Place. He employs two staff and a builder. He stated that this company was managing some 25 HMOs. He added that he had little experience of managing properties when he acquired the company. He attributed this his age and inexperience.

(ii) **Joes Properties Ltd:** On 13 March 2018, this company was incorporated by Majed Rahman, who gave his correspondence address as "Global Residential, 1g Holybush Place, Bethnal Green, London, E2 9QX",

On 30 September 2018, Md Abdul Halim took over control of the company. He gave the same correspondence address. On 1 July 2020, Mr Uddin took over the company, giving the same correspondence address. On 25 August 2021, Mr Uddin applied to strike the company off the Register of Companies. On 7 September 2021, the strike off was suspended, an objection having been received by the Registrar. The Company has traded under the name "**Global Residential**". Mr Uddin stated that he had also acquired this company for some £25k. He had again borrowed this sum from his father. When he took over this business, the company was managing some 25 properties which were not HMOs. However, the Company had acquired such a bad record on the social media, that he had decided to hand back these properties.

12. Mr Uddin stated that he had established two further companies. On 12 October 2022, he incorporated MTV Ecommerce Ltd. This is an online import and export business. On 7 March 2023, he incorporated TIBZ Properties Ltd. This is a lettings agency for commercial properties.
13. The appeal is by way of a re-hearing. The Tribunal is entitled to have regard to matters of which Hackney was previously unaware. However, we cannot have regard to the evidence which we heard on 15 March.

The Sole Issue in Dispute

14. At the beginning of the hearing, Mr Uddin confirmed that he accepted that the Flat was an HMO which required a licence under the Additional Licensing Scheme which Hackney had introduced in March 2018. He admitted an offence under section 72(1) of the Housing Act 2004. He conceded that no application has been made for an HMO licence. The sole issue is the size of the Financial Penalty.

The Background

15. The Flat at 32 Buxton Court was originally a one bedroom flat. However, the living room has been divided with a partition to create two additional bedrooms. Three tenants have shared the kitchen and bathroom.
16. On 11 June 2004, Mrs Ahmed was registered as the leasehold proprietor at the Land Registry. The Land Registry record that she paid £110k. On 26 April 2004, Hackney had granted Jebun Nessa Uddin (presumably Mrs Ahmed) a long lease, probably acquired under the Right to Buy legislation.
17. On 3 February 2019, "Global Residential" trading as "Joe's Properties Limited" (sic) let Room C to Mr Georgi Kolev. The landlord was specified as Jebun Nessa Ahmed. The (incomplete) agreement is at R.79-90. The tenancy was granted for a term of 6 months at a rent of £422.50 a fortnight. Mr Uddin was unclear as to who had signed the agreement on behalf of Joes Properties Ltd.

18. Mr Kolev provided Hackney with a brief statement, dated 27 July 2022, which is at R.89. He stated that his rent was £750 per month which he was paying "One Deal Estate/Rent Room Limited" by bank transfer. He was withholding part of his rent because the agency had stopped servicing the Flat.
19. On 3 May 2021, "Joes Properties Ltd" granted a "licence to occupy" Room 2 to Mr Peter Todorov. The weekly rent was £110. This was to be paid monthly at a rate of £477. The agreement is at R.68-76. The agreement was signed by "Global Residential Limited". The email address for the licensor was given as "info@globeresidential.co.uk". Again, Mr Uddin was unclear as to who signed the agreement on behalf of the licensor. It is apparent that the substance and reality of the agreement was to create a tenancy. The tenant was not notified of the name and address of the landlord.
20. Mr Todorov provided Hackney with a brief statement, dated 27 July 2022, which is at R.90. He stated that he paid "One Deal Estate/Rent Room Limited" £450 per month.
21. On 24 November 2021, "One Deal Estate" granted a "licence to occupy" Room 3 to Mr Viswas Mohan. The monthly rent was £480. The agreement is at R.59-69. It uses the same template as Mr Todorov's agreement. The email address for the licensor was given as "info@globeresidential.co.uk". Mr Uddin was unclear who signed the agreement on behalf of the licensee. Again, it is apparent that the substance and reality of the agreement was to create a tenancy. The tenant was not notified of the name and address of the landlord.
22. Mr Mohan provided Hackney with a statement, dated 28 July 2022, which is at R.91-4. He stated that he paid "Rent Room Ltd" £480 per month. He stated that since he had moved into the Flat, no one had visited. He stated that the agency was supposed to clean the Flat once or twice a month. However, he added that "they always told lies about the cleaning".
23. Mr Uddin provided the Respondent with a Letting Agreement dated 1 May 2022 between "Rent Room Ltd" trading as "One Deal Estate" and Mrs Ahmed which is at R.47-57. The Agreement provided for three options. Mrs Ahmed signed up for Option 3, "Full Management" at a monthly commission of £373. The agreement is detailed and suggests a lettings agency with detailed knowledge of the statutory responsibilities of managing residential properties. Mr Uddin told the Tribunal that he had downloaded it from the internet. It was quite apparent that he had no understanding of the obligations that the agreement indicated that the Applicant would be assuming as property agent.
24. In October 2020, Mr Kolev contacted Hackney to complain that there were no fire alarms, fire extinguishers or other health and safety measures. He made a further complaint in April 2021. On 11 March 2022, he made a formal complaint as there had been no response from Hackney. On 20

April 2022 (at R.106), Hackney responded to his complaint. Ms Adele Clarke confirmed that no HMO licence was in place. Hackney would write to the landlord instructing them to apply for a licence. In the absence of this, a Civil Penalty Notice would be imposed.

25. On 20 June 2022, some 20 months after Mr Kolev had first complained about his living conditions, Ms Reynolds and Mr Kenneth Appiah inspected the Flat. They confirmed that the three tenants were living in the flat and that there was no evidence of smoke or carbon monoxide alarms. On 1 July, Ms Reynolds emailed the Applicant (at info@globalresidential.co.uk and info@onedestate.co.uk) requiring the installation of a smoke alarm and carbon monoxide alarm. Hackney asked the Applicant to confirm installation of the alarms by return of email. The Applicant did not do so.
26. On 27 and 28 July, Ms Reynolds made further visits. She noted that there were still no smoke and carbon monoxide alarms. She spoke to Mr Kolev, Mr Todorov and Mr Mohan.
27. On 4 August 2022, Ms Reynolds sent a letter to Mr Uddin (as a director of Joes Properties Ltd trading as Globe Residential) and on 11 August to Mr Uddin (as a director of Rent Room Ltd trading as One Deal Estate) to inform him of her findings. The letters advised him of a liability under section 72(1) of the 2004 Act and provided information about how to apply for a licence. The Applicant did not do so.
28. On 5 August 2022, the Respondent served the Applicant with notice under section 16, Local Government (Miscellaneous Provisions) Act 1976, requiring the Applicant to declare its interest in the Property. It served a further notice under section 235 of the 2004 Act requesting the disclosure of documents. The Applicant responded to these notices. On 19 August, Mr Uddin provided a photo showing that a smoke alarm had been installed. However, no carbon monoxide alarm had been fitted.
29. On 1 September, Hackney served the Applicant with Notice of Intention to impose a penalty of £13,333 (at R.8-11). The Notice of Intention Information is at R.34-35. Hackney advised Mr Uddin of the Applicant's right to make representations. The letter added: "If your representations relate to the level of the financial penalty or your ability to pay it, you should support these assertions with evidence for the Council to consider, e.g. Bank Statements or Company Accounts". Hackney enclosed a formal Ability to Pay Declaration to be completed and verified. The Applicant was invited to disclose relevant financial information.
30. The Applicant did not complete that form. Neither did it apply for a licence. On 14 September (at R97-98), Mr Uddin made representations accepting the company's liability but contending that the fine was excessive. He suggested that this should be set at the lowest level of £1,000.

31. On 4 October, Hackney issued its Final Notice (at R.25-29). The Notice of Review Information is as R.34-35). Hackney reduced the Financial Penalty to £11,999.70. It indicated further that it would reduce the penalty amount (a) by 20% if the Applicant paid that sum within 28 days and (b) to £6,666.50 (50% of the originally intended penalty), if the Applicant also applied for a licence.
32. The Applicant did not pay the penalty within the specified period of 28 days. Neither did it apply for a licence. Indeed, at the date of the hearing, no application had been made for a licence.

The Law

33. The Housing Act 2004 ("the 2004 Act") introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation.
34. Part 2 of the Housing and Planning Act 2016 introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting local housing authorities ("LHAs") to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.
35. In *Jepsen v Rakusen* [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, considered the policy of Part 2 of the 2016. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. In the Court of Appeal (reported at [2021] EWCA Civ 1150; [2022] 1 WLR 32), Arnold LJ endorsed these observations. At [36], he noted that Part 2 of the Act was the product of a series of reviews into the problems caused by rogue landlords in the private rented sector and methods of forcing landlords to either comply with their obligations or leave the sector. Part 2 is headed "Rogue landlords and property agents in England". At [38], he noted that the Act conferred tough new powers to address these problems. At [40], he added that the Act is aimed at "combatting a significant social evil and that the courts should interpret the statute with that in mind". The policy is to require landlords to comply with their obligations or leave the sector. These policy objectives apply equally to rogue letting agents.
36. Section 61 of the 2004 Act provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of

“tests”. Section 254(2) provides that 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.”

37. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act. In March 2028, Hackney introduced an Additional Licencing Scheme which applies to all HMOs in the borough which are occupied by 3 or more persons occupying 2 or more households.

38. Section 72(1) creates an offence of having control or management of an unlicensed HMO". Section 263 provides:

“(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

39. It is to be noted that there may be more than one person who may commit an offence under section 72 as having control or managing an HMO. In such circumstances, it will be for the LHA to determine who is the appropriate person to hold a licence. This will normally be the landlord or the property agent. Section 251 provides for offences by bodies corporate. It does not create a new offence, but rather allows proceedings based on existing offences to be brought against directors personally for actions by corporate bodies under their control. However, when it comes to the making of a RRO, this can only be made against the "landlord".
40. In the current case, it would have been open to the Respondent to impose a Financial Penalty on (i) Mrs Ahmed, as landlord, who is the lessee of the Flat who receives the rent through an agent, and is the "person managing" the Flat; or (ii) Rent Room Ltd, as property agent, who receives the rent from the tenants and is the "person having control" of the Flat. Having decided to impose a Financial Penalty on Rent Room Ltd, it would also have been open to impose a Financial Penalty on Mr Uddin, as its director. The Respondent has decided to impose the Financial Penalty on Rent Homes Ltd. Only time will show whether they are able to enforce the payment of the Financial Penalty.
41. By section 72(6), a person who commits an offence under section 72(1) is liable on summary conviction to an unlimited fine. Alternatively, by section 249A, a LHA may impose a Financial Penalty of up to £30,000:

“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. This includes ... offences under section 72 (licencing of HMOs)”.

42. Schedule 13A deals with the procedure for imposing Financial Penalties and appeals against them. Paragraph 10 of Schedule 13A provides for a right of appeal:

“(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.”

43. Paragraph 12 requires a LHA to have regard to any guidance given by the Secretary of State about the exercise of its functions under s.249A. Mr Underwood provided the Tribunal with the current guidance issued by the Secretary of State, namely “Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities” (April 2008). LHAs are expected to develop and document their own policy on when to prosecute and when to issue Financial Penalties and should decide which option they wish to pursue on a case-by-case basis in line with that policy.

44. Mr Underwood highlighted the following passages from the Guidance:

(i) The amount of the penalty is to be determined by the LHA in each case, having regard to the Guidance ([1.11]);

(ii) LHAs are expected to develop and document their own policies about when to prosecute, when to penalise and how to determine the appropriate level of a penalty ([3.3], [3.5]);

(iii) Higher penalties are required when the recipient's actions are deliberate, or if they ought to have known that they were in breach of their legal obligations ([3.5(b)]); and

(iv) It is important that the penalty is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities ([3.5(d)]).

45. In *Marshall v Waltham Forest LBC* [2020] UKUT 35 (LC), the Upper Tribunal confirmed that when dealing with an appeal against a Financial Penalty, a FTT should start with the LHA's policy and apply it as if "standing in the shoes of the local authority". Moreover, although the appeal is conducted as a re-hearing, the Tribunal must consider the authority's original decision (i) to impose the Financial Penalty and (ii) as to the level of the penalty set under the Policy. The Tribunal must afford those decisions "considerable weight" and "great respect". In the subsequent decision of *Gateshead Borough Council v City Estates Holdings Limited* [2023] UKUT 35 (LC), the Upper Tribunal emphasised that a FTT must make its own decision. Its role is not to review the decision made by the LHA.

Hackney's Policy

46. Hackney have adopted a "Guide to Applying the Civil Penalty Fee Matrix" (at R.14-24). The Policy outlines, amongst other matters, the Council's approach to fixing the amount of financial penalties for offences committed in its area. Under the policy, an offence may fall into one of six bands which reflect the gravity of the offence in question, for which the corresponding penalty may be adjusted to account for mitigating and aggravating circumstances.
47. Failure to licence an HMO is regarded as a serious matter meriting a Band 3 or 4 penalty (ranging from £10,000 to £19,999 in Table 1). Hackney assessed a "medium likelihood of harm" and a "medium level of culpability". This justified a Financial Penalty of £13,333 (Table 2). When Hackney assessed the penalty for the Notice of Intention, there were no known mitigating factors. The Notice of Intention therefore specified a Financial Penalty of £13,333. The Notice of Intention Calculation is at R.34-35.
48. On 14 September (at R97-98), the Applicant made representations against this penalty. Mr Uddin accepted the company's liability. He stated that he had only just taken over the running of the company and suggested that its offence was a consequence of his "lack of experience and naivety". He stated that it was clear to him that he would benefit from undertaking some training in how best to run a letting business. He had also made inquiries about joining a landlord accreditation scheme. He stated that the company retained only £5,000 of the rental income generated by the properties it managed, and suggested that the intended penalty would result in the company's closure. Although he stated that he was attaching bank statements for the last three months, Hackney did not receive these. Mr Uddin proposed a penalty of £1,000.

49. Hackney affirmed their starting figure of £13,333 as their starting point. However, Ms Reynolds applied a 10% reduction for mitigating circumstances having regard to his admission of guilt for the offence and recognition that he required training to improve his knowledge of the regulations. These are examples of mitigating factors in Hackney's policy. This reduced the Financial Penalty to £11,999.70.

The Tribunal's Decision

50. In his application Form, Mr Uddin states that the reasons on for his appeal is that the amount of the penalty is far too high. He relies on the matters that he had raised in his letter to Hackney, dated 14 September 2022 (at R.1-2). Although he has provided a copy of this letter in his Bundle of Documents, he has not attached the bank statements to which the letter refers. Mr Uddin provided an email from the National Residential Landlord Association ("NRLA") confirming that he had been admitted to membership (R.3-4). He stated that he had completed an "e-course". He had paid £200. He also produced an account suggesting that Mr Kolev owed rent arrears of £9,015 (R.5-7). No application has been made for an HMO licence. Mr Uddin was unable to provide an explanation as to why no application had been made.
51. Mr Uddin gave evidence. We did not find him to be a satisfactory witness. On 1 January 2020, Mr Uddin had acquired Rent Room Ltd. He told us that he paid £25k for the company and acquired the management of some 25 HMOs. On 1 July 2020, he had acquired Joes Properties Ltd. He told us that he paid £25k for this company and acquired the management of some 25 properties. He stated that this company had acquired such a bad reputation on the social media, that he had handed these properties back. Apart from the records maintained by Companies House, there was no documentary evidence to support these assertions. We regret that we can give little credence to anything that Mr Uddin told us, which is unsupported by documentary or other evidence.
52. Mr Uddin was unable to offer any adequate explanation as to why: (i) On 3 February 2019, Joe's Properties Limited (sic) had let Room C to Mr Kolev; whilst (ii) On 3 May 2021, Joes Properties Ltd had granted a licence of Room 2 to Mr Todorov; and (iii) On 24 November 2021, One Deal Estate had granted a licence of Room 3 to Mr Todorov. He stated that he had not visited the Flat.
53. Mr Uddin's evidence about the detailed Letting Agreement, dated 1 May 2022, which Rent Room Ltd and Mrs Ahmed, the leaseholder, was equally unsatisfactory. The agreement suggested that the Applicant had a detailed knowledge of the statutory requirements of a property agent. It was quite apparent that he did not. He had merely downloaded the agreement from the internet adding the "One Deal" logo, thereby suggesting that the Applicant Company was a professional property agent. It was no such thing.

54. Mr Uddin stated that he had attended the NRLA "e-course". It was apparent to the Tribunal that he had learnt little from this course.
55. We are entitled to have regard to matters which were not known to Hackney. In his closing submissions, Mr Underwood reminded us that it would be open to us to increase the Financial Penalty. However, Mr Uddin is a litigant in person who did little credit to his case. We are satisfied that in determining the appropriate Financial Penalty, we should be careful to make an objective assessment of the seriousness of the offence. We should not be unduly influenced by the unfavourable impression that Mr Uddin made on us.
56. In assessing the Financial Penalty, we must have regard to Hackney's Policy:
- (i) Hackney treat a failure to licence an HMO as a serious offence. Mr Uddin suggested that this offence should be put in the lowest category of "harm level".
 - (ii) Hackney assessed the severity level as medium. Mr Uddin suggested that this should be assessed as low.
 - (iii) Hackney assessed the level of culpability as being medium. Mr Uddin against suggested that this should be low.
 - (iv) Under Table 2 of Hackney's policy, an assessment of "medium harm level" and "medium culpability" indicated a Financial Penalty of £13,333. To this, Hackney made a reduction of 10% for mitigating circumstances. The policy permits a reduction of up to 30%. Mr Uddin argued that a greater reduction should be made having regard to the Applicant's financial circumstances. The Tribunal should also have regard to the separate application for a RRO.
57. We agree with Hackney that any licencing offence should be treated as "serious". We note that in *Acheampong v Roman and Choudhury v Razak* [2022] UKUT 239 (LC); [2022] HLR 44, Judge Cooke (at [20]) suggested that the licencing offences are less serious than the other offences in respect of which a Financial Penalty can be made as they are not punishable by imprisonment. We disagree. As an Expert Tribunal, we have considerable knowledge of housing conditions in London. Unlicensed HMOs with inadequate means of escape carry a serious risk of death or serious injury. Equally, properties let in in unfit condition with inadequate ventilation, dampness and mould growth also carry a risk of death or serious injury to health. These are serious hazards when assessed under the Housing Health and Safety Rating System introduced by the 2004 Act. We are not willing to minimise the social evil at which the 2016 Act is addressed.
58. Hackney assessed the "harm level" as medium. Ms Reynolds inspected the Flat. We are satisfied that medium is the appropriate level.. The Flat is a

one bedroom ex-council flat which has been adapted to create three bedrooms. Mr Uddin suggested that the tenants had removed the smoke and carbon monoxide alarms. We consider this to be most unlikely. We can see no justification for reducing the harm level to low. Hackney has inspected the Flat. We have not. We should have due regard to the assessment that it has made.

59. In assessing the "culpability" as medium. Hackney categorised the Applicant's culpability as a lack of reasonable care, rather than flagrant disregard of the law. We cannot accept that this could be put into the "low" category, namely as a minor and isolated incident. Hackney has adduced no evidence to suggest that the Applicant has committed any other housing offence. In these circumstances, we are satisfied that medium is the correct assessment.
60. Table 2 of Hackney's policy, an assessment of "medium harm level" and "medium culpability" indicates a Financial Penalty of £13,333. To this, we must to consider whether there should be any reduction for mitigating circumstances or increase for any aggravating factors. Ms Reynolds has applied a 10% reduction for mitigating circumstances having regard to Mr Uddin's admission of guilt for the offence and his recognition that he required training to improve his knowledge of the regulations. We note that the absence of any relevant previous conviction is also a relevant matter.
61. We have had regard to the examples of "aggravating factors" which are specified in Hackney's policy. There is no record of previous convictions; no obstruction of the investigation; no evidence on non-compliance in respect of any of the other properties managed by the Applicant; written agreements have been provided and rent has been received by bank transfer rather than in cash.
62. We were not impressed by the two "licence agreements" granted by the Applicant, the effect of which were clearly to create tenancies. A smoke detector was installed. However, there is still no carbon monoxide alarm. We suspect that fire retardant doors would have been required. Hackney has not called any of the tenants to give evidence to the tribunal.
63. We are not willing to make any reduction on grounds of the Applicant's financial circumstances. No sufficient evidence has been produced in respect of this. Neither do we make any reduction in respect of the RRO of £7,920 which the Tribunal has made against Mrs Ahmed. Parliament has provided that tenants should have a separate and additional remedy. Neither do we have regard to any rent arrears that Mr Kolev is alleged to have. This is rather a matter to be addressed in the application for a RRO.
64. Taking all these factors into account, we are satisfied that a reduction of 10% should be made for the mitigating circumstances identified by Ms Reynolds. Mr Underwood has not satisfied us that any increase should be

made for any aggravating features. Mr Uddin has completed an "e-course". He has also joined the NLRA. The fact that he seems to have learnt little from this course, is not a sufficient reason not to make this reduction. However, we are clear that 10% is the maximum that could be made for mitigating circumstances.

65. We therefore conclude that we should confirm the Financial Penalty of £11,999.70 which Hackney has imposed on the Applicant.
66. We understand that Mr Uddin has satisfied HMCTS that the tribunal fees should be waived on financial grounds. No issue of refund of fees therefore arises.
67. We are concerned that the Applicant has not yet applied for an HMO licence. We have considered whether this should be reflected in the Financial Penalty. However, we note that in their Final Notice, Hackney stated that it would have considered a further 20% reduction in the Financial Penalty where the Applicant to have applied for a licence. Thus, Hackney's Financial Penalty would have been lower had an application been made. Mrs Ahmed is the leaseholder. We would urge her, or her property agent, to apply for a licence at the earliest opportunity. If they fail to do so, further enforcement action is likely.

Judge Robert Latham
22 March 2023

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.