



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

**Case reference** : **LON/00AZ/HNA/2022/0080**

**Property** : **380 Bromley Road London SE6 2RS**

**Appellant** : **Mr S Santhakumar**

**Representative** : **In person**

**Respondent** : **London Borough of Lewisham**

**Representative** : **Mr P Boyle**

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

**Tribunal** : **Judge Pittaway  
Ms R Kershaw BSc**

**Date of hearing** : **19 September 2023**

**Date of decision** : **2 October 2023**

## **Decision**

1. The tribunal find that the appellant committed an offence under s72(3) (b) of the 2004 Act (the ‘**2004 Act**’).
2. The Tribunal finds that the appellant did not have a reasonable excuse under s72(5) of the 2004 Act.
3. The tribunal finds that the appropriate financial penalty is £500.

## **Application**

4. With an application dated 18 October 2022 the appellant seeks to challenge the imposition by the Council of a financial penalty of £4,500 in respect of the property.

## **The hearing**

5. The appellant appeared in person at the hearing. The respondent was represented by Mr Boyle, a private Sector Housing Fraud and Intelligence Officer working for Lewisham’s Private Sector Housing Team.
6. The tribunal had before it a bundle of 24 pages from the appellant and a bundle of a bundle of 36 pages from the respondent. It also had a copy of the Civil Penalty Calculator of the London Borough of Lewisham and a copy of its Culpability/Harm Grid.
7. The tribunal heard evidence and submissions from Mr Boyle and Mr Santhakumar.

## **Background**

8. The property is described in the application as a four-bedroom house.

## **Issues**

9. The issues for the tribunal to determine were
  - Had Mr Santhakumar committed an offence under section 72(1) of the 2004 Act (owning/managing an unlicensed HMO)?
  - If Mr Santhakumar had committed an offence did he have a reasonable excuse?
  - If Mr Santhkumar had committed an offence and did not have a reasonable excuse what was the appropriate level of penalty?

## **Reasons for the tribunal's decision**

10. The tribunal makes the determinations in this decision on the basis of the documents in the bundles before it at the hearing, the evidence before it and which it heard at the hearing and the submissions made. As appropriate these are referred to below. The relevant sections of the 2004 Act to which the tribunal has had regard are also set out below.

### **Had Mr Santhakumar committed an offence under section 72(1) of the 2004 Act?**

11. S249A(1) and (2) of the 2004 Act provide,

*(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).*

12. s72(1) of the 2004 Act provides that,

*‘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.’*

13. As stated in the directions of 20 February 2023, amended on 7 June 2023, the appeal is by way of a re-hearing of the Respondent's decision to impose a penalty and/or the amount of the penalty. The allegation is that the appellant has committed a criminal offence, and it is for the respondent to prove this beyond reasonable doubt.
14. The Respondent alleged that on 4 July 2022 the Appellant owned/managed a property that was an unlicensed HMO.
15. On 29 October 2021 the Respondent designated the entire area of the London Borough of Lewisham as an area for Additional Licensing, with the designation coming into effect on 5 April 2022.
16. Mr Boyle gave evidence that he and Mr Gary Madigan inspected the property on 4 July 2022, during which visit Mr Santhakumar confirmed that four persons were living at the Property. During that visit he informed Mr Santhakumar that from April 2022 homes occupied by with three or more unrelated persons required an HMO licence.

17. Mr Santhakumar confirmed to the Tribunal that at the time the Property was occupied by his mother (paying rent of £650 per month) and three lodgers, who were unrelated (each paying £475 per month). The lodgers had taken occupation on 10 June 2022. Mr Santhakumar stated that the lodgers had all vacated the property by the end of July 2022, which was not challenged by Mr Boyle.
18. On 13 July 2022 Mr Boyle wrote to Mr Santhakumar advising him that the property required an additional HMO licence.
19. Mr Santhakumar wrote to Mr Madigan (the letter was posted on 12 August) confirming that he had given notice to the three lodgers to find alternative accommodation. Mr Boyle stated that the letter had not been received by his department although the bundle before the Tribunal included a certificate of posting.
20. The Notice of Intent served on Mr Santhakumar (the copy in the bundle being undated) gave notice of a proposed Civil Penalty Notice of £4,500.
21. By letter posted on 7 October 2022 Mr Santhakumar set out again the action that he had taken and that he had expected Lewisham to re-inspect the Property to confirm it no longer required an additional HMO licence.
22. The Final Notice of Civil Penalty dated 7 October 2022, received by Mr Santhakumar on 12 October gave as reasons for imposing the penalty that the Appellant ignored requests from the Respondent to regularise his position for 56 days.
23. By a subsequent letter, again accompanied by a certificate of posting, although the date of the certificate is not apparent from the copy certificate in the bundle Mr Santhakumar acknowledged receipt of the Final Notice referring to his letters of 12 August and 7 October, neither of which had been acknowledged.
24. Mr Boyle stated that his department had not received the letter of 7 October. When it received Mr Santhakumar's third letter he had enquired of his department head who had stated that he had not received the previous two letters.
25. On the evidence before it the tribunal is satisfied to the requisite standard of proof that an offence was committed on 4 July 2022 when Mr Boyle and Mr Madigan visited the property. The relevant evidence is Mr Santhakumar's confirmation that the Property on that date was occupied by 4 unrelated persons. If Mr Santhkumar had not provided this confirmation the Tribunal would not have had the requisite standard of proof from the evidence provided by the Respondent, and it acknowledges Mr Santhakumar's confirmation of the position on that date.

**Did Mr Santhakumar have a reasonable excuse for committing the offence?**

26. S73(5) of the 2004 Act provides that

*'In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—*  
*(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or*  
*(b) for permitting the person to occupy the house, or*  
*(c) for failing to comply with the condition, as the case may be.'*

27. Mr Santhakumar submitted that he should not be fined in the circumstances. He gave evidence that in January 2022 he had contacted Lewisham who had advised him that an HMO licence was not required. As soon as he understood that occupation by four persons would require a licence he investigated what would be required to obtain one. He decided that it would be easier to revert to the Property being occupied by one person, which is what he had procured by the end of July 2022. He had endeavoured to advise Lewisham of the action he had taken and it is unfortunate that not one but two of his letters were not received. On the evidence before it the Tribunal finds that the letters that were not received were sent and to the correct address.

28. The tribunal has reviewed the evidence before it and Mr Santhakumar's submissions as to whether he had a reasonable excuse, and finds that Mr Santhakumar did not have a reasonable excuse for not having an additional HMO licence.

29. In reaching its decision the Tribunal has had regard to paragraph 81 of the decision in *Perrin v HMRC* [2018]UKUT 156 (TCC) approved by Deputy Chamber President Martin Rodger KC in *Marigold and oths v Wells* [2023] UKUT 33 (LC)

*"81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:*

*(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).*

*(2) Second, decide which of those facts are proven.*

*(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself*

*the question “was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”*

30. In this case the Tribunal finds that the facts upon which Mr Santhakumar relies are his belief, on the basis of a conversation that he had with Lewisham in January 2022, that he did not require an HMO licence if three lodgers occupied the property in addition to his mother. The respondent has not challenged that that conversation took place.
31. The requirement for an additional HMO was introduced in April 2022. Mr Santhakumar entered into the lodger agreements in June 2022. The Tribunal heard evidence that the introduction of the requirement for additional HMO licences had been widely advertised prior to their introduction. It accepts that Mr Santhakumar is not a professional landlord but finds that, given the time which elapsed between the conversation in January and the lodger agreements being entered into in June, Mr Santhakumar should have been aware of the change in requirements. Accordingly failure to obtain an additional HMO licence was not objectively reasonable in the circumstances.
32. The Tribunal has also had regard to paragraph 47 of the decision in *AA v Rodriguez & ors*[2021] UKUT 0274 (LC)

*‘47. The view has generally been taken that it is the responsibility of someone who wishes to let their property to find out whether any relevant regulatory restrictions exist and that ignorance of the need for a licence will not normally provide a reasonable excuse (although it may be relevant to culpability and therefore to the amount of a financial penalty to be imposed under section 249A). But there is no hard and fast rule and, just as much as any other defence, a reasonable excuse defence based on ignorance of the need for licensing will always require a careful evaluation of all the relevant facts.’*

33. Accordingly while the Tribunal finds that Mr Santhakumar does not have a reasonable excuse it considers below Mr Santhkumar’s submissions in the context of culpability.

### **The amount of the financial penalty**

34. This appeal is by way of a re hearing.
35. In ascertaining the level of penalty to be charged the Tribunal should have regard to the Council's policy and whether it was followed by the Council. While not referred to in the hearing this approach is consistent with the Upper Tribunal decision in *Waltham Forest LBC v Marshall* [2020] 1 WLR 3187). The tribunal find that the Council did comply with statutory procedure in deciding to impose a financial penalty.
36. The Council’s Civil Penalty calculator requires a Starting Point to be set, using its Culpability and Harm Grid, which is the adjusted for the landlord’s track

record, the landlord's financial position and the landlord's financial benefit from the offence.

37. The Respondent's 'Civil Penalty Calculator' and "Culpability/Harm Grid" are in the bundle before the Tribunal and it has had regard to these in fixing the level of the penalty. On the evidence before it and with regard to the submissions made the Tribunal find it appropriate to vary the penalty from that fixed by the council.

### **Step 1- Level of culpability**

38. The Respondent submitted that it had fixed the level of culpability as 'high' as the landlord had fallen far short of complying with legal duties, in particular referring to the landlord not having responded to its letter of 13 July 2022 and the Notice of Intent.
39. The Tribunal has had regard to paragraph 47 of the decision in *AA v Rodriguez & ors*[2021] UKUT 0274 (LC) referred to above.
40. The Tribunal find that Mr Santhakumar's actions were relevant to the amount of the level of culpability.
41. On the evidence before it the Tribunal finds that Mr Santhakumar's level of culpability, using the Council's guidelines, is 'low'. He did investigate whether he required an additional HMO licence. And when he was told by the Respondent that he did now require an additional HMO licence he investigated taking measures to obtain one. He decided that the process was too complicated for him, and arranged for the lodgers to vacate the Property within a month of his being told of the need for an additional HMO, removing the need for an HMO.
42. Using the Respondent's wording from its guidelines, the offence was minor and part of an isolated incident and the Tribunal finds the level of culpability to be 'low' according to the Respondent's calculator.

### **Step 2-assessing the level of harm**

43. The Respondent had placed this at 'lesser', i.e. that there was no actual or potential harm. The Tribunal heard evidence from Mr Boyle that inspection of the property had shown there to be nothing at the Property to cause the Respondent alarm.
44. On the evidence before it the Tribunal finds no reason to depart from this assessment.

### **Starting point and adjustments**

45. On the basis of 'low' culpability and 'lesser' harm the relevant starting point on the Respondent's civil penalty calculator is £750. This may be adjusted

upwards if appropriate given the landlord's track record. The Respondent saw no reason to do so and the Tribunal find this to be the correct approach.

46. The Respondent then considered the landlord's financial position and his financial benefit. It considered there was no need to increase the penalty by reason of these factors and the Tribunal have no reason to depart from this approach.

### **Mitigation**

47. Mr Boyle informed the Tribunal that generally the Respondent would consider mitigation on the basis of representations that it received, but that they had not received any from Mr Santhakumar. Mr Boyle indicated that if the Respondent had been aware of Mr Santhakumar's responses the level of penalty might have been less.

48. It is not known why Mr Santhakumar's letters of 12 August and 7 October were not received by the Council but the Tribunal find that they were sent and that they contained representations that should be taken into account in considering mitigation.

49. In the circumstances the Tribunal finds that the civil penalty of £750 should be reduced to £500 to reflect those mitigating representations.

**Name:** Judge Pittaway

**Date:** 2 October 2023

### **Rights of appeal**

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

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

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



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

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

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