



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

Case reference : **LON/00AE/HNA/2023/0021**

Property : **10 Uxendon Hill, Wembley HA9 9RU**

Applicant : **Mr Kamal Ahmed Chowdhury**

Representative : **In person**

Respondent : **London Borough of Brent**

Representatives : **Ms Tola Robson & Ms Sherkilla
Finnegan**

Type of application : **Appeal against a financial penalty**

Tribunal members : **Judge Timothy Powell
Mr Appollo Fonka FCIEH CEnvH M.Sc**

Date of Decision : **26 February 2024**

DECISION

The Tribunal's decision

- (1) The Tribunal confirms the financial penalty of £5,000 imposed by the London Borough of Brent in respect of the offence committed by Mr Chowdhury under section 72(3) of the Housing Act 2004 (breach of a licence condition), but not in respect of the alleged offences under the Management of Houses in Multiple Occupation (England) Regulations 2006, which were not proved.
- (2) The penalty should be paid to the Brent Council within 42 days of the date of this decision.

The appeal

1. By an application under section 249A and Schedule 13A of the Housing Act 2004 (“the 2004 Act”), the Applicant appealed against a financial penalty of £5,000 imposed upon him by the Respondent local housing authority, the London Borough of Brent (“Brent”), in a Final Notice dated 25 January 2023.
2. The Final Notice alleged that the Applicant had committed several offences under sections 72 and 234 of the 2004 Act, with the effective date of the offences being “12th August 2022 [Ongoing]”. Further details of the offences were given in the accompanying Reasons, and they amplified again in the Schedule of Offences in the hearing bundle, where it was said that the offences had occurred “between 16 July and 12 August 2022”. The alleged offences were that the Applicant:
 - (i) being a licence holder of a House in Multiple Occupation (“HMO”) situated at 10 Uxendon Hill, Wembley HA9 9RU (“the Property”), failed to install the required and stipulated smoke alarm(s) in the Property in breach of Condition 21 of the property licence, contrary to Section 72(3)(b) Housing Act 2004,
 - (ii) being a licence holder and a person managing an HMO situated at the Property, failed to provide information to the occupier and to ensure that such details were displayed in a prominent position within the HMO, contrary to section 234(3) of the 2004 Act and Regulation 3 of The Management of Houses in Multiple Occupation (England) Regulations 2006 (“the Management Regulations”), and
 - (iii) being a licence holder and a person managing an HMO situated at the Property, failed to take all measures as are reasonably required to protect the occupiers of the HMO from injury, in that officers noted:
 - There was no mains fire alarm system,
 - Only one fire blanket was provided in the kitchen, which was insufficient to protect the tenants in the event of a fire,
 - no heat detection system in the Property,
 - no valid BS5839 [fire detection] certificate or electric condition report in respect of the Property,contrary to section 234(3) of the 2004 Act and Regulation 4(4) of the Management Regulations.
3. Paragraph 10 of Schedule 13A to the Housing Act 2004 provides that a person to whom a Final Notice is given may appeal the decision to impose the penalty, or the amount of the penalty. The matter proceeds as a re-hearing of the council’s decision to impose a penalty; and the Tribunal may confirm, vary or cancel the Final Notice.

4. On 5 September 2023, the Tribunal issued Directions leading up to a final hearing which took place on 24 January 2024 at 10 Alfred Place, London WC1E 7LR.

The hearing

5. At the hearing on 24 January 2024, the Applicant Mr Kamal Chowdhury appeared in person. The Respondent was represented by Ms Tola Robson, solicitor-advocate within the Respondent's Legal Department, and Ms Sherkilla Finnegan, joint advocate, accompanied by Mr Anthony Jemmott, manager of the licensing team, and two witnesses, Mrs Mansi Thakkar and Mr George Graham.
6. The Tribunal had the benefit of a 276-page hearing bundle prepared by Brent on behalf of both parties. The bundle contained witness statements from three Brent employees, giving the council's reasons for opposing the appeal, and numerous exhibits relating to the Property, including inspection reports, photographs, correspondence with Mr Chowdhury and his tenant Mr Istvan Semperger, and documents relating to the imposition of the financial penalty. In addition, the Tribunal had the detailed Grounds for Appeal submitted by Mr Chowdhury with this appeal.
7. The Tribunal heard oral evidence in this order from:
 - (i) Mrs Mansi Thakkar, a Housing Enforcement Surveyor within the Respondent's Private Housing Services team;
 - (ii) Mr George Graham, an Environmental Health Officer in the same team; and
 - (iii) The Applicant in person.
8. The appeal is by way of a re-hearing of the decision made by Brent to impose a financial penalty. The Tribunal is entitled to have regard to matters of which Brent was previously unaware, which existed at the time of its decision.

The facts

9. Apart from disagreements with what was said in certain telephone calls and at a meeting on 12 August 2022, Mr Chowdhury did not dispute the primary facts of the case.
10. Mrs Thakkar, an enforcement surveyor, gave evidence by reference to the documents in the hearing bundle. These showed that the freehold of the property was owned by Mr Chowdhury and his wife Jewela Choudhury, having been acquired by them on 14 February 1984. On 20 June 2021, the council had received an anonymous report from a member of the public to say that there were a large number of tenants in occupation of the Property. Brent wrote to Mr Chowdhury on the 24 June 2021, identifying that the Property may require a property licence and requiring him to make an application or provide information why

the Property does not need a licence.

11. Mr Chowdhury replied in July and August 2021 to say that he was in bad health, and he needed more time to complete the licence application. Brent replied on 12 August to suggest that Mr Chowdhury may wish to consider nominating somebody else to apply the property licence. That suggestion was repeated twice in September 2021. In the absence of an application for an HMO licence, the matter was referred to Mrs Thakkar in the enforcement team on 30 September 2021.
12. On 11 October 2021, Mr Chowdhury submitted a licence application form, seeking an HMO licence. In that form is said that seven people lived in the Property and there was one letting. Mr Chowdhury said that he was the “prime contact”.

Issue of an HMO licence

13. When asked by the Tribunal, Mr Chowdhury said that he had been assisted by the council in completing that form. On 4 January 2022, Brent wrote to Mr Chowdhury enclosing a notice that a mandatory HMO licence had been granted to him, a copy of the HMO licence and “a booklet, which forms part of the licence, that sets out the legal conditions of the Mandatory HMO licence that will need to be adhered to.” The notice of the grant of the licence confirms that Mr Chowdhury “is a fit and proper person to be the licence holder and is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence manager.” The licence itself was dated 6 December 2021 and remained in force for one year. The licence was stated to be non-transferable and must be displayed at the premises. The licence was for a maximum of five people. Given that there were already seven people living in the property, it was said to be overcrowded so that “you are required to ensure that these numbers are reduced at the earliest opportunity. However, existing tenancies must be allowed to run their full term, unless tenants agree to an early termination of their tenancy, and any termination would have to comply with the correct statutory procedure.”

Inspection of the Property

14. The licence was granted to Mr Chowdhury before Brent inspected the property. However, on 2 March 2022 Mr Shazad Parker, a compliance officer, carried out an inspection as a result of which he completed a “compliance inspection form”, a copy of which was found in the hearing bundle. Mr Parker wrote to Mr Chowdhury on 3 March 2022. His letter was headed “Action Required. Do not ignore.” The letter pointed out that “During the inspection, a number of breaches of the licensing conditions were identified and require action to be taken by you. These are listed in the Schedule on the following page and the deadline in which you must resolve the breaches by the 14/04/2022.” The letter went on to say that Mr Chowdhury should provide evidence of

complying with those breaches but, if the required improvements were not carried out within the specified time, enforcement action might be taken against him.

15. The Schedule outlined several breaches of condition of the HMO licence the most important of which were:
- Condition 10: if gas is supplied to the HMO, Mr Chowdhury must produce a gas safety certificate for the past 12 months and a current certificate within 14 days on demand,
 - Condition 21: required Mr Chowdhury to install a hard-wired mains operated smoke alarm with battery backup on each storey of the HMO, with interlinked alarms in the escape route (hallway), kitchen and utility room, and in each of the bedrooms,
 - Condition 22: required Mr Chowdhury to replace existing non-fire doors with 30-minute fire doors to the kitchen, utility room, bedrooms and communal living room,
 - Condition 23: required Mr Chowdhury to provide a valid fire safety certificate for the Property as well as a certificate for all the firefighting equipment installed in the Property,
 - Condition 25: required thumb turn locks without the use of a key to be fitted to the communal living room door and all bedrooms, and to the kitchen door leading to the rear garden,
 - Conditions 26, 27, 29: required Mr Chowdhury to make residents aware of fire routines, provide a fire blanket, remove a polystyrene ceiling in one room and fit a 30-minute fire resistant panel under the stairs,
 - Condition 30: required a report to be provided about the electrical installations, and
 - Condition 36: required documents to be displayed within the Property namely a copy of the licence, a copy of the current gas safety certificate, the name, address and telephone number of the licensee and/or manager of the premises and energy performance certificates carried out for new tenancies.
16. Mrs Thakkar said that the breaches of greatest concern to the council were those that related to fire safety. She also saw it as important that information was provided to occupants.

Extended deadlines to comply with licence conditions

17. Although the original deadline to carry out work was 14 April 2022, this was later extended to 15 July 2022.
18. On 11 July 2022, Mr Parker sent an email to Mr Chowdhury which confirmed that some works had been carried out at the Property, such as the installation of fire doors, a mortise thumb turn for the front entrance door and the installation of a window restrictor, but it

appeared that none of the other breaches had been resolved at that stage. In a taste of what was to come later with Mrs Thakkar, Mr Parker said in his letter: “I feel unhappy that you believe I threatened you”, although no further details were provided. Mr Parker confirmed that the deadline for doing the outstanding works was still 15 July 2022.

19. Mr Chowdhury responded on 12 July to say that he could not meet the (extended) deadline. He thought that the council’s approach was “antagonising” and that their approach should be “co-operative not confrontative.” He said that he was “now half way through compliance, I find the requirements too demanding and not worth the financial return. I am therefore seriously considering to re-convert it to a non-HMO house.” He asked for forbearance to the end of the month.
20. In a longer email of 12 July 2020, Mr Chowdhury said “It is necessary to clarify my position as Landlord. Please be informed that I am not renting to individual occupants. I rented the property to one individual (Mr Istvan Semperger) who is subletting to individuals. It is Mr Semperger, my tenant, who has agreement with occupants, not me. He manages the property, deals with the tenants and pays me rent [at the] end of the month. And it is Mr Semperger who is getting the compliance work done.” Mr Chowdhury asked Mr Parker to discuss the position with Mr Semperger and agree a new deadline with him so that all the issues could be resolved and there was no need to involve enforcement.
21. The hearing bundle contained no witness statement from Mr Semperger, nor did he appear at the hearing. There was no written tenancy agreement showing that he was Mr Chowdhury’s tenant of the Property, but there was sufficient surrounding evidence for the Tribunal to be satisfied that he was indeed the tenant, and had been for about 10 years, and that he occupied the Property with six others.
22. On 1 and/or 5 August 2022 (it was not clear), Mrs Thakkar in the enforcement team spoke with Mr Chowdhury about arranging an inspection of the Property to see which works had been completed and which remained outstanding. Mr Chowdhury claimed the call had been very stressful and that Mrs Thakkar had bullied him, demanding that he should meet her “at 1 pm tomorrow”, though Mrs Thakkar denied this.

Second inspection of the Property

23. A meeting was arranged, and, on 12 August 2022, Mrs Thakkar carried out an inspection of the Property in the presence of Mr Chowdhury and Mr Semperger.
24. Mrs Thakkar said the appointment had been rearranged on that date for the convenience of Mr Semperger, and that Mr Chowdhury had wanted him to understand the requirements should he apply to be the new licence holder. Mrs Thakkar said that she “behaved in a professional manner” when she arrived at the Property. However, her

visit was cut short because of Mr Chowdhury's angry behaviour and tone, such that she felt threatened and scared. She had called her manager, Mr Graham, who had spoken to Mr Chowdhury "to calm him down".

25. At the hearing, Mr Chowdhury complained loudly about Mrs Thakkar's description of the inspection on 12 August. He said this description was "totally false" and a "blatant lie". He said that he was not rude to women, and it had been the other way around: Mrs Thakkar had bullied him at the Property. He accused her of dishonesty and abuse of power, and it was all part of a personal attack upon him, a vendetta.
26. The Tribunal gave Mrs Thakkar the opportunity to respond to Mr Chowdhury's allegations. She said that her intention had been to work with Mr Chowdhury, not against him. She said that the whole approach of the council was to work with landlords to cure breaches: Brent grants licences without an inspection, then inspects the property and gets work done, so that landlords get longer licence when they reapply. In the spirit of cooperation, Brent was generous with its deadlines. She had noticed the failings of the Property on 12th August 2022 without having been able to conduct a full visit or taking photographs, as she would normally have done. She said that she felt unsafe because of the way Mr Chowdhury was speaking to her. He was angry and she had therefore phoned her manager for support.
27. When Mr Graham gave evidence, he confirmed that he received a call from Mrs Thakkar and that "there was loud talking" in the background. He had spoken to Mr Chowdhury and after the call he had said to Mrs Thakkar that he was not comfortable that she should remain at the Property and that she should abort the inspection.
28. Having heard both sides, the tribunal prefers the evidence of Mrs Thakkar as to what happened at the property on 12 August 2022. Her tone in giving evidence was far more measured than Mr Chowdhury, who was somewhat angry and forceful. Furthermore, Mrs Thakkar's evidence was corroborated by her manager, who had heard raised voices at the Property down the telephone.
29. However, while the charged atmosphere at the Property is most regrettable, what was said and how it was said do not have a material effect on the Tribunal's decision.
30. Shortly after the inspection, Mrs Thakkar wrote to Mr Chowdhury to give him a final 21 days to complete all outstanding works, stating that she would re-inspect on 8 September 2022 "and if any works are pending enforcement action will proceed immediately." Mr Chowdhury replied on 17 August 2022 to say that, after careful consideration, he had decided not to stop his tenant's HMO business. As Mr Chowdhury was personally "unfit to hold any HMO responsibility" due to his serious health condition, he asked Mrs Thakkar to take up the outstanding list of work directly with his tenant, Mr Semperger, who

had confirmed his intention to become the licence holder and complete the work.

31. Almost immediately, Mr George Graham replied, also on 17 August 2024, to say that Mr Chowdhury had had sufficient time to complete the works, irrespective of his tenant's involvement, that as licence holder Mr Chowdhury was ultimately responsible for complying with all the conditions of the licence and, if he did not do so, he would be referred to the council's legal team. Mr Graham also said that the HMO licence could not be transferred "so therefore, until there is another named person, you remain culpable."
32. Meanwhile, Mr Graham gave evidence about events in August 2022, when he corresponded with Mr Istvan Semperger, who was keen to obtain his own HMO licence. Mr Chowdhury produced a medical report on 23 August 2022 outlining his health conditions and, in an email of 24 August 2022, purported to resign as the licence holder due to poor health and proposed Mr Semperger in his place.

Third and final inspection of the Property

33. On 8 September 2022, Mr Graham and Mrs Thakkar re-inspected the Property together and found that works that had been on the original compliance schedule of 3 March 2022 had still not been completed. In particular, the Property still had no mains fire alarm system, and there were no notices to the occupants giving them safety and contact information.

Notice of Intent to issue a final penalty

34. Mrs Thakkar gave evidence that she prepared the Notice of Intent to issue a financial penalty in relation to offences committed under sections 72 and 234 of the Housing Act 2004. The Notice of Intent proposed a financial penalty of £5,000. It was dated 30 September 2022 and sent to Mr Chowdhury by letter dated 5 October 2022. Although it did not impose a penalty, unusually, it offered a 20% discount to £4,000 if Mr Chowdhury paid by 2 November 2022.
35. Also on 5 October 2022, Mr Semperger sent an email to Mrs Thakkar to confirm that all the outstanding compliance work had been done at the Property except for the fire alarm. The email appeared to have been prepared earlier, because it referred to dates in September when the work would be completed. Regarding the fire alarm, Mr Semperger said that he had been let down by his electrician but had now found another, who would finish the work on 14 September 2022. He asked for a telephone call after he returned from holiday on 23rd September to complete his licence application.
36. An email from an electrician, Ryan Sarsons, on 6 October 2002 confirmed that he had been instructed to install the fire alarm; and he made an enquiry on 17 November to check that the council would be happy with a hard-wired interlinked fire alarm system with battery

backup. Mrs Thakkar confirmed on 18 November that that would be fine.

37. Mr Chowdhury responded to the Notice of Intent on 26 October 2022, making representations that: he had not committed any offence; it was his tenant sub-letting that had caused the Property to become an HMO, not him; he was not controlling or managing the Property and, therefore, he was wrongly appointed a licence holder; when he was appointed, he had not been given any guidance or explanation about the duties and responsibilities of a licence holder and, had these been explained, he would not have become one; furthermore, he was medically unfit to hold the licence. Given that his tenant Mr Semperger had taken full responsibility for his subtenants and managing and controlling the HMO, Mr Chowdhury invited the council to withdraw the Notice of Intent and deal directly with Mr Samperger.

Review of the council's decision

38. Brent carried out a review of the Notice of Intent to issue a financial penalty and issued a Notice of Review dated 2 December 2022. In short, the Review concluded that: Mr Chowdhury had had sufficient time to complete the works and, by failing to do so, he had committed offences as the licence holder and the person responsible; Mr Chowdhury was the “person in control” of the HMO because he received the rack-rent and, while his tenant might also be liable in relation to his conduct and have committed an offence under another provision, it was Mr Chowdhury, the licence holder, who had agreed to be bound by the licence conditions; Mr Chowdhury had had ample time during the application process to peruse the licence application form to see what it entailed and what was required, he had been advised on several occasions to consider choosing someone else to be the licence holder (given his health), but he had still applied for an HMO licence in his own name; and the penalty remained at £5,000 “because the offences found during the inspection were serious and posed a high level of potential harm to the occupants, in that there were no early warning signs or mains wired smoke or heat detection system to alert the occupiers in the event of a fire”.
39. On 6 December 2022, the HMO licence issued to Mr Chowdhury expired, without him having made an application to extend it; but nothing turns on this with regards to this appeal.
40. On 12 December 2022, Mr Chowdhury responded to the Notice of Review, by writing to Mr Randolph, the Head of Private Housing Services. In his detailed letter, supported by two medical reports, Mr Chowdhury explained the delays in doing the works were due to his ill health and the problems finding tradesmen during the summer; and he complained about the case officer’s “aggressive and bullying” attitude and the fact she rushed to impose a penalty. He provided a list of “mitigating factors” including “prompt acceptance of responsibility” and “that full compliance will be done”, immediately replacing 11 doors

with fire doors, his good character, the lack of harm to anyone and no complaints from his tenant or his sub-tenants.

41. Meanwhile, on 19 December 2022, Mr Semperger made an application in his own name for an HMO licence in respect of the Property; and, in due course a new 5-year HMO licence was granted to Mr Semperger for up to 10 occupants in the Property (now that additional kitchen facilities had been provided), with effect from that date.

The Final Notice

42. On 25 January 2023, Brent council sent a Final Notice to Mr Chowdhury confirming a financial penalty for £5,000, with a 10% discount to £4,500 for early payment. The Final Notice was accompanied by a copy of the council's matrix used for calculating the amount of the penalty, reasons and an explanation of how the penalty was calculated.
43. On 7 February 2023, the installation of a fire alarm system in the Property was certified.
44. On 21 February 2023, Mr Chowdhury submitted this appeal against the financial penalty to the Tribunal, with detailed Grounds for Appeal.

Mr Chowdhury's evidence and arguments

45. Mr Chowdhury did not produce a witness statement of his evidence but relied upon his written Grounds for Appeal and his oral evidence and submissions at the hearing.

Written Grounds for Appeal

46. In his written Grounds for Appeal, Mr Chowdhury stated that Brent Council's decision to issue a penalty notice was flawed because it failed to take into account his health conditions and all the circumstances of the case. He also did not think that the enforcement officer (by which he meant Mrs Thakkar) had used her power properly, believing that she "has failed to consider essential facts and behaved unreasonably, has been inconsiderate and acted spitefully towards me."
47. Mr Chowdhury placed emphasis on a telephone call he received from Mrs Thakkar on 5 August 2022 seeking to arrange a meeting at the Property. He claimed that she had started by accusing him of not doing any compliance work, but he had in fact carried out a number of remedial works. He found her tone bullying, offensive and rude. He met Mrs Thakkar at the Property on 12 August 2022 and complained again about what he said was her bullying and rude behaviour. He claimed that when he told Mrs Thakkar that he was sick and unable to take her pressure, she said that she could not care whether he was sick or dying.
48. In support of the appeal, Mr Chowdhury emphasised his health issues,

the difficulty post-Covid in getting tradesmen and the high cost of the compliance work, which he said required a £25,000 loan which he was unable to borrow from a bank given his age (69 years). Nonetheless, “I made no excuse and still worked very hard to get a number of compliance work completed.”

49. The dispute about what did or did not take place at the Property on 12 August 2022 has been dealt with earlier in this decision. In his Grounds for Appeal, Mr Chowdhury talked about Mrs Thakkar’s “unusual and erratic behaviour” and said that he “knew she decided to get me”. As a result, her decision to impose a financial penalty on him “is unfair, oppressive and ego serving” and the penalty should be withdrawn.
50. Mr Chowdhury added that he did not set up an HMO business but had merely rented his property to an East European man and his family. Without his knowledge, they had sublet the property to a few other individuals, making it an HMO. He had agreed to take up the HMO licence but without knowing the full extent of the client compliance work and the money that it would involve. While the application form had many questions, it had none about the licence holder’s health. He said that if it had it done so, he would not have gone for the licence and that he was not fit and proper to hold an HMO licence. However, although medically unfit, he nevertheless completed a good deal of remedial work until 15 July 2022 after which his health condition deteriorated. His doctor advised him to take bed rest to avoid a heart attack and, upon advice, he submitted his resignation from holding the HMO licence on 24 August 2022.
51. Mr Chowdhury felt strongly that, having resigned, Brent Council should not have gone after him. He was aggrieved that he had been punished when he should have been resting. He outlined disagreements with Mrs Thakkar’s statements to demonstrate her “unjustified wrong intentions towards me” and to show that her evidence could not be relied upon. He listed the work that he had carried out, namely the installation of 11 fireproof doors, installing window restrictors on several windows, buying a fire extinguisher and fire blanket, giving all the occupants his telephone number and that of the manager (presumably, Mr Semperger), having a valid gas certificate and a electrical installation condition report, coupled with the ongoing search for an electrician who was qualified to install a fire alarm.
52. His conclusion was that “any reasonable person would not have penalised me, not when so much work have been accomplished and at an unprecedented time when we are all faced with a biting recession, huge energy price rise and cost of living crisis.” He concluded that to set a time deadline and expect it to be achieved, when the council had not provided any funding, help or contractor, was oppressive and unrealistic. Mr Chowdhury said that if he were called to attend the Tribunal, he would produce documents to show how much he had worked to find an electrician and skilled people to install the fire alarm (though there were no such documents at the hearing). Regarding his

health issues, he said “anyone reading my medical report would not have taken such harsh action”. He said that the financial penalty would not serve any useful purpose and to say that it would serve to deter repetition, was “surely not applicable in my case.”

Evidence and submissions at the hearing

53. At the hearing, Mr Chowdhury did not dispute that the Property was an HMO, nor that it required to be licensed. In oral evidence, he said that he was not disputing the law, but he was still appealing to set aside the financial penalty. Mr Chowdhury amplified his grounds for appeal, emphasising that this was in a difficult post-Covid period, the range and extent of the works that he had carried out, and that he had no real control of the property, having acquired it 30 years ago but having sublet it for the past 10 years to Mr Semperger and his family. He denied having broken any rules, blaming his tenant for creating the HMO. When he first heard about the council’s concerns, his initial reaction was to serve a notice to quit on Mr Semperger, but he said the council had asked him not to do so because that would make people homeless.
54. Mr Chowdhury denied he was a person having control or managing the Property, because Mr Semperger was his tenant and dealt with the occupants. He also said that he only received £1,800 rent per month and claimed (without evidence) that each of the seven current occupants were paying Mr Semperger £1,000 each per month.
55. Mr Chowdhury also said that had not known what taking on an HMO licence would entail, suggesting that he had been deceived by the council and hooked into applying. Again, he blamed his ill-health for the difficulties in finding an electrician. He reiterated that the issue of a financial penalty was more of a personal attack on him, particularly by Mrs Thakkar, who was bullying and caused him stress. He complained about her “blatant lies” regarding the meeting at the Property on 12 August 2022 and said that she should have given him the option of more time to complete the works. Overall, her approach, and that of the council, was not fair and an abuse of power.

The Tribunal’s decision

56. The Tribunal confirms the financial penalty of £5,000 imposed by the London Borough of Brent in respect of the offence committed by Mr Chowdhury under section 72(3) of the Housing Act 2004 (breach of a licence condition), but not in respect of the alleged offences under the Management of Houses in Multiple Occupation (England) Regulations 2006, which were not proved.
57. The penalty should be paid to the Brent Council within 42 days of the date of this decision.

The Tribunal's reasons

58. Financial penalties were introduced by the Housing and Planning Act 2016 (“the 2016 Act”). The 2016 Act amended the Housing Act 2004 (“the 2004 Act”) by inserting section 249A and Schedule 13A. These provisions enable local authorities to impose financial penalties of up to £30,000 in respect of a number of offences under the 2004 Act, as an alternative to prosecution.
59. Subsection 249A(1) of the 2004 Act provides that a local authority may only impose a financial penalty if satisfied beyond reasonable doubt that a person’s conduct amounts to a relevant housing offence. The Tribunal must also be satisfied to the criminal standard of proof that an offence has been committed.
60. DCLG Guidance for Local Authorities (“the Guidance”) has been issued under paragraph 12 of Schedule 13A. The Guidance encourages each local authority to develop their own policy for determining the appropriate level of penalty; and the maximum amount should be reserved for the worse offenders.
61. The Guidance advises that the following factors must be taken into account when deciding on the level of the civil penalty, namely:
 - The severity of the offence,
 - The culpability and track record of the offender,
 - The harm (or potential for harm) caused to the tenant,
 - Punishment of the offender,
 - Deter the offender from repeating the offence,
 - Deter others from committing similar offences, and
 - Remove any financial benefit the offender may have obtained.
62. 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 First-tier Tribunal should start with the local housing authority’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 First-tier Tribunal must make its own decision. Its role is not to review the decision made by the local housing authority.

Liability

63. We consider first the primary liability of the Applicant – that is, whether the offence is made out – before we consider the statutory defence of reasonable excuse in sections 72(5) and 234(4) of the 2004 Act.
64. There is no dispute that:
- Mr Chowdhury is the owner of the Property (with his wife) and that he receives £1,800 per month for renting it out to his tenant, Mr Semperger,
 - In June 2021 and at the time of the alleged offence, the Property was occupied by seven unrelated people,
 - At all material times, including between 16 July and 12 August 2022, the Property was an HMO that required to be licensed, and
 - Mr Chowdhury applied for and held an HMO licence for the Property between 6 December 2021 and 6 December 2022.
65. The question is whether on the relevant dates, between 16 July and 12 August 2022, we are satisfied beyond reasonable doubt that Mr Chowdhury committed the offences as alleged in the Final Notice and the Schedule of Offences.

The first alleged offence: section 72(3)(b)

66. The first alleged offence was under section 72(3)(b) of the 2004 Act. For convenience, the relevant parts of section 72 are set out below (underlining added):

“72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person’s occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under

subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) 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.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to [a fine].

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.”

67. It is important to note that Mr Chowdhury is not accused of an offence under section 72(1) or (2), which require him to be a person “having control of or managing an HMO”, but under section 72(3), which merely refers to a person being “a licence holder”.
68. The alleged offence is that Mr Chowdhury, being a licence holder of the HMO, he failed to install the required and stipulated smoke alarm(s) in the Property in breach of Condition 21 of the property licence, contrary to Section 72(3)(b) Housing Act 2004.
69. The evidence of inspections of the Property on 2 March, 8 August and 12 September 2022 demonstrate, and Mr Chowdhury accepts, that smoke alarms had not been installed in the Property on those dates, despite their being a requirement of Condition 21 of the HMO licence. Therefore, subject to any reasonable excuse, the Tribunal is satisfied beyond reasonable doubt that the conditions of section 72(3) of the 2004 Act are met, and that Mr Chowdhury had committed this offence.

The second and third alleged offences: 234(3) and the Management Regulations

70. The two alleged offences related to breaches of the Management Regulations, were:
- (i) A failure to provide information to the occupants and ensure that such details were displayed in a prominent position in within the HMO (regulation 3), and
 - (ii) A failure to take all measures reasonably required to protect the occupiers from injury, including a failure to provide a mains fire alarm system, providing only one fire blanket, having no heat detection system in the Property and no valid BS5839 [fire detection] certificate or electric condition report (regulation 4(4)).
71. The listed failings under the Management Regulations are all breaches of conditions of the HMO licence as well (condition 36 for the regulation 3 offence and conditions 21, 23, 27 and 30 for the regulation 4(4) offence) and they could equally have been included within the first offence under section 72(3). Indeed, the failure to provide a mains fire alarm duplicates the first offence and appears to add nothing to it. When the Tribunal asked at the hearing why Brent Council had specified offences under the Management Regulations rather than just relying on the offence for breach of licence conditions under section 72(3), the reply was that the conditions and Management Regulations “go hand in hand”.
72. Be that as it may, the relevant wording of section 234 of the Act, including the offence is sub-section (3), is as follows (underlining added):
- “234 Management regulations in respect of HMOs**
- (1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—
 - (a) there are in place satisfactory management arrangements; and
 - (b) satisfactory standards of management are observed.
 - (2) The regulations may, in particular—
 - (a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;
 - (b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.
 - (3) A person commits an offence if he fails to comply with a regulation under this section.

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.”

73. The relevant wording of the Management Regulations is as follows (underlining added):

“Interpretation

2. In these Regulations—

(a) “the Act” means the Housing Act 2004;

(b) [...]; and

(c) “the manager”, in relation to an HMO, means the person managing the HMO.

Duty of manager to provide information to occupier

3. The manager must ensure that—

(a) his name, address and any telephone contact number are made available to each household in the HMO; and

(b) such details are clearly displayed in a prominent position in the HMO.

Duty of manager to take safety measures

4.— (1) The manager must ensure that all means of escape from fire in the HMO are—

(a) kept free from obstruction; and

(b) maintained in good order and repair.

(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.

(3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.

(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—

(a) the design of the HMO;

- (b) the structural conditions in the HMO; and
- (c) the number of occupiers in the HMO.”

74. As will be seen, the offence under section 234(3) is committed by “a person” who fails to comply with the Management Regulations, but those regulations impose duties on “the manager” of the HMO.
75. In his appeal, Mr Chowdhury denied that he was either in control of or managing the HMO. The meaning of “person having control” and “person managing” is to be found in section 263 of the 2004 Act, which reads as follows (underlining added):

“263 Meaning of “person having control” and “person managing” etc.

(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.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.”

76. More than one person can have control of and be a manager of an HMO, and the two candidates at the Property are Mr Chowdhury and

his tenant, Mr Semperger.

77. Although Mr Chowdhury submitted that he was neither in control of nor managing the HMO at the Property, he is a person who receives the rack-rent of the premises (as a whole) from Mr Semperger. Therefore, at the very least, by section 263(1), he is a person “in control of” the premises.
78. However, the offence under section 234 and the Management Regulations does not rely upon or refer to a person being “in control” (or, for that matter, to a “licence holder” as appears in the Schedule of Offences). Rather, the regulations only refer to the “manager” of the HMO which, by regulation 2(3), means the “person managing the HMO”. This, in turn, is defined by section 263(3) of the 2004 Act.
79. Recent cases have looked at the meaning of “person managing” premises for the purpose of 2004 Act: *Cabo v Dezotti* [2022] UKUT 240 (LC) (02 September 2022), *Cottam & Ors v Lowe Management Ltd* [2023] UKUT 306 (LC) (20 December 2023) and *Global 100 Ltd v Jimenez & Ors* [2023] EWCA Civ 1243 (27 October 2023). What emerges from these cases is that a “person managing” an HMO within section 263(3) must be “an owner or lessee” of the premises; and, as freeholder, Mr Chowdhury satisfies this test. Thereafter, there is a distinction between a person who receives rents from the occupants, in section 263(3)(a), and a person who does not receive those rents because of an arrangement with another person, in section 263(3)(b).
80. So far as section 263(3)(a) is concerned, the person must be one who “receives (directly or through an agent or trustee) rents or other payments from, in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises”. In the Tribunal’s judgment, Mr Chowdhury does not satisfy this section because he receives rent from only one person (Mr Semperger) for the whole of the premises, not rents from several persons who occupy parts of the premises (the quoted words in section 263(3)(a) all being in the plural).
81. Turning next to section 263(3)(b), there are three requirements, as explained by Martin Rodger KC in *Cabo v Dezotti* [54-58]:
 - (i) The first requirement is that Mr Chowdhury must not have been receiving those rents or other payments referred to section 263(3)(a). That was the import of Mr Chowdhury’s evidence: he only received £1,800 per month from Mr Semperger for the rental of the whole Property, and he contrasted that with the £7,000 per month he assumed Mr Semperger was receiving from the other occupants to whom he sub-let the rooms in the Property [though with six other occupants, the appropriate calculation may have been £6,000 per month]. As with the preceding paragraph, the Tribunal is satisfied that Mr Chowdhury did not receive rents or other payments from the

occupants of parts of the premises, and so he satisfies this requirement,

- (ii) The second requirement is that Mr Chowdhury would have received the rents from the occupiers of the Property “but for having entered into” an agreement with Mr Semperger, the effect of which was to allow Mr Semperger to keep all the rents from the occupants, so that Mr Chowdhury was not in a position to receive rent or other payments from those in occupation. In *Cabo v Dezotti*, a similar arrangement was held “to be sufficient to demonstrate the required causal connection between the arrangement and the non-receipt of rent.” [56],
- (iii) The third requirement is that the arrangement was made with another person who was not an owner or lessee of the Property. While satisfied in *Cabo v Dezotti*, this requirement was not satisfied in *Cottam & Ors v Lowe Management Ltd*, where the person receiving payments from the occupants had been lessee of the property. In this case, Mr Chowdhury’s evidence was that he had sub-let the whole of the Property to Mr Semperger. Although he did not produce a copy of any tenancy agreement, this was his uncontested evidence at the hearing and Brent appears to accept it, as they have now issued an HMO licence to Mr Semperger as tenant of the Property. Therefore, Mr Chowdhury does not satisfy this requirement and he is not a “person managing” the premises.

- 82. As Mr Chowdhury is not a person managing the premises under the 2004 Act, it follows that he is not a “manager” for the purposes of the Management Regulations. That being the case, the Tribunal is not satisfied beyond all reasonable doubt that Mr Chowdhury has committed any of the offences alleged under section 234 of the 2004 Act and the Management Regulations.
- 83. The fact that he may have committed equivalent offences under section 72(3) in his capacity as “a licence holder” is nothing to the point: those offences were not specified in the Final Notice or in the Schedule of Offences in the hearing bundle.

Reasonable excuse defence

- 84. Regarding the offence for which the Tribunal has found primary liability, namely that as licence holder Mr Chowdhury failed to install the required and stipulated smoke alarm(s) in the Property in breach of Condition 21 of the property licence, contrary to Section 72(3)(b) of the 2004 Act, Mr Chowdhury did not expressly argue that he had a reasonable excuse for his actions. However, the Tribunal nonetheless considered whether what Mr Chowdhury said in his Grounds for Appeal and oral evidence and submissions, amounted to a reasonable excuse for having committed an offence, under section 72(5) of the

2004 Act.

85. We remind ourselves that it is for Mr Chowdhury as appellant to satisfy us, on the balance of probabilities, that the reasonable excuse is made out (see *IR Management Services Limited v Salford City Council* [2020] UKUT 81 (LC)).
86. The Upper Tribunal gave general guidance on the correct approach to what may be a reasonable excuse under section 72(5) in *Marigold and Others v Wells* [2023] UKUT 33 (LC). In that case, the Deputy President draws attention to the tax case of *Perrin v HMRC* [2018] UKUT 156 (TCC) at paragraph [47] and following. At paragraph [48], the Deputy President commended the following approach, quoting *Perrin*:
- “(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?’”
87. Mr Chowdhury was first alerted to the need to apply for an HMO licence in June 2021. Brent Council preferred him to be the licence holder because he was the freeholder, but he did not have to be. He was given three opportunities by the council to nominate someone else, offers that were made primarily to reflect Mr Chowdhury’s ill-health. Nonetheless, he applied for a licence in his own name, completing a detailed application form with numerous questions relating to the condition of the Property and he presented himself as the prime contact. When the licence was granted on 6 December 2021, Mr Chowdhury was given details of all of the obligations of a licence holder, including all of the conditions to which the Property must comply. The property was then overcrowded with seven occupants, but he was given time to allow the existing tenancy agreements to run their natural course rather than having to evict anyone. The council explained that if Mr Chowdhury wanted more people in the Property than the five authorised by the licence, he needed to make improvements to the facilities in the kitchen. This was not a requirement; it was merely an option.

88. On 2 March 2022, the council carried out a thorough inspection of the Property and provided Mr Chowdhury with a detailed inspection report making it crystal clear, by reference to the conditions on the licence, what he had to do to put the Property into an acceptable state. Brent gave Mr Chowdhury several extensions of time to carry out the work.
89. The Tribunal acknowledges that this was in the post-Covid pandemic period, but the third and last lockdown had been lifted, and all restrictions had come to an end by July 2021 and the national health emergency had largely passed. Mr Chowdhury provided no evidence of his attempts to engage tradesmen to carry out the work necessary at the Property, nor of the problems that he said that he had encountered, and the Tribunal considers the time provided by the council was sufficient to complete the works, or to make much greater progress in doing so.
90. The Tribunal accepts that Mr Chowdhury is ill. His medical reports confirm this. However, his health did not prevent him from applying for and obtaining the HMO licence and did not prevent him organising the replacement of 11 fire doors and installing window restrictors. The Tribunal is sympathetic to Mr Chowdhury's health condition, but there is nothing to suggest that it prevented him from organising tradesmen to carry out the necessary work at his Property, or to arrange for his tenant Mr Semperger to do so on his behalf.
91. The Tribunal also accepts that Mr Chowdhury was under pressure from the council to comply with the licence conditions. However, it accepts Mrs Thakkar's evidence that the council was looking to work with Mr Chowdhury to ensure the improvements to the Property were made, so that his licence could be renewed for a five-year period. The Tribunal does not consider the pressure was untoward. The Tribunal rejects Mr Chowdhury's allegation of bullying or victimisation by the council's officers and prefers their evidence that it was Mr Chowdhury who was, at times, angry and confrontational. The problem was simply that Mr Chowdhury did not take up the opportunity presented by the extensions of time given to him to do the necessary work.
92. The inspection on 12 August 2022 came more than one year after the requirement for an HMO licence was notified to Mr Chowdhury and more than eight months after the issue of the HMO licence. In the Tribunal's view, Mr Chowdhury's omission to carry out work required by the council amounted to prevarication on his part. He had months in which to carry out the work and extensions of time to deal with what were serious fire safety issues in a property that was overcrowded. He suggested that he could not afford the work or raise a loan but provided no evidence to support these contentions. Nor was there any evidence of the efforts he did or did not make to include his tenant in carrying out the work, beyond the fact that Mr Semperger was at the Property on 12 August 2022, and that he entered into correspondence with the council about the possibility of applying for an HMO licence in his own name, which he eventually did.

93. Taking all these factors into consideration, the Tribunal is not satisfied that what Mr Chowdhury did or omitted to do was objectively reasonable for him in these circumstances. It follows that on the basis of the evidence heard, the Tribunal is not satisfied on the balance of probabilities that the defence of reasonable excuse is made out in respect of the period in which the primary offence was committed, namely 16 July to 12 August 2022.
94. Accordingly, we find beyond a reasonable doubt that Mr Chowdhury committed the offence under section 72(3)(b) of the 2004 Act, and, on a balance of probabilities, we reject the proposition that he had a reasonable excuse.

The amount of the civil penalty

95. We turn now to the amount of the financial penalty imposed.
96. The procedure followed by Brent to impose a financial penalty and the amount of that penalty are described in the Reasons attached to the Notice of Intent prepared by Mrs Thakkar, the Review decision and the Reasons attached to the Final Notice.
97. Mrs Thakkar had regard to Brent’s enforcement policy, which guides council officers to a matrix of four factors to be taken into account and a system of points scoring according to the severity of the circumstances, offences and outcomes.
98. For completeness, the matrix is set out below. It will be noted that the points score for the last row is to be doubled in determining the final penalty charge, as it relates to the potential harms to the tenants of the Property which arise from the offences.

Factors	Score = 1 to 7	Score = 8 to 14	Score = 15 to 20
1-Deterrence & Prevention	High confidence that a financial penalty will deter repeat Offending. Publicity not required as a deterrence,	Medium confidence that a financial penalty will deter repeat offending. Some publicity will be required as a deterrence in the landlord community.	Low confidence that a financial penalty will deter repeat offending. Mass publicity will be required as a deterrence in the landlord community.
2-Removal of Financial Incentive	No significant assets and low financial profit made by offender.	Small landlord/ agent managing up to 5 properties and/or some rental income retained.	Portfolio landlord/agent running over 5 rental properties.

3-Offence & History	No previous history and single low offence.	More than one recent offence and/or moderate level offence(s).	Multiple and/or continuous serious offences.
4- Harm to tenants – DOUBLE WEIGHTING	Low potential harm to tenants and single household dwelling.	Moderate potential harm to tenants and/or small HMO with up to 5 tenants,	High level of potential harm to occupants, continuous impact and/or large HMO with more than 5 occupants

99. The fixed penalty charges associated with the scores produced by the matrix are as follows:

Score Range	Penalty Charge	Score Range	Penalty Charge
1-5	£300	51-60	£10,000
6-10	£500	61-70	£15,000
11-20	£750	71-80	£20,000
21-30	£1,000	81-90	£25,000
31-40	£2,500	91-100	£25,000
41-50	£5,000		

100. In the present case, Brent proceeded from the basis that (according to the Final Notice): “The condition of the property indicates several breaches of Mandatory Licencing Conditions in relation to the management and fire safety at the property. In addition to this, there were failures in relation to HMO Management Regulations 2006.”

101. Brent then assigned the following points for each of the factors, with the reasons given in each case:

- **Row 1 – Deterrence and Prevention: 4 points.**

In the Final Notice, the reasons given were: “Fairly high confidence that a financial penalty will deter repeat offending, however as the landlord has not complied with the schedule even after many months, it has been reflected in the scoring”. In oral evidence, Mrs Thakkar said she had chosen 4 points because 1 point was too low where items of work were still outstanding, and 7 points would be too high, where there had been some compliance. Although Mr Chowdhury had submitted that there was no need for any deterrence in this case, deterrence is a factor explicitly mentioned as one of the purposes of imposing a financial penalty in the DCLG Guidance for Local Authorities and,

therefore, it is appropriate to take it into account in the council's matrix. The Tribunal therefore endorses this score.

- **Row 2 – Removal of Financial Incentive: 8 points.**

The reasons were: “Mr Kamal Chowdhury is a small landlord and he has an AST with Mr Istvan Semperger who pays him £1,800 per calendar month. In an email dated 18th August 2022, Mr Istvan Semperger stated that him and his friends have lived in the property for 10 years. However, the property has only been licenced since December 2021, after failure to licence investigation by Brent Council.” In oral evidence, Mrs Thakkar said that the first column of the matrix was not relevant because Mr Chowdhury did have assets and he had been accepting rent from the Property for 10 years. Mr Chowdhury should have applied for a licence when the council brought in its additional licencing scheme on 1st January 2015 and, in any event, a change in the law in 2018 removed the three-storey requirement for mandatory licencing of HMOs. She chose 8 points for this factor, being the lowest score in the “moderate” scoring column. The Tribunal agrees with this reasoning and confirms the score.

- **Row 3 – Offence and History: 8 points.**

The reasons given were: “More than one offence. Section 72 (3b) [sic] failing to comply with licencing conditions and Section 234 (3) of Housing Act 2004 failing to comply with HMO Management Regulations [details of which were then given]. The absence of a mains fire system, alarms and fire safety measures puts occupiers at risk from injury.” Mrs Thakkar chose 8 points for this factor, being the lowest score in the “moderate” scoring column. Although the Tribunal upheld only one offence, being the breach of licencing conditions under section 72(3)(b), the “moderate” column makes provision for “More than one recent offence and/or moderate level of offence(s)”. The Tribunal considers that the absence of a mains fire alarm system put the occupants at risk of injury from fire and this offence, alone, still justified the description of a “moderate level offence” and the 8 points allocated for this factor.

- **Row 4 – Harm to Tenants (double counted): 30 points.**

The reasons given were: “High level of harm to occupiers as large HMO with over 5 occupiers. There is no mains fire system on the day of the original inspection on 2nd March 2022 and also on 12th August 2022. Only a fire blanket has been provided in the shared kitchen which is not sufficient to protect the tenants in the event of a fire. The level of harm is high and continuous as there are no early warning signs or mains wired smoke or heat detection to alert the occupiers in the event of a fire. Furthermore, not having a valid BS5839 Fire safety certificate or Electrical Condition

Report (EICR) puts the tenants at risk of living in unsafe conditions that are a danger to their lives. Also, a majority of the fire doors have key-hole locks where smoke can go through the key-hole and harm the tenants. In addition to this, apart from one main tenant the other 6 occupiers do not have any terms on which they occupy the property, exposing them to illegal evictions and homelessness at any time.” Mrs Thakkar had chosen 15 points, being the lowest score of the third column (“High level of potential harm to occupants”) which, in accordance with the matrix, she doubled to produce 30 points. The Tribunal regards the lack of an adequate fire alarm system to be serious and the risk of a catastrophic fire as being high in this case, so confirms the score in relation to this factor.

102. Overall, the points allocated for the four factors combined to result in a total of **50 points**. That was the highest score in the 41-50 score range, which produced a penalty charge of £5,000.
103. Mr Chowdhury did not specifically address the factors in the matrix, but he did say that he did not consider deterrence was appropriate in the circumstances of this case, he received less by way of rental income than his own tenant received from the other occupants and he depended on his rental income for his retirement, and he provided documentary evidence to support his contention that he was a person of good standing.
104. The Tribunal is willing to accept that Mr Chowdhury is a man of good standing, and it has dealt with the other points earlier, but repeats that it regards the lack of an adequate fire alarm system as a serious breach of the licensing conditions. The Property was overcrowded in terms of the licence and facilities, and there was very little fire provision, so that the occupiers were exposed to a high risk of very serious harm. Even if the Tribunal had reduced some of the individual factor scores by a few points (which it was not inclined to do), the total score would still come within this score range 41-50 and the same £5,000 penalty would result.
105. Therefore, applying Brent’s policy and matrix, and having carefully considered all of the circumstances of this case (including the reasons why we were not satisfied that the reasonable excuse defence was made out), we find that a civil penalty in the sum of £5,000 was justified and therefore confirm that penalty.

Name: Judge Powell

Date: 26 February 2024

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).

Where possible, you should make your further application for permission to appeal on-line using the Upper Tribunal's on-line document filing system, called CE-File. This will enable the Upper Tribunal to deal with it more efficiently and will enable you to follow the progress of your application and submit any additional documents quickly and easily. Information about how to register to use CE-File can be found by going to this web address: [https://www.judiciary.uk/wp-content/uploads/2021/07/Practice-Note-on-CE-filing-Lands-Chamber-17.6.21 .pdf](https://www.judiciary.uk/wp-content/uploads/2021/07/Practice-Note-on-CE-filing-Lands-Chamber-17.6.21.pdf)

Alternatively, you can submit your application for permission to appeal by email to: Lands@justice.gov.uk.

The Upper Tribunal can also be contacted by post or by telephone at: Upper Tribunal (Lands Chamber), 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (Tel: 020 7612 9710).