



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

**Case Reference** : **MAN/00CX/HNA/2021/0132**

**Property** : **3A Duckworth Lane, Bradford, BD9 5ER**

**Applicants** : **Mr Mukhtar Ahmed**

**Respondent** : **Bradford Metropolitan District Council**

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

**Tribunal Members** : **Judge, Katherine Southby  
Valuer Member, Colin Snowball MRICS  
Lay Member, Hilary Clayton**

**Date of Decision** : **18 August 2023**

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**DECISION**

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The Tribunal allows the appeal in part and substitutes a penalty of £26,250.

## **REASONS**

### **Background**

1. This is an appeal by the applicant, Mr Mukhtar Ahmed, against a financial penalty of £27,500 imposed on him by Bradford Metropolitan District Council ('the Council') under the Housing Act 2004 ('the Act'), s.249A. The penalty arose because of a failure of Mr Ahmed to comply with the requirements of an improvement notice under section 30 of the Act.
2. The penalty was imposed on 8 October 2021 in relation to 3A Duckworth Lane ('the property'). Mr Ahmed appealed to the Tribunal against the penalty on 27 October 2021.
3. The property was not inspected by the Tribunal.
4. The hearing took place by way of a video hearing on 18 August 2023. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was FVH – a video hearing. A face to face hearing was not held because all issues could be determined in a remote video hearing.
5. The documents to which the Tribunal was referred to are in a bundle of 64 pages from the Applicant and an updated bundle of 129 pages from the Respondent together with some additional photographs from the Applicant showing the current state of the Property. The parties confirmed that they had access to the same documents, had had the opportunity to consider them and were happy to proceed by way of a video hearing. They confirmed that they could see and/or hear the proceedings. Despite some initial connectivity difficulties and problems with the sound, all parties confirmed that they were able to participate in full and were happy to proceed. The order made is described at the end of these reasons.
6. Mr Shephard of Counsel represent Mr Ahmed who attended. The witness was Mr Javid Iqbal – sometimes referred to as Javid Raja. Ms Nasreem Karim of Instructing Solicitors was also present. Mr Ryatt represented the Respondent. The witnesses for the Respondent were Ms Nazima Javed and Mr Shonu Miah.
7. We carefully considered all the written evidence submitted to the Tribunal in advance and the oral evidence given to us at the hearing even if we do not mention it. We used the hearing to amplify and update parts of the written evidence and only record such of the oral evidence as is necessary to explain our decision.

### **The Law**

#### *Housing Act 2004*

8. Section 249A (1) of the Act provides that a local authority may impose a financial penalty where there has been "a relevant housing offence".
9. Section 249 (2) sets out what amounts to a housing offence and includes at, section 249(a) an offence under section 30 of the Act, namely a failure to comply with an improvement notice. Section 249 (3)-(4) further provides that only one financial

penalty can be imposed for each offence and that cannot exceed £30,000. The imposition of a financial penalty is an alternative to criminal proceedings.

10. Section 30 of the Act provides:

**Offence of failing to comply with improvement notice**

(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

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

(8) 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.

*Procedural requirements*

11. Schedule 13A of the Act sets out the procedural requirements a local authority must follow when seeking to impose a financial penalty. Before imposing such a penalty the local authority must give a person notice of their intention to do so, by means of a Notice of Intent.

12. A Notice of Intent must be given within 6 months of the local authority becoming aware of the offence to which the penalty relates, unless the conduct of the offence is continuing, when other time limits are then relevant.

13. The Notice of Intent must set out:

- the amount of the proposed financial penalty
- the reasons for imposing the penalty
- Information about the right to make representations regarding the penalty

14. If representations are to be made, they must be made within 28 days from the date the Notice of Intent was given. At the end of this period the local authority must then decide whether to impose a financial penalty and, if so, the amount.
15. The Final Notice must set out:
  - the amount of the financial penalty
  - the reasons for imposing the penalty
  - information about how to pay the penalty
  - the period for the payment of the penalty
  - information about rights of appeal
  - the consequences of failure to comply with the notice.

### *Guidance*

16. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties: 2004 Act Schedule 3, para 12. The Ministry of Housing Communities and Local Government issues such guidance ("the MHCLG Guidance") in April 2018: *Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Authorities*. This requires a local authority to develop its own policy regarding when or if to prosecute or issue a financial penalty. The MHCLG Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:
  - a) Severity of the offence.
  - b) Culpability and track record of the offender.
  - c) The harm caused to the tenant.
  - d) Punishment of the offender.
  - e) Deterrence of the offender from repeating the offence.
  - f) Deterrence of others from committing similar offences.
  - g) Removal of any financial benefit the offender may have obtained as a result of committing the offence.
17. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, in June 2018 the Council approved a policy for the use of Civil Penalties as an alternate to prosecution in the Housing and Planning Act 2016 ('the Policy'). We make further reference to this Policy later in these reasons

### *Appeals*

18. A final notice given under Schedule 13A to the 2004 Act must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given. However, this is subject to the right of the person to whom a final notice is given to appeal to the Tribunal (under paragraph 10 of Schedule 13A).
19. Such an appeal may be made against the decision to impose the penalty, or the amount of the penalty. It must be made within 28 days after the date on which the final notice was sent to the appellant. The final notice is then suspended until the appeal is finally determined or withdrawn.
20. The appeal is by way of a re-hearing of the local housing authority's decision and may be determined by the Tribunal having regard to matters of which the authority was unaware. The Tribunal may confirm, vary or cancel the final notice. However, the Tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed.

21. When deciding whether to confirm, vary or cancel the final notice imposing the financial penalty, the issues for the Tribunal to consider will or may include:
- a. Whether the Tribunal is satisfied beyond reasonable doubt that the applicant's conduct amounts to a relevant housing offence in respect of premises in England (see sections 249A(1) and (2) of the Housing Act 2004);
  - b. Whether the local housing authority has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act);
  - c. If the appeal relates to more than one financial penalty imposed on the applicant whether or not they are in respect of the same conduct; and/or
  - d. Whether the financial penalty is set at an appropriate level having regard to any relevant factors, which may include, for example:
    - i. The offender's means
    - ii. The severity of the offence
    - iii. The culpability and track record of the offender
    - iv. The harm (if any) caused to a tenant of the premises
    - v. The need to punish the offender, to deter repetition of the offence or the need to deter others from committing similar offences; and/or
    - vi. The need to remove any financial benefit the offender may have obtained as a result of committing the offence
22. A number of decisions of the Upper Tribunal have established the questions that should be addressed when considering an appeal against a financial penalty. Those are *London Borough of Waltham Forest v Younis* [2019] UKUT 0362 (LC), *London Borough of Waltham Forest v Marshall & Another* [2020] UKUT 0035 (LC), *IR Management Services Ltd v Salford City Council* [2020] UKUT 0081 (LC), *Sutton & Another v Norwich City Council* [2020] UKUT 0090 (LC) and *Thurrock Council v Daoudi* [2020] UKUT 209 (LC).
23. The Tribunal's task is not simply a matter of reviewing whether the penalty imposed by the Final Notice was reasonable: the Tribunal must make its own determination as to the appropriate amount of the financial penalty having regard to all the available evidence. In doing so, the Tribunal should have regard to the seven factors specified in the MHCLG Guidance as being relevant to the level at which a financial penalty should be set (see paragraph 14, above).
24. The Tribunal should also have particular regard to council's Policy (see paragraph 15, above). As the Upper Tribunal (Lands Chamber) observed in *Sutton & Another v Norwich City Council* [2020] UKUT 0090 (LC):
25. "It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities, and not by courts or tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred."
26. The Upper Tribunal went on to say that the local authority is well placed to formulate its policy and endorsed the view that a tribunal's starting point in any particular case should normally be to apply that policy as though it were standing in the local authority's shoes. It offered the following guidance in this regard:

27. “If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision.”
28. Upper Tribunal guidance on the weight which tribunals should attach to a local housing authority’s policy (and to decisions taken by the authority hereunder) was also given in another recent decision of the Lands Chamber: *London Borough of Waltham Forest v Marshall & Another* [2020] UKUT 0035 (LC). Whilst a tribunal must afford great respect (and thus special weight) to the decision reached by the local housing authority in reliance upon its own policy, it must be mindful of the fact that it is conducting a rehearing, not a review: the tribunal must use its own judgment and it can vary such a decision where it disagrees with it, despite having given it that special weight.
29. The decision of the Upper Tribunal in *Sutton & Another v Norwich City Council* was appealed to the Court of Appeal. The Court concluded that the penalties imposed could not be impugned: *Sutton & Another v Norwich City Council* [2021] EWCA Civ 20. The Court (at para. 14) having considered the Upper Tribunal’s view on the weight to attach to a policy of the authority in *London Borough of Waltham Forest v Marshall & Another* took the view there were no reasons to dissent from those observations.

### **Evidence**

30. On 13 May 2019 the owner and occupants of 3a Duckworth Lane, BD9 5ER were sent letters [page 28 Respondent bundle] advising them of an inspection due to take place on Monday the 20th of May 2019. The inspection was to be carried out by Environmental Health Officer Mr Andrew Rudd. Mr Rudd subsequently carried out a full inspection of the property in accordance with the Housing Health and Safety Rating System as introduced by the Housing Act 2004 which in his view revealed significant concerns regarding the hazard of Fire. Mr Rudd’s concerns were that the accommodation was located on the first and second floors of a building, with a jewellers’ shop on the ground floor. The accommodation has a separate entrance door located up a flight of external steps to the rear of the property which led straight into the kitchen. There was a living room off the kitchen and a staircase leading to the second floor where 2 bedrooms and a bathroom were located. There was no working fire alarm system and as access and egress from the bedrooms on the second floor was via an open staircase through the kitchen there was a significant risk of the occupants being trapped should there be a fire.
31. Mr Rudd sought advice from the Fire Service and subsequently issued an Emergency Prohibition Order, on the 21st of May 2019 which prohibited the use of the premises for habitation until works to mitigate the hazard of fire had been completed. The works specified on the Emergency Prohibition Order included:
- Rearranging the layout of the flat so the occupants have a protected route of escape should a fire start anywhere in the building or associated grounds. This work would include a partition wall/lobby to separate the kitchen from the escape route, and fitting doors to all rooms off the escape route.
  - Provide a fire alarm and detection system to a minimum BS5839:Part 6 (2004):  
Grade D. This system needed to cover all areas of the flat and commercial premises.

- Ensure adequate separation between the commercial premises and living accommodation.

32. Mr Rudd also issued the owner, Mr Mukhtar Ahmed, with a 'Notification of Works Required', on the 17th of June 2019 [Page 30 Respondent's bundle] which specified additional works that must be completed before the premises could be occupied again. The additional works were to mitigate the risks from the hazards of:

- **Excess Cold** – provide and fit suitable heating in the bathroom.
- **Damp and Mould** – install a system of mechanical ventilation in the windowless bathroom and treat the existing mould.

33. Mr Rudd visited the premises again on the 3rd of July 2019 and found the tenants were still living there, in breach of the Emergency Prohibition Order. Work to separate the kitchen from the lobby had been started but not completed. Mr Rudd visited again on the 6th of January 2020 and found the work detailed on the Emergency Prohibition Order had still not been completed and the tenants were still living in the property.

34. Mr Rudd sent Notices of Intended Entry, under section 239 of the Housing Act 2020, to the owner and occupants advising of an inspection to be carried out on the 6th of February 2020 [Page 32 Respondent's bundle].

35. During the Inspection on the 6th of February 2020 Mr Rudd found that a partition wall and fire door had been fitted to separate the kitchen and lobby area but no other work on the Emergency Prohibition Order or the Notification of Works had been completed. The work carried out was sufficient to remove the 'imminent risk' and so the Emergency Prohibition Order was revoked.

36. An Improvement Notice was served on Mr Ahmed on the 9th of March 2020 [Page 33 Respondent's bundle] requiring work to be carried out in order to reduce the risks from the following hazards:

- **Excess Cold**  
Fit a heater in the bathroom  
Repair the damaged section of ceiling to the second-floor front bedroom
- **Fire**  
Fit a Grade D1: Type LD2 fire alarm and detection system  
Ensure adequate separation between the commercial and residential premises  
Fit additional electric sockets throughout to reduce the risk of fire from overloading of the electrical system.  
Provide and fit suitable lighting to the first floor lobby area  
Obtain an Electrical Installation Condition Report to ensure there are no faults to the electrical system which may cause a fire.
- **Domestic hygiene, pests and refuse**  
Repair the damaged section of ceiling to the second floor front bedroom
- **Falling on level surfaces**  
Fit additional electric sockets throughout to reduce the risk of extension leads creating a tripping hazard  
Provide and fit suitable lighting to the first floor lobby area
- **Entry by Intruders/Collision and entrapment/Position and Operability**  
Replace the damaged entrance door
- **Damp and Mould**  
Fit a heater in the bathroom  
Install a mechanical ventilation system in the bathroom  
Clean, remove and treat the mould in the bathroom

- **Collision and Entrapment/Personal hygiene, sanitation and drainage**  
Arrange for the wash hand basin in the bathroom to be securely fitted to the wall to reduce the risk of trapping fingers.  
Replace the damaged bath panel  
The Improvement Notice required all specified work, which had previously been required on the informal 'Notification of Works Required', as well as some additional works found on a revisit, and any outstanding work on the Emergency Prohibition Order. The Improvement Notice required all works to be completed by the 20th of April 2020.

37. On the 25th of June 2020 a letter was sent to the owner regarding the need to follow government advice regarding COVID-19 when arranging for work to be carried out [Page 49 Respondent's bundle].
38. On the 4th of January 2021 Environmental Health Officer, Miss Debra Ayre sent Notices of intended entry to the owner and occupants of 3a Duckworth Lane, BD9 5ER [Page 51 Respondent's Bundle] Miss Ayre had taken over the case due to Mr Rudd leaving the Authority and arranged to inspect the property to check compliance with the Improvement Notice on the 13th of January 2021. Upon visiting the property she states that she was denied access by the tenants and that the owner did not attend.
39. Miss Ayre sent further Notices of Intended Entry requiring access on the 29th of January 2021 [Page 52 Respondent's Bundle] and was able to carry out a partial inspection on that date. Miss Ayre made notes on a copy of the Schedule of Works [Page 53 Respondent's Bundle] and took photographs) which showed much of the work detailed on the Improvement Notice had not been completed. Miss Ayre also found additional items of disrepair, including,
- Loose and missing flashing round the rear dormer.
  - Damp stains to the kitchen ceiling and the attic room ceilings.
  - Kitchen units loose and in poor condition.
40. On the 21st of April 2021 Miss Ayre states that the owner contacted her and advised her that he had completed all of the work on the Improvement Notice. Miss Ayre advised him of the outstanding work. The owner then contacted Miss Ayre again on the 26th of May 2021 following which Miss Ayre agreed to carry out a further visit with the owner on the 15th of June 2021 to check that all work had been completed, prior to sending confirmation of outstanding work. Miss Ayre sent a further Notice of Intended Entry [Page 55 Respondent's Bundle] confirming the arranged visit, on the 6th of June 2021.
41. Miss Ayre carried out a full inspection on the 15th of June 2021 and made notes on a copy of the Improvement Notice [Page 56 Respondent's Bundle] Mr Ahmed did not attend but the tenants allowed access.
- Item 1 on the Improvement Notice had not been complied with as there was no heater fitted to the bathroom.
  - Item 2 had been partially completed, in that expanding foam had been used to fill a hole under the eaves in the second floor front bedroom, but the area had not been skimmed to a sound finish [Page 58 Respondent's Bundle]
  - Item 3 had not been complied with as the specified fire alarm and detection system had not been installed.
  - Item 4 put the responsibility on the owner for ensuring adequate separation between the commercial and residential premises, to protect the occupants of



the flat should there be a fire in the commercial areas. It was not possible to check this as the commercial premises were not open.

- Item 5 had not been complied with as there were no additional electric plug sockets fitted [Pages 59 and 60 Respondent's Bundle] and damaged light fittings had not been replaced. This meant there were no working sockets in the second floor rear bedroom and an inadequate number of sockets in the other rooms.
- Item 6 had not been complied with as there was no additional lighting, or two-way switch in the first floor lobby. In addition, the single switch was damaged leaving exposed wires [Page 61 Respondent's Bundle]
- Item 7 had not been complied with as the landlord did not obtain an Electrical Installation Condition Report.
- Item 9 had not been complied with as there was no heater in the bathroom and no system of mechanical ventilation. Although there was no visible mould in the bathroom there was a large crack in the ceiling [Page 62 Respondent's Bundle]
- Item 10 had been partially complied with as the basin in the bathroom had new sealant [Page 63 Respondent's Bundle] However, the pedestal supporting the basin was not securely fitted to the floor or basin.

42. Following the inspection on the 15th June 2021 the case officer sought authorisation to proceed with a Civil Penalty Notice, from the Private Sector Housing Manager Mr Shonu Miah, by completing a Formal Proceedings Assessment Scoring Sheet [Page 64 Respondent's Bundle] a Public Interest Matrix [Page 66 Respondent's Bundle] and an Authorisation to Issue a Civil Penalty form [Page 68 Respondent's Bundle]
43. Once authorisation to proceed to a Civil Penalty Notice had been obtained, the case officer completed a CPN Calculator [Page 69 Respondent's Bundle] to determine the level of culpability, the level of harm and, ultimately, the level of fine. An assessment of costs to complete the works was also carried out [Page 75 Respondent's Bundle]
44. On 5th August 2021 a Notice of Intention to Impose a Financial Penalty, Schedule 13A (1) Financial Penalties under Section 249A of the Housing Act 2004, was served [Page 76 Respondent's Bundle] The notice was put in the letterbox at Sefton Lodge, 30 Park Drive, BD9 4DT by Miss Ayre at 16.36
45. On 7th October 2021, the Council's Final Notice of the Imposition of a Financial Penalty Schedule 13A (6) Financial Penalties under Section 249A of the Housing Act 2004 was issued [Page 80 Respondent's Bundle] This was served on Mr Mukhtar Ahmed by Mr Shonu Miah, Private Sector Housing Manager, by sending 1st class post to Mr Ahmed at Sefton Lodge, 30 Park Drive, BD9 4DT on 8th October 2021. The invoice associated with the notice was also enclosed [Page 82 Respondent's Bundle]
46. The reasons for Imposing a Financial Penalty were set out in the Notice of Intention to Impose a Civil Penalty and accompanying letter of the 5th August 2021 [Page 76 Respondent's Bundle] and the Final Notice to Impose a Civil Penalty and accompanying letter of the 7<sup>th</sup> October 2021 [Page 80 Respondent's Bundle]
47. The Respondent states that the level of culpability was considered as high due to a history of non-compliance following both formal and informal action, and a continuing failure to comply with the current Improvement Notice. Opportunity was given to remedy the disrepair informally prior to the service of the Improvement notice but the Applicant failed to comply.

48. The level of harm was assessed as high due to the lack of an appropriate fire alarm and detection system which significantly increases the likelihood of serious harm to the occupants in the event of a fire.
49. The applicant made no representation to the local authority following service of the Notice of Intention to Impose a Civil Penalty.
50. Mr Shepherd argued on behalf of the Applicant that the fact that Ms Ayres, the Environmental Health Officer who was the Case Officer in this matter was not in attendance to give oral evidence meant that the Tribunal should give less weight to her written statement. The Tribunal heard that Ms Ayres had left the Council approximately 2 years ago and that the Respondent had notified the Applicant that they would not be calling her to give oral evidence. Both parties accepted that they were happy to proceed in her absence.
51. Mr Ahmed gave oral evidence to the Tribunal that he owns 3 investment properties which he inherited. One is solely residential and two are mixed use with retail units on the ground floor. He stated that he is not involved in the running or management of the properties. Mr Iqbal, his brother-in-law manages 3A Duckworth Lane as an informal arrangement, which started 7-8 years ago. Mr Iqbal was also the manager of Durani jewellers which was the tenant of the ground floor retail premises at 3 Duckworth Lane. Mr Ahmed stated that he had not been to the Property for 10 years as he was too busy running his jewellery business, and there was no contract or agreement with Mr Iqbal for the management of the Property.
52. Mr Ahmed stated that when he received correspondence from the Council he would open it and pass it on to Mr Iqbal, although he stated that he had not received all of the notices and stated that he had not read everything. He gave evidence that he did not think he had received the Improvement Notice but read the one which referred to the fine and spoke to Mr Iqbal who said he would sort it all out with Ms Ayres. Mr Ahmed stated that as far as he was concerned everything was sorted out.
53. Mr Ahmed was asked whether he had had meetings with Mr Iqbal to decide what work should be done or not done in response to the Improvement Notice. Mr Ahmed stated that they spoke regularly, and that Mr Iqbal was trying to get people in to do the work but that it was difficult with Covid restrictions and that the tenants were making things very difficult. He conceded that he was not fully up to date with the process and had no record of any communication between himself and Mr Iqbal or between Mr Iqbal and the Council.
54. Mr Ahmed was asked how he could be sure that Mr Iqbal had the necessary knowledge and skills to manage the property, and he stated that he had not had any problems over the last 10-15 years of Mr Iqbal's involvement. His attention was drawn to errors in names and dates within Leases in the bundle and stated that he did not do them, that Mr Iqbal did all of that.
55. Mr Ahmed was asked about the dates when his tenants left, and he accepted that at page 39 of the bundle the Lease of Mr Sandor and Miss Karickova had started on 1 March 2021, and that the s21 notice for the previous tenant Ms Jumakova, signed by Mr Ahmed was dated 1 November 2021. A subsequent s21 notice for Mr Sandor was dated 24 January 2022. He was asked whether Ms Jumakova and Mr Sandor and Ms Karickova had leases of the Property at the same time. Mr Ahmed was unclear, stated

that he could not recall and that some tenants leave part way through. He stated that he is not an investor in property, does not see himself as a landlord as it is not his business and not his responsibility.

56. Mr Ahmed was asked if he had received the original Emergency Prohibition Order referring to fire safety in 2019. Mr Ahmed stated that he could not recall that but when questioned about a serious fire hazard leading to a ban on occupation stated, 'that's the works I was carrying out – Iqbal was trying to do it.'
57. Mr Ahmed stated that he had phoned and spoken to Ms Ayre but had not attended the property when she inspected. He confirmed having spoken with Ms Ayres on 21 April 2021 and told her that he had completed most of the works. He agreed that he also spoke with her on 26 May 2021 and that she informed him of the inspection on 15 June 2021 which he did not attend. He stated that at that inspection Ms Ayres met with Mr Iqbal and said that she was satisfied with the works and that they should carry on. Mr Ahmed accepted that as at 15 June 2021 the works required by the Improvement Notice had not been completed. He stated that Mr Iqbal was waiting for joiners and plumbers and was liaising with Ms Ayres.
58. He stated that at no point were they trying to avoid doing the works and that there was no malice involved. He stated that being a landlord was not his business, that he did not have to vet Mr Iqbal, that this was not his legal responsibility.
59. Mr Ahmed was asked about an inspection by Nazima Javed of the Respondent in November 2022 whereupon she found there was still non-compliance with the original improvement notice. Mr Ahmed stated that the Tenants were very difficult, and that Mr Iqbal was trying to get the work done when the property was empty.
60. The Tribunal heard oral evidence from Mr Iqbal that he had tried to do his best but that it was difficult because of Covid19. He stated that when Miss Ayres came to inspect the property he talked with her face to face and she said it was Ok to take his time. Mr Iqbal was unclear when questioned which works were outstanding at the inspection by Miss Ayres, describing it as 'just the fire alarm' and alternatively as 'various bits and bats'.
61. Mr Iqbal confirmed that he had no formal training or education in managing property. He stated that he was not managing the property, he was 'just there' because he has worked there in the shop downstairs for more than 10 years and during this time he has also managed the property.
62. Mr Iqbal was asked about his meetings with Miss Ayres, and stated that on 29 January 2021 he met her on the stairs, and on 15 June 2021 he met her at the Property. He was asked how he identified himself to her, and 'she lives in Bradford, she knows me'. He stated that he told her he was the managing agent. Mr Iqbal confirmed when questioned that he had had no other contact with Ms Ayres apart from the occasions when she visited.
63. Ms Nazima Javed gave oral evidence that she had attended the Property in November 2022 and had met with Mr Iqbal, who had identified himself to her as Raja Javed and had not mentioned that he was managing the property or involved in doing works, although he was on the phone to Mr Ahmed speaking to him about the works,

64. Mr Miah gave oral evidence that as part of the assessment of culpability the Respondent had considered the failure to comply with the works specified in the original Emergency Prohibition Order, and that tenants had come and gone without the works having been done.
65. Mr Miah accepted that there had potentially been double counting of the Applicant's conduct which was incompatible with the Guidance [page 101] and that there had been a 5% uplift applied in error.

### **Decision**

66. It is not in dispute that an Improvement Notice was issued in respect of the Property on 9 March 2020.
67. It is accepted by Mr Ahmed that on 15 June 2021 that the works set out in the Improvement Notice had not been complied with. This is consistent with the evidence of Ms Ayres, which although she was not present to be questioned, we found to be consistent with the oral evidence of those witnesses who did attend and which we find persuasive. We do not find that any doubt has been cast on her statement by either the Applicant's oral evidence or the submissions made on the Applicant's behalf.
68. Mr Ahmed appears to be suggesting, although this was not advanced by Mr Shephard on his behalf, that the problems with his tenants and the difficulties associated with Covid-19 amount to a reasonable excuse for this failure. We disagree.
69. We find there to be a notable absence of evidence of efforts made by Mr Ahmed to take action to resolve aspects of the Improvement Notice, and in particular the fire alarm, of which he had been notified in 2019. We note the confirmation by Mr Ahmed that he left everything to Mr Iqbal, and the confirmation by Mr Iqbal that he had no contact whatsoever with Ms Ayres other than meeting her twice, once on the stairs and once at the Property when she inspected. We do not accept that this was the conduct of a Landlord who through his property manager was taking all appropriate steps to comply, but who was thwarted by external circumstances.
70. We note that during this time the property was relet, and therefore we do not accept that conduct of tenants can amount to a reasonable excuse either, as there was the opportunity during changeover of tenants to obtain unfettered access to the Property to resolve the issues and carry out the necessary works. This was not done and the property was relet notwithstanding the works being incomplete.
71. We find that we are satisfied beyond reasonable doubt that a relevant housing act offence has been committed, namely that there was a failure to comply with an Improvement Notice dated 9 March 2020.

### **Penalty**

72. We next considered the penalty imposed by the Council. We remind ourselves that our task is not simply matter of reviewing whether the penalty imposed by the Council by the Final Notice was reasonable: we must make our own determination as to the appropriate amount of the financial penalty having regard to all the available evidence before us.

73. Limited submissions were made by the Applicant in respect of the correct level of penalty. Mr Shepherd argues that the Council have surrendered their decision making to a computer programme. He asserts this on the basis that the fine imposed was beyond the maximum available to the Council in the table at Page 11.

### **Culpability**

74. We considered the Respondent's Guidance on Civil Penalties [page 90 Respondent's bundle] and note that this states that 'A landlord will be deemed to be highly culpable when they intentionally or recklessly breach or wilfully disregard the law. We find that Mr Ahmed recklessly breached or wilfully disregarded the law by absenting himself to a very large extent from active involvement in the property without having put in place a manager with appropriate knowledge, and without overseeing the actions of that manager to ensure that his obligations as a Landlord were being met.

75. The Guidance lists amongst factors that will contribute to this assessment the following items which the Tribunal considers to be relevant in this case:

- Despite a number of opportunities to comply they have failed to do so. In this case Mr Ahmed was notified of works needing to be done in respect of fire safety in 2019. This is significantly prior to any difficulties presented by the Covid19 pandemic, and yet these works remained outstanding not only in 2021 when Miss Ayres inspected but still remained outstanding on 19 December 2022 when Nazima Javed inspected.
- Failure to comply results in significant risk to individuals. Whilst several aspects of the works remained outstanding it is the continued non compliance with the works to install a fire alarm and detection system in the premises which particularly leads us to the conclusion that the Applicant's failure to comply gives rise to significant risk to individuals.
- Serious and/or systematic failure to comply with their legal duties. Mr Ahmed's oral evidence was that he did not consider himself to be a Landlord as his primary business was as a jeweller, and that as a consequence he could not be expected to comply with the regulatory and legislative responsibilities with attach to being a landlord, to know or understand them, or to take personal responsibility for ensuring that those whom he delegated responsibility to were in fact ensuring compliance. In effect he had a system of abdicating responsibility, to the extent that he had not attended the Property for 10 years and had not taken any steps to ensure that his manager was competent, other than not having had previous difficulties. He did not change his level of involvement significantly even when the Council issued an Emergency Prohibition Order, or over the course of the following extended period of time until December 2022. We find this to be a serious and systematic failure to comply with his legal duties.

76. For the reasons above we consider culpability in this case to be high. We note that this is in line with the assessment of the Respondent in this matter.

### **Harm**

77. The Council categorised the level of harm in this matter as high.

78. We considered the Council's guidance and note that it states that a high level of harm could constitute:

- Serious effect on individual(s) or widespread impact
- Harm to a vulnerable individual

- High risk of an adverse effect on an individual
79. We consider the continued failure to carry out works in accordance with the improvement notice, and particularly those concerning fire safety create a high risk of an adverse effect on an individual. We agree with the Respondent's classification of harm in this case as high.
  80. A high level of Harm and High Level of Culpability places the initial level of fine under the Respondent's policy at £25,000. This is therefore the starting point prior to considering aggravating and mitigating factors. We reject Mr Shephard's argument that the Council had abdicated its responsibility to a computer programme. It seems to us that instead the Council has carried out exactly the same process in accordance with its policy which the Tribunal has just conducted, and reached the same conclusions. Even were Mr Shephard to have been correct, his argument would be irrelevant since the Tribunal has just reconsidered and remade this aspect of the decision-making process itself, without reference to a computer programme and reached the same initial level of fine.
  81. Mr Shephard's other argument that the fine was too high because it exceeded the maximum on the table misunderstands the next stage of the process. This table sets out the initial fine levels prior to the application of aggravating and mitigating factors. The Respondent reached an initial level of £25,000 and then went on to consider whether there were additions or deductions which should be applied as a result of consideration of aggravating and mitigating features. They considered number of items of work (10%) and motivated by financial gain (5%) and record of non-compliance (5%) to be aggravating features and absence of previous convictions (5%) and element of tenant responsibility (5%), although they now accept that record of non compliance should not be double counted. This leaves an uplift on the initial fine of £25,000 of 5% being £26250.
  82. We too next considered aggravating and mitigating factors. We were given no information about Mr Ahmed's means, although we note that he has 3 rental properties in addition to his main business as a jeweller, and therefore draw no conclusion in this regard.
  83. We have regard to the number of items of non-compliance being greater than 5 which gives a 10% uplift. We also consider that being motivated by financial gain is an aggravating feature as the property was relet during the prolonged period of non-compliance this gives a 5% uplift under the Policy. This gives an uplift of 15%
  84. We considered mitigating factors as being no previous convictions and complications to the compliance process caused by Covid-19. We accept that during this period there are likely to have been difficulties in appointing builders and sourcing materials, particularly in the earlier stages. We have not included an element of tenant responsibility here as we find no evidence other than one occasion where tenants did not allow entry for an inspection, that the tenants were the reasons for the absence of work, and in any event we find this element of potential mitigation to be nullified by the decision to relet. This gives a reduction of 5% for each mitigating factor, being a total of 10%.
  85. We find that the aggravating and mitigating elements above lead us to increase the initial penalty of £25,000 by 5% to £26250.

86. We considered whether this amount was fair and proportionate and would act as a deterrent and remove any gain as a result of the offence. We have limited information about financial gain, but note that the property was tenanted for a prolonged period of non compliance. In considering ability to pay we are mindful that we are entitled to consider that properties owned could be sold to pay any penalty. Having considered all of the circumstances around this matter we consider that a financial penalty of £26250 is fair and proportionate and we amend the amount payable by the Applicant accordingly.
87. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.
88. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
89. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
90. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

**Tribunal Judge Katherine Southby**

6 September 2023