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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00FY/HNA/2023/0017**
Property	**:**	**3 Landseer Close, Nottingham, NG7 3BH**
Applicant	**:**	**Dr Ramdane Djebarni**
Representative	**:**	
Respondent	**:**	**Nottingham City Council**
Representative	**:**	**Ms Sarah Mills (council solicitor)**
Type of application	**:**	**Appeal against a financial penalty** under 249A of the Housing Act 2004
Date of hearing	**:**	**22 January 2024**
Date of Decision	**:**	**22 February 2024**

DECISION

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Decision of the Tribunal

1. The Tribunal substitutes the financial penalty of £4,960.00 imposed by the Respondent in respect of the offence under section 95(1) of the Housing Act 2004, for a financial penalty of **£6,000.00**.

The Application

2. This is an Appeal against the imposition of a financial penalty of £4,960.00 under s95 of the Act for the offence of having control or management of a house which was required to be licensed but was not so licensed.

3. The matter was heard by video conferencing on 22 January 2024 without an inspection of the Property. The Applicant failed to attend.

4. The Applicant is Dr Ramdane Djebarni. The relevant property is 3 Landseer Close, Nottingham, NG7 3BH (the Property). Dr Djebarni is the freehold owner of the Property. He has owned the Property since December 1998.

5. The Respondent is Nottingham City Council which is the local housing authority for the area in which the Property is situated.

6. On 1 August 2018, the Respondent extended its licensing regime to include properties that fall outside the scope of HMO Mandatory and Additional Licensing Schemes by implementing a Selective Licensing Scheme in exercise of its powers under s80 of the Act. From 1 August 2018, all privately rented properties located within the Selective Licensing designated area are required to be licensed unless exempt in accordance with the Act. The Property falls within such an area.

Background

7. Dr Djebarni was a lecturer at Nottingham Trent University until 2016 when he left to take a position with the University of South Wales. He was resident at the Property from 1998 until relocating to Pontypridd in 2016. Dr Djebarni states that in mid-January 2022, he took early retirement from his position at the University of South Wales for health reasons.

8. While residing in Pontypridd, Dr Djebarni let the Property to Dr Farid Elarnaut, a senior research lecturer in the department of computer science at the University. The letting was arranged through a friend of Dr Djebarni called Mr Mohieddin Grada. There appears to be no dispute that the few agreed terms included payment of an initial sum of £400.00 to Mr Mohieddin Grada and thereafter £400.00 per month into Dr Djebarni's bank account with Natwest. Dr Djebarni claims that a nominal rent was agreed on the basis that the tenant would take full care of the house including "*maintenance, regulations requirements etc.*" Nothing was written down. Dr Djebrani's version slightly differs in that

he claims that he arranged for his friend and former student Dr Adel Grada to look after the Property and arrange to let it out. The relationship between Mohieddin Grada and Adel Grada is unclear. Neither provided statements.

9. Dr Elarnaut was not provided with any written terms or contact details for Mr Grada or Dr Djebarni after he moved in. He states that the house was in poor repair and with no means of contacting Mr Grada or Dr Djebarni he was obliged to carry out all necessary repairs himself. The Property had been let unfurnished. He therefore purchased many appliances including fridge, dishwasher, hob, oven and extractor. He cleaned and painted the whole house, changed the flooring and replaced the kitchen, including plumbing. This evidence was not challenged.

10. The situation continued until November 2021 when out of the blue Mr Adel Grada called Dr Elarnaut to give him four months' notice to quit. This was followed in December 2021 by a telephone call from Dr Djebarni to say that he would send him a new contract. Instead, Dr Elarnaut received an email asking him to leave the Property on 1 February 2022. This was quickly followed by a notice of rent increase to £720.00 per month and a section 21 notice to quit, served by Mr Adel Grada, who described himself as agent. The section 21 notice prompted Dr Elarnaut to contact Shelter and the licensing team at the Council who explained that the section 21 Notice was invalid.

11. The Council wrote to Dr Djebarni on 9 February 2022, to caution him that the Property needed to be licenced and that his section 21 Notice was invalid. On 13 March 2022, Dr Djebarni emailed the Council to say that he wished to move back to Nottingham following his retirement and had asked Mr Adel to give the tenant 6 months' notice expiring end March 2022. However, the tenant had refused to move out or reply to the emails leaving him with no choice but to initiate eviction proceedings. He also asked how he should go about procuring a licence.

12. On 15 and 17 March 2022 the Council sent advice on how to file an application. The Council chased for the licence application on 9 May 2022 and served notices under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 and Section 235 of The Housing Act 2004. No response was received. On 25 May 2022, a further letter was sent to Dr Djebrani requiring action on both the licence application and notices and warning that failure to respond was also an offence. No response was received.

13. On 13 October 2022, officers of the Council visited the Property and spoke to Dr Elarnaut and his wife, who reside there with their four children. A further letter was sent to Dr Djebrani on 10 November 2022, at his known address and to his contact email address, confirming that an inspection had been arranged. The letter also chased again for a licence application to be submitted.

14. The inspection took place on 29 November 2022. An HHSRS assessment identified two Category 1 and three Category 2 hazards. There was no working fire detection, significant damp and mould, risk of falling and asbestos was found to be present.

15. A further letter was sent on 1 December 2022, enclosing a schedule of works required to address these hazards. The letter also reminded Dr Djebrani again of the requirement to licence the Property. This was followed on 30 December 2022 by a threat of enforcement. No response was received. Consequently, on 16 January 2023, an Improvement Notice was served on Dr Djebrani.

16. Dr Djebrani finally got in touch on 5 February 2023, seeking advice and stating that he was not in a financial position to do the improvement works because his retirement pay was only £1,024.00 and he had been unable to increase the rental. The Council responded reiterating the advice already provided on 9 February 2022, a year earlier. In the absence of any substantive action the Council considered its enforcement policy and determined that a financial penalty was the most appropriate action to take for the failure to licence offence. On 1 March 2023, a Notice of Intent to impose a financial penalty of £6,000.00 served on Dr Djebrani.

17. On 15 March 2023, Dr Djebrani made written representations claiming the delay in obtaining the licence had been caused by ill-health (chronic depression and anxiety, hypertension, high cholesterol, and the onset of dementia. All of which worsened after the death of his mother and his Pfizer vaccination). He said that the licensing process had involved him in substantial costs, that he was 90% ready to file the application but while waiting for the requested EPC, his health had taken a turn for the worse. Dr Djebrani stated that access to NHS services had become almost impossible with frequent delays. He had therefore travelled to Algeria (where he has family) for affordable health services. He would return to the UK when he was feeling better. A neighbour had been asked to instruct a lawyer to deal with the tenant and the house, which he wanted to sell as soon as possible. Dr Djebrani was hopeful that the licence application would be submitted the following week.

18. A licence application was then submitted on 22 March 2023. The Council considered Dr Djebrani's representations and made some adjustments to the penalty. A reduction of £150.00 was made to take account of ill-health, despite no evidence having been provided. The financial benefit calculation was reduced by £890.00 as the licence application fee had now been paid. This reduced the overall penalty to £4,960.00 which is the amount shown of the Final Notice.

The Property

19. The Tribunal did not inspect the Property but understand from the Council's evidence that there was no particular issue regarding its suitability for licensing, for an appropriate number of occupiers and a

licence was in fact granted on 25 July 2023. The improvement notice works had not been addressed when they last inspected (about three months prior to the hearing). Dr Djebrani has not responded to communications from the Council for some time. His last communication indicated that he could not afford to carry out the improvement notice works and that he would remain abroad for the foreseeable future. The Property continues to be occupied by Dr Elarnaut's family. It suffers from damp and mould caused by a combination of overcrowding, inadequate mechanical ventilation, no loft insulation, and penetrating damp. The Council do not intend carrying out the work in default but is considering whether to prosecute or impose a financial penalty. The Council is also considering whether to issue a prohibition notice.

The Hearing

20. The Council was represented by Mrs Mills, a Council solicitor at the hearing on 22 January 2024.

21. Dr Djebrani was expected to represent himself. He was sent a video link for the hearing on 22 December 2023 with full instructions on how to join. He did not notify the Tribunal or the Council that he would be in Algeria on the date of the hearing. VHS and the Tribunal were unable to contact Dr Djebrani by telephone to find out whether he was having difficulty joining. VHS then emailed the same question. He responded by email sent from an ipad to say that he was abroad and only contactable by email. VHS sent a hearing link for Dr Djebrani to join using his ipad but despite repeated attempts he did not join. The Tribunal sent an email to Dr Djebrani to say that it would reconvene at 11.30am to consider whether to proceed in his absence. The consequences of the UK having no reciprocal arrangement with Algeria for taking evidence from persons abroad was explained and Dr Djebrani was invited to make submissions concerning the Tribunal's intention to proceed in his absence, before the reconvene. Dr Djebrani did respond, but not until later that day.

22. Meanwhile the Tribunal determined that it would exercise discretion under Rule 34 to proceed in the absence of Dr Djebrani on the grounds that Dr Djebrani had been notified of the hearing with instructions on how to join. He had not communicated his intention to remain overseas for the hearing or taken any reasonable steps to ensure that he would be able to join. In particular, he was uncontactable by telephone on the day. The Tribunal was satisfied that it was in the interests of justice to proceed with the hearing because considerable time and resource of the Council and the Tribunal would otherwise be wasted. Furthermore, Dr Djebrani did not dispute that the offence had been committed (his appeal is against the application of the Council's policy to the particular facts of the offence) and had indicated in his application that he was content for the case to be determined on the papers.

23. In his submissions, received later the day of the hearing, Dr Djebrani did not seek a postponement. He asked if he could send some short supplemental written submissions to be considered post hearing. On conclusion of the hearing directions were given for Dr Djebrani to file his supplementary submissions and for the Council to respond.

Parties' relevant submissions

Respondent

24. The Council filed a comprehensive Bundle (122 pages) which included a statement of case filed by Ms Chadburn, an Environmental Health Officer, relevant correspondence with Dr Djrebrani and the tenant, a witness statement of Dr Elarnaut, copies of the Council's enforcement policy and policy on civil penalties, copies of the Notice of Intent with penalty calculation, Dr Elarnaut's representations and a copy of the Final Notice with revised penalty calculation.

25. The calculation was based on an assessment of culpability as 'high' and 'seriousness of harm' as Level C placing the offence in Band 3 with a staring point of £4,500 and a cap of £6,000.00.

26. However, Ms Mills said that that had the evidence attached to Dr Djebrani's bundle been provided before issue of the Final Notice the Council may have approached the calculation differently. Ms Chadburn gave oral evidence concerning this.

27. When explaining application of the Council's policy to the offence Ms Chadburn said that there might have been a case for classifying 'culpability' in the next lower category of 'medium' had more information and evidence of Dr Djebrani's illness's been available when the calculation was made. The later evidence of ill-health, together with his admission of guilt, the partially completed licence application and this being a first offence could arguably have placed the level of culpability as 'medium' rather than 'high'.

28. When questioned by the Tribunal about classifying the seriousness of harm as Level C, which appeared to contradict the guidance, she said that it was failure to cooperate or comply with the improvement notice that had created the risks of harm identified as being Level A or B, rather than the failure to licence. The Council had therefore placed the offence in Level C which covered all cases not within Level A or B.

29. A 'medium' level culpability with a Level C seriousness of harm would have placed the offence in Band 2 (starting point £2,100.00). If illness was taken into account to lower the culpability level it would not also be considered as a mitigating factor justifying a further reduction. However, failure to take any steps to comply with the improvement notice would have been taken into account as an aggravating factor and

would have increased the penalty by £540.00. This gives a starting point of £2,640.00.

30. The rental profit of £4,800.00 (12 x £400) would be discounted to 40% (Table 6 – penalty band 2) adding £1,920.00 to the penalty, but as the total (£4,560.00) exceeded the cap for a Band 2 offence the penalty would be capped at £3,000.00.

31. Ms Mills confirmed that as far as the Council were aware, Dr Elarnaut and his family were still in occupation. Dr Djebarni had not responded to correspondence for some time. His last correspondence indicated that he was abroad with no current intention of returning to the UK and could not afford to carry out the improvement works.

Applicant

32. Dr Djebrani filed a comprehensive Bundle (57 pages) which was considered by the Tribunal. It included the appeal application, his statement of case dated 26 October 2023 (described as Applicant's Skeleton Argument) and Dr Djebarni's witness statement dated 3 November 2023.

33. The relevant parts of Dr Djebarni's witness statement (not already referred to above) state that:

    a. English is his fourth language, which he studied to do a PhD. His mother tongue is Amazigh (*tribunal note*: *a Berber language spoken in Algeria by ethnic Imazighen who are mostly bilingual in Arabic*). He has also studied in Arabic and French.
    b. He suffers with autism and chronic depression which makes it difficult for him to deal with people and pressing events.
    c. Ill-health has caused him to spend the last several years abroad for treatment.
    d. The tenant had not complained about disrepair until contacting the council about the licensing issue.
    e. All rental income from the Property had been donated to a charity.

34. He attached some documentary evidence in support of his submissions concerning:

    a. Charitable payments - (a list of standing order payments from Dr Djebarni's NatWest account of £800.00 per month (during 2016-2019) to no identifiable recipient).

    b. Income - (some Lloyds Bank credit card statements for Dr Djebarni's Mastercard showing some undated transactions on his card), and;

    c. Ill health:-

        i) A prescription from a surgery in Tonteg, undated but addressed to Dr Djebarni's Pontypridd address, for various

medications used for a variety of conditions including control of blood pressure, high cholesterol and anxiety.

ii) A 'Certificat Medical' dated 13 May 2023 in French from a Docteur BEKKAI M. Yahia (no translation provided).

iii) An assessment outcome for Aspergers Syndrome ("AS") (which is an autism spectrum disorder) dated 13 March 2017, carried out by NHS Wales, which states that AS is not capable of rigid diagnosis, but the assessment scores indicated that Dr Djebarni does appear to have features of AS and might be classified as such.

iv) A boarding pass dated 19 April (year not shown) for a flight from London to Algiers. What appears to be a passport page showing various stamps, 8 stamps (5 legible) for dates in August and July 2019, July and October 2022 and March 2023.

35. The statement of case accepts that the licensing offence was committed but argues that the penalty is disproportionate and wrongly calculated. This is because insufficient weight was given to mitigating factors and irrelevant factors were taken into account when assessing the harm caused and the financial benefit to Dr Djebrani. Specifically, he argued that:

a. The penalty is excessive in relation to Dr Djebrani's means.
b. He has no track record of offending.
c. No harm has been caused to the tenant.
d. There is no need for deterrence as Dr Djebrani is an 'accidental landlord' of one property which he is about to sell and he is retired.
e. There has been no financial benefit.
f. The calculation of the penalty is incorrect in relation to culpability, seriousness, aggravating and mitigating factors and financial benefit. This last ground is then expanded on by Dr Djebrani as follows:-

i) Culpability – insufficient weight was given to 'medium' and 'low' factors. Such as: 'medium' - lack of proper systems, inadequate efforts made to comply, partially completing a licence application; and 'low' - Dr Djebrani's mental illness and age. The assessment only considered 'high' factors and was unbalanced.

ii) Seriousness of Harm – the offence is purely administrative. The penalty is not being imposed for disrepair. The offence itself caused no significant or relevant harm to the tenants.

iii) Aggravation/Mitigation – disrepair should not be an aggravating factor where the offence is one of failure to licence. Dr Djebrani has engaged repeatedly. There is no legal requirement for the tenancy agreement to be in writing and this should not be an aggravating factor. The 5% reduction for ill health is entirely trivial and fails to reflect the difficulties cause by Dr Djebrani's mental health issues.

iv) Financial Benefit – there is no financial benefit beyond the licence fee itself which has now been considered.

v) Further mitigation – the Property was Dr Djebarni's former home which he hoped to return to on retirement. Management was delegated to an unqualified friend. The Property has been let for well below market value on the basis that the tenant would keep it in repair. Dr Djebarni is of limited means; his total income is £1,024 per month. He cannot afford to carry out the repairs and will be forced to sell the Property. There was no exploitation, the situation has arisen through a lack of competence. There was no malice or intent. Furthermore, Dr Djebarni has donated the entire rent to a charity for many years.

36. In his supplemental submissions Dr Djebrani stated that he had paid £1,100.00 on legal fees to have his statement put in formal legal terms. Mr Grada was paid a small fee for managing the property. He was unaware of the new regulations, but applied as soon as was made aware. Progress was slow due to the need to obtain various certificates. He has relocated to Algeria where he has family.

Legislative framework

37. Section 95 of the Act prescribes offences in relation to licensing of houses under Part 3 (Selective Licensing).

(*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) …………………
(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
(a)………………….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)….. ,
as the case may be.

38. New provisions were inserted into the 2004 Act by section 126 and Schedule 9 of the Housing and Planning Act 2016. Section 249A now empowers a local housing authority in England to impose a financial penalty on a person if it is satisfied, beyond reasonable doubt, that the

person's conduct amounts to a relevant housing offence. Managing or controlling a property which is required to be licenced under Part 3 of the Act but is not licenced contrary to s95(1), is a relevant housing offence.

39. Under paragraph 10(3) Schedule 13A Housing Act 2004 the Tribunal will conduct a rehearing of the Respondent's decision but it may be determined having regard to matters of which the Respondent was unaware.

Issues

40. The issues for the Tribunal are:

    a. Whether it is satisfied beyond reasonable doubt that Dr Djebrani was a person having control of or managing a house which was required to be licenced under Part 3 of the 2004 Act but was not so licenced. The undisputed facts in this case suggest that the ingredients of this offence are met from 1 August 2018 when the area in which the Property is situated was designated, until 23 March 2023 when a licence application was submitted.

    b. Whether Dr Djebrani can nevertheless rely on the statutory defence of reasonable excuse.

    c. If an offence has been committed, what should be the size of any financial penalty.

41. Dr Djebrani did not specifically raise a defence of reasonable excuse. He stated that he was unaware of the changes to the licensing regime that required him to licence the Property. His friend Mr Abel had agreed to manage the Property for Dr Djebrani because it would have been difficult for him due to his chronic ill-health. Dr Djebrani, has in effect, put forward an arguable case for reliance on the statutory defence under s95(4). I must therefore determine, on the balance of probabilities, whether his lack of knowledge of the relevant licensing legislation affords him a reasonable excuse.

42. I am satisfied that Dr Djebrani held an honest belief that the Property did not require a licence. He let the Property in 2016 and on the undisputed evidence in this case, apart from receiving the rent, he had nothing further to do with the Property until 2021 when he wanted to resume residence.

43. An honest belief might, in certain circumstances constitute a defence of reasonable excuse, but not if on the facts of the case, it is unreasonable for a landlord to have held that belief. I am not satisfied that Dr Djebrani's belief, although honestly held, was reasonable. Dr Djebrani knew he was a landlord. He is an intelligent professional working in a sector that relies on a sophisticated model of licenced accommodation for its students and researchers. Dr Djebrani appears to have an

excellent command of English. He may have used a solicitor put some of his representations into what he describes as more formal legal language, but it is evident from his emails before and during these proceedings that his use and understanding of English is very good indeed. As is to be expected given the professional appointments he has held for many years in two universities.

44. It is highly unlikely that Dr Djebrani could have been unaware that as a landlord he had responsibilities for the wellbeing and safety of his tenants. The briefest look into this would have revealed the extensive legislative framework that applies to residential tenancies. Dr Djebrani could have appointed a professional letting agent if he felt too unwell to undertake the task. Instead, he asked an unqualified friend to broker a tenancy and took no further interest in the Property, or his tenants, until he wanted to evict them. It cannot be reasonable for a landlord to fail to check the regulatory position at the start of a letting venture and fail to update himself on any changes. Dr Djebrani was unaware of the licensing regime because he had failed to act responsibly with regard to his duties and liabilities as a landlord.

Tribunal's determination

Offence

45. It follows that the Tribunal do not find that Dr Djebrani has established a defence under s95(4) and that it is therefore beyond reasonable doubt that he has committed an offence under s95(1) of the 2004 Act. All that remains to be determined is the size of any financial penalty.

Financial penalty

46. Any failure to licence is a serious offence. It has led to occupation of an overcrowded property with inadequate fire protection, which suffers from damp and mould. All of which carry a serious risk of death, illness or injury. The risks would have been identified years ago had Dr Djebrani applied for the licence in 2018.

47. 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."

48. Paragraph 12 requires a Local Housing Authority (LHA) to have regard to any guidance given by the Secretary of State about the exercise of its functions under s.249A. The current guidance issued by the Secretary of State is: "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.

49. The following passages from the Guidance are of relevance:

(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)]).

50. 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". Furthermore, 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 refined this approach emphasising that a FTT must make its own decision as to the appropriate penalty. Its role is not to review the decision made by the LHA.

51. The Civil Financial Penalties Policy prepared by the Safer Housing and Licensing Team, Version 2.2 dated 31 January 2023, was used by the Council to calculate the penalty. The document contains both Policy

and Guidance. Parts A and B are Policy, the other sections are Guidance only. I have taken account of both.

52. Part A, paragraph 8.6 states: "*Multiple offences will indicate a higher culpability for those same offences as it shows a pattern of behaviour and not simply an isolated incident. Even where some offences do not have a Civil Penalty imposed for them, they can and should still be considered as part of any assessment of culpability for the other offences that do result in a Civil Penalty being imposed*"

53. Part C sets out the council's *guidance* on determining the financial penalty amount. The overview in paragraph 1 states that generally the maximum amount (£30,000.00) should be reserved for the very worst offenders and that "*The actual amount levied in any particular case should reflect the severity of the offence and the Landlord's previous record of offending*"…..taking into account the following factors:

(a) Severity of the offence. The more serious the offence, the higher the penalty should be.

(b) Culpability and track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

(c) The harm caused to the tenant. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

(d) Punishment of the offender. It is important that it is set at a high enough level to have a real economic impact on the offender and demonstrate the consequences of complying with their responsibilities.

(e) Deter the offender from repeating the offence.

(f) Deter others from committing similar offences. An important part of deterrence is the realisation that (a) the Local Housing Authority is proactive in levying civil penalties where the need to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

(g) Remove any financial benefit the offender may have obtained as a result of committing the offence.

54. The calculation process is broken down and assessed in seven steps:

(1) Culpability
(2) Seriousness of Harm Risked
(3) Penalty band

(4) Offence mitigating/aggravating factors
(5) Calculating Financial Benefit
(6) Combining figures to get total penalty amount
(7) Considering landlord representations

55. To determine the seriousness of the offence and the penalty band, culpability and seriousness of harm risked to the tenants is first assessed.

56. Four levels of culpability are identified in the guidance: Very High (Deliberate Act), High (Reckless Act), Medium (Negligent Act), Low (low or no culpability). The behaviour of the landlord is compared to this guidance to determine the appropriate level.

57. High culpability involves *"Actual foresight of, or wilful blindness to, a risk of offending, but risk nevertheless taken. Must be satisfied that the landlord is* ***reckless*** *as to whether harm is caused, that is, where the Landlord appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people*". The policy then identifies factors that may lead to that conclusion.

58. The Council don't identify what harm, or risks of harm the landlord is reckless to, in relation to the offence of failing to licence the Property. One drawback of the guidance is that it fails to identify the inherent risks of properties which should be licensed not having been brought within the statutory regime. There is no control of numbers which often, as in this case, leads to overcrowding. The suitability of the property is not assessed or its condition. It is not the absence of the licence per se that causes harm, it is the absence of the oversight and control of the Council caused by the failure to licence, that results in a risk of harm.

59. Medium culpability involves "*Offence committed through an act or omission, which a person exercising reasonable care would not commit.*" Factors that may lead to that conclusion are given.

60. Dr Djebarni took no steps to acquaint himself with his landlord responsibilities. He asked a former student with no apparent qualification to arrange the letting. The terms are unwritten and apart from rent, unclear. Dr Djebrani's version includes an attempt to contract out of his repairing liabilities under s11 of the Landlord and Tenant Act 1985. It is of no surprise that he was unaware of the licensing regime. It is entirely consistent with his wilful blindness to his other landlord responsibilities. The offending continued for a period of 4 years 7 months, demonstrating a clear, sustained failure to ascertain or comply with legal requirements or regulation. There was a failure to act swiftly to ensure compliance once notified by the Council. Compliance was only achieved after the formal Notice of Intent was served over a year later.

61. It is true that some of Dr Djebarni's actions also fall within the factors identified under medium culpability, such as the partially completed licence application, and this being a first offence. However, they are

insufficient to justify an overall level of medium because the application remained partial for a long period of time due to Dr Djebrani's failure to quickly obtain the required safety certificates. Also, the guidance specifically states that a first offence is only a 'medium' level factor if no 'high' level criteria are met.

62. Low Culpability involves: *"Offence committed with little or no fault on part of the Landlord"*

63. Dr Djebarni argues there was low or no culpability because there was no harm to the tenants and his age and mental illness were factors that prevented or hampered him from complying. He says that he suffers from depression, hypertension, and high cholesterol. The prescription from the South Wales surgery indicates that he was receiving some medication while living there for conditions that include these conditions. However, there is no medical evidence confirming the severity of what are common conditions, or on how the conditions would or could affect Dr Djebrani's ability to comply with his responsibilities. No medical evidence has been provided that confirms he was suffering ill-health or mental illness during the relevant period. The prescription does show Dr Djebrani's date of birth. He was 57 years of age when the offence was first committed and is now 62.

64. I have been unable to consider or give weight to the Certificat Medical dated 13 May 2023. If Dr Djebarni wanted this to be considered by the Council and the Tribunal he could and should have provided a translation. Given that he speaks both languages there is really no excuse for not having done so.

65. The Aspergers Syndrome assessment confirms that AS is not an illness. It is a pattern of behaviour that carries certain impairments mainly in relation to the ability to communicate with people, which can lead to social anxiety and stress. No evidence has been provided of the effect of this condition on Dr Djebrani's ability to comply with his legal responsibilities as landlord.

66. Until January 2022, Dr Djebrani held a professional appointment at the University of South Wales which would have required a high level of responsibility. Dr Djebrani has not said if adjustments were made to assist him in this role or provided any evidence. He was 55 years of age when the Property was first let and is still well below the retirement age for a state pension. This is inconsistent with the picture he has presented to the Tribunal of an elderly retired person, with inadequate English whose ability to act responsibly has been materially impaired by a neurological condition coupled with mental and physical illness. There is no credible evidence before the Tribunal that Dr Djebrani suffers from a mental illness, any physical or mental frailty, or a neurological condition that is such as to justify a finding that he had no or low culpability in the commissioning of this offence.

67. For all the above reasons I find Dr Djebrani's culpability to fall squarely within the criteria for assessing it as reckless and therefore High.

68. Step 2 Seriousness of Harm risked was categorised with three levels, A, B & C. where:

a. Level A stated the seriousness of harm risked "would meet the guidance for Class 1 and Class II harm outcomes un the Housing Health and Safety Rating System;
b. Level B "would meet the guidance for Class III & IV harm outcomes in the Housing Health and Safety Rating System; and
c. Level C covers "All cases not falling within Level A or B".

69. For the reasons given by Ms Mills [paragraph 28 above] the Council take the view that as the failure to licence does not itself risk the types of harm identified in Level A or B they generally designate failure to licence cases as Level C and treat the condition of the Property and other regulatory non-compliances as aggravating factors. While there is some logic to this argument it again ignores the intrinsic risks that lack of oversight or regulation brings when properties that should be licenced are not brought within a regulatory framework, whose main purpose is after all to protect tenants from harm. However, as the guidance lacks some much-needed flexibility on the application of Table 2, I have ascribed the seriousness of harm risked as Level C.

70. A finding of High Culpability with a Level C risk of harm puts this offence in Penalty Band 3 on Table 3:

Harm Risked	Very High	High	Medium	Low
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

71. The Penalty Bands in Table 4 are:

Penalty Level	Penalty Band	Starting Point
1	£600- £1,200	£900
2	£1,200-£3,000	£2,075
3	£3,000- £6,000	£4,500
4	£6,000- £15,000	£10,500
5/5+	£15,000 -£30,000	£22,500

72. A Penalty Band 3 offence is £3-6,000.00 with a starting point of £4,500.00.

73. The next step is to consider aggravating and mitigating factors. The maximum adjustment should be capped at the maximum specified for the penalty band (in this case £6,000.00) but the Council is not precluded from going outside the range where the facts justify it.

74. Table 5 contains a non-exhaustive list of aggravating and mitigating factors. It includes poor management practices, property in poor condition, lack of the tenancy agreement, evidence of threatening behaviour/ harassment of tenant, ignoring warnings from the Council and only complying once formal enforcement proceedings have been taken.

75. Management practice has been non-existent. There has been a complete failure to obtain necessary safety certificates or an EPC until enforcement action was threatened. Compliance with the landlord's statutory repairing obligations has also been non-existent. Dr Djebrani's only excuse being that he had (unlawfully) attempted to contract out of it. There has been no attempt to comply with the Improvement Notice which identified multiple Category 1 and 2 hazards. There is no written tenancy agreement. There is evidence that after being advised by the Council on 15 March 2021 that a s21 Notice could not be validly served, Dr Djebrani wrote to the tenant on 13 April 2021 threatening court proceedings to recover arrears for a substantial rent increase. An increase which he'd demanded without first serving a statutory notice on the tenant. The letter threatens a further substantial increase and suggests court proceedings might have a negative effect on the tenant's application to the Home Office for leave to remain in the UK. The tenant complained that the letter was intended to threaten him. Warnings from the Council concerning enforcement were not acted on with any urgency and the licence application was only submitted after the Notice of Intention was served.

76. The Property lacks any fire detection systems, it suffers from damp and mould, and is overcrowded. Rather than deal with these pressing issues Dr Djebarni decided to move to Algeria and basically ignore everything, including making satisfactory arrangements to attend the hearing.

77. The history of this tenancy demonstrates a complete abrogation of responsibility by the landlord for compliance with the many legislative and regulatory provisions that residential lettings are subject to. The excuses made by Dr Djebarni do not bear much scrutiny. There is no credible evidence of frailty, serious illness or neurological impairment that could justify this level of irresponsibility. There is no evidence of any financial hardship which could justify his complete failure to address the schedule of necessary works.

78. Dr Djebarni says he cannot afford to carry out the works because he lives on a small pension of £1024.00 per month, that he is an 'accidental' landlord who has been using his property to generate income for an unidentified charity. He has provided no evidence to substantiate either claim. The Natwest list of standing orders is for £800.00 per month (double the rent) and does not identify the recipient. The Lloyds Bank credit card statements show only that Dr Djebarni has a Mastercard which he sometimes uses. It says nothing about his income, outgoings or any charitable donations. There is not a shred of evidence to support Dr Djebarni's income claims or his alleged donations to charity.

79. It would have been a simple matter to provide documentary evidence of income and of any charitable donations. None was provided. If Dr Djebarni was as impoverished as he claims, it is inconceivable he would donate the entire rent to a charity, or that he could genuinely believe that this was the action of a responsible landlord whose tenants were living in a substandard, hazardous property. It is all unevidenced and frankly unbelievable, and for that reason I do not believe Dr Djebarni's testimony concerning his financial position.

80. The Council say that on a recalculation they would add £540.00 for non-compliance with the improvement notice. I agree that a substantial upward adjustment should be made for this. I would add to that an adjustment of £250.00 for poor/non-existent management practices leading to long term non-compliance with safety checks, £100.00 for the lack of a written tenancy agreement and £200.00 for threatening behaviour to the tenant. This gives a total upward adjustment of £1,090.00

81. The mitigating factors, such as they are, include some evidence that Dr Djebarni has, at certain times, received therapeutic medication for conditions that include those he complains of. On the evidence provided these do not appear to justify a reduction in the penalty. Dr Djebarni could have provided a medical report on the extent to which these conditions prevented him from reasonable compliance, but he did not.

82. Dr Djebarni has no history of enforcement action, which is unsurprising as this is his only property. However, his failure to comply promptly coupled with his abject failure to address the Improvement Notice works militate against giving any financial credit for the fact that he has no track record of non-compliance. Although slow to act he has admitted

the offence which justifies a reduction of £150.00. The net upward adjustment for aggravating and mitigating factors is therefore £940.00.

83. The guidance states that the relevant financial benefit for landlords operating an unlicensed property is likely to be the rental income received during the period of the offence capped at 12 months rent where the offence continues for a longer period. A multiplier is then applied to that figure which reflects the severity of the offence. The guide on Table 6 applies a multiplier of 60%. The calculation is therefore £400 x 12 x 60% =£2,880.00. I see no reason to depart from the guidance on financial benefit.

84. This gives a total penalty calculation of £8,320.00

85. Dr Djebarni does not dispute that he has been in receipt of the rent. The only costs he refers to are the costs of obtaining safety check certificates. These are not expenses that reduce the financial benefit of the rent, they are costs associated with a landlord complying with legal requirements.

86. The calculation exceeds the £6,000.00 cap for a band 3 offence. I have considered whether the circumstances of this offence justify going outside the range and have concluded they do not. The penalty is set at a level that, on the evidence, is realistic. It is intended to have real economic impact, which removes any profit and dissuades him and others from future offending.

Name: Judge D Barlow **Date: 22 February 2024**

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.