



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

Case Reference : **MAN/00CX/HNA/2021/0029**

Property : **66 New Lane, Bradford, BD3 8NP**

Applicants : **Mr Iliyas Khan**

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, Amin Hossain**

Date of Decision : **15 November 2023**

DECISION

DECISION

The Tribunal upholds the appeal and varies the financial penalty to £14,250.

REASONS

Background

1. This is an appeal by the applicant, Mr Iliyas Khan, against a financial penalty of £15,000 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 Khan to comply with the requirements of an improvement notice under section 30 of the Act.
2. The penalty was imposed on 4 March 2021 in relation to 66 New Lane ('the property'). Mr Khan appealed to the Tribunal against the penalty on 14 April 2021.
3. The property was inspected by the Tribunal.
4. The hearing took place by way of a face-to-face hearing at Bradford Tribunal Centre on 30 October 2023.
5. The documents to which the Tribunal was referred to are in a bundle of 219 pages from the Respondent. The parties confirmed that this was the totality of documents to be considered by the Tribunal, that they had access to the same documents, had had the opportunity to consider them and were happy to proceed. The order made is described at the end of these reasons.
6. Mr Khan attended and was not represented.
7. Ms Kossier represented the Respondent. The witness was Ms Twynan, Environmental Health Officer from Bradford Metropolitan Borough Council.
8. 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 specifically 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

9. Section 249A (1) of the Act provides that a local authority may impose a financial penalty where there has been "a relevant housing offence".
10. 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.
11. 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

12. 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.

13. 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.

14. 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

15. 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.

16. 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

17. 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.
18. 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

19. 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).
20. 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.
21. 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.
22. 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

23. 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).

24. The Tribunal's task is not simply 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).

25. 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):

26. "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."

27. 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:

28. "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.”

29. 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.
30. 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.

Inspection

31. The Tribunal carried out an inspection at the Property. Mr Khan attended, and the Tribunal were shown the items referred to in the Improvement Notice from the Respondent.

Evidence

32. It is not disputed by Mr Khan that he is the freehold owner of the Property at 66 New Lane.
33. On 14 August 2019 Miss Ruth Trick attended an inspection at the Property having given notice of her intention to do so. Mr Khan also attended. Miss Trick found one category 1 hazard and five category 2 hazards, following which the Council decided to take informal action and issued an Informal Notification of Works.
34. This set out the following deficiencies and required works with a completion date of 9 October 2019:

Hazard	
Excess Cold	Repair/replace rear doors
	Repair/replace window to front right hand bedroom
Collision/Entrapment	Ease and adjust bedroom doors
	Replace or remove glazed toilet door
Electrical Hazards	Arrange Electrical Inspection
	Provide additional sockets in kitchen at lower level
	Provide minimum of two double socket outlets to 1 st floor bedroom
	Provide a minimum of 4 double socket outlets to the living room
	Seal gap at top of double plug socket in

	kitchen above the worktop
Position and Operability	Provide mechanical extractor to kitchen wall or modify kitchen window
Personal Hygiene Sanitation and Drainage	Provide suitable washable floor covering
	Replace missing lower part of rainwater pipe
Domestic Hygiene, Pests and Refuse	Hack off perished ceiling plaster to ground floor bedroom and wall plaster to left hand wall in entrance of property and replaster to match existing.

35. The evidence of Ms Twyford (formerly Trick) is that the schedule for completion was extended to 23 October 2019 at the request of Mr Khan.

36. Mr Khan gave oral evidence to the Tribunal that as far as he was aware he was never given a deadline; he was told he would be given as much time as he needed because he had told the Council he could not afford to do the works.

37. Following notification by tenants of a rodent infestation Ms Trick inspected the Property on 2 March 2020, having given notice of her intention to do so. Mr Khan attended. Ms Trick reports that the category 1 hazard of excess cold had been dealt with by replacement of the rear doors, but that several other issues remained and that there was now a new category 1 hazard relating to the rodent infestation. Ms Trick states that Mr Khan informed her that the electrician had advised him that he did not need additional electrical sockets.

38. As of 2 March 2020, the items from the Informal Notice of Works had been addressed as follows:

Hazard		Action taken by Mr Khan
Excess Cold	Repair/replace rear doors	DONE
	Repair/replace window to front right hand bedroom	
Collision/Entrapment	Ease and adjust bedroom doors	
	Replace or remove glazed toilet door	DONE
Electrical Hazards	Arrange Electrical Inspection	DONE
	Provide additional sockets in kitchen at lower level	ADVISED BY ELECTRICIAN NOT NECESSARY
	Provide minimum of two double socket outlets to 1 st floor bedroom	ADVISED BY ELECTRICIAN NOT NECESSARY
	Provide a minimum of 4 double socket outlets to the living room	ADVISED BY ELECTRICIAN NOT NECESSARY
	Seal gap at top of double plug socket in kitchen above the worktop	DONE
Position and Operability	Provide mechanical	

	extractor to kitchen wall or modify kitchen window	
Personal Hygiene Sanitation and Drainage	Provide suitable washable floor covering	DONE
	Replace missing lower part of rainwater pipe	DONE
Domestic Hygiene, Pests and Refuse	Hack off perished ceiling plaster to ground floor bedroom and wall plaster to left hand wall in entrance of property and replaster to match existing.	

39. Following the inspection on 2 March 2020 an Improvement Notice was issued and sent to Mr Khan at his home address by first class post with a compliance date of 27 April 2020 which set out the following items of work to be done:

Hazard	
Domestic Hygiene, Pests and Refuse	Investigate and take remedial action to abate problem of rodent infestation
	Hack off perished ceiling plaster to ground floor bedroom and wall plaster to left hand wall in entrance of property and replaster to match existing.
Excess cold	Repair/replace window to front right hand bedroom
Collision/Entrapment	Ease and adjust bedroom doors
Electrical Hazards	Arrange Electrical Inspection
	Provide additional sockets in kitchen at lower level
	Provide minimum of two double socket outlets to 1 st floor bedroom
	Provide a minimum of 4 double socket outlets to the living room
	Seal gap at top of double plug socket in kitchen above the worktop
Position and Operability	Provide mechanical extractor to kitchen wall or modify kitchen window
Personal Hygiene Sanitation and Drainage	Remove and replace bath panel

40. Mr Khan contacted the Council following receipt of a demand for payment of the charge for issuing the improvement notice sent to 68 New Lane, stating that he had not received the Improvement Notice dated 9 March 2020 sent to the same address.
41. Mr Khan gave oral evidence to the Tribunal that all works were done within 3 or 4 months of the notice being issued. He stated that he had not received the Improvement Notice because of Covid-19 when the post stopped being delivering to his property.
42. A revisit to the Property took place on 21 October 2020, having given notice to Mr Khan of the intended inspection. Mrs Hudson of the Council attended and recorded that all of the items in the Improvement notice remained outstanding. Ms Hudson's notes from that inspection [page 101] state '*visit with REW to 66 New Lane BD3 to check*

compliance with improvement notice. All works outstanding apart from replacement rear doors. Additionally, rat droppings found in the rear yard and major leak from the bathroom to the ceiling in the living room and hallway”.

43. Ms Hudson served a Notice of Intention to Impose a Financial Penalty on Mr Khan on 12 January 2021, to which written responses were received on 3 February 2021. Mr Khan did not appeal the contents of the improvement notice. Following receipt of Mr Khan’s written responses, a further inspection was carried out on 16 February 2021.
44. Mrs Hudson’s notes from the inspection on 16 February 2021 [page 129] records that whilst some works have been completed there is still evidence of rodent infestation, the doors have not been eased to enable easy closing, the electrical works have not been completed to the Council’s satisfaction, and the fan not fitted.

Hazard		
Domestic Hygiene, Pests and Refuse	Investigate and take remedial action to abate problem of rodent infestation	
	Hack off perished ceiling plaster to ground floor bedroom and wall plaster to left hand wall in entrance of property and replaster to match existing.	DONE
Excess cold	Repair/replace window to front right hand bedroom	DONE
Collision/Entrapment	Ease and adjust bedroom doors	
Electrical Hazards	Arrange Electrical Inspection	DONE
	Provide additional sockets in kitchen at lower level	ADVISED BY ELECTRICIAN NOT NECESSARY
	Provide minimum of two double socket outlets to 1 st floor bedroom	ADVISED BY ELECTRICIAN NOT NECESSARY
	Provide a minimum of 4 double socket outlets to the living room	ADVISED BY ELECTRICIAN NOT NECESSARY
Position and Operability	Provide mechanical extractor to kitchen wall or modify kitchen window	
Personal Hygiene Sanitation and Drainage	Remove and replace bath panel	DONE

45. Mr Khan gave oral evidence to the Tribunal that the problems with rodent infestation were due to the way in which the tenants were using the Property which he was unable to control.

46. Ms Twyford gave oral evidence to the Tribunal that the pest proofing at the property was inadequate in that when inspected there were found to be gaps in flooring and skirting which were filled with cardboard allowing rodent ingress.
47. Mr Khan stated that he had not understood until explained at the hearing by Ms Twyford that the issue with the bedroom doors was that they required a latch. He stated that he had fitted them all with locks thinking this was what was required by the Council.
48. With regard to the electrics, Mr Khan gave evidence that he had engaged Mr Raymond Brook as electrician who had worked for the Council, who had provided a certificate. Mr Khan stated that Mr Brook had told him [page 121] that there were sufficient sockets already. He stated that if the officers from the Council had moved the furniture, they would have seen that there were more sockets present. He stated that he did not consider that it was his job to point this out to them when they inspected.
49. Mr Khan stated that the property was let out at a rent of £550 per month on a 12-month tenancy from 6 May 2019 onwards which was renewed on 7 May 2020 although the tenants had moved out some time after that whereupon Mr Khan stated that the property had been empty until the current tenants had moved in in June 2022.
50. Mr Khan gave oral evidence that in his view he should not be responsible for the works as he stated he was paying a Mr Owez Khan from Prime Housing £50 per month for maintenance, and he should have taken care of all of these matters. Mr Khan stated that this was an informal arrangement between them and there was no contract. He was asked whether he had spoken to Mr Owez Khan about the improvement notice and he stated that Mr Owez Khan had told him that he would have to do the works which the Council had set out in the improvement notice, but that he had been told that the condition of the property was not bad and that Mr Owez Khan regularly let out properties far worse than his. Mr Khan stressed that he is a first-time landlord and did not have the money to carry out the works.
51. Mr Khan made a number of other allegations and accusations about the conduct of the Council and his neighbours in respect of other matters pertaining to the Property, but as these are not of direct relevance to the issues before the Tribunal they have not been set out in this decision.
52. Mr Khan stated that he did not accept that there was any non-compliance on his part, and that he had complied, that he had passed the matter over to his MP and that the matter was in their hands, and he was waiting for them to call him. He stated that he did whatever Ms Twyford had asked him to do and that the penalty should be removed.

Decision

53. The Tribunal accepts that an Improvement Notice was issued in respect of the Property on 9 March 2020.
54. The Tribunal accepts that this notice was properly served on Mr Khan by first class post at his correct home address. We do not find Mr Khan's evidence concerning Covid-19 persuasive in respect of this date which pre-dated the first lockdown announcement of 23 March 2020.

55. We find that we are persuaded that the works set out in the Improvement Notice had not all been complied with by the required deadline, by the subsequent October inspection, or in some cases by the final February 2021 inspection. In coming to this conclusion, we have taken Mr Khan's representations at their highest and, leaving aside the question as to why he would not point this out to the Council Officers at the time, we have accepted his submissions that there were sufficient sockets in the rooms which the Council Officers could have observed had they looked.
56. We note that Mr Khan stated that he did not understand what the Council were asking him to do in respect of the bedroom doors. This may well have been the case, but he did not provide any persuasive explanation for why he did not seek clarification from them if he was unsure. In our view an element of responsibility rests with Mr Khan if he is uncertain how to comply with the requirements set by the Council, which in our view were not unclear in any event.
57. We have also considered that this Improvement Notice was against a backdrop of Covid-19 lockdowns in March 2020 which would have made compliance more difficult by the original April 2020 deadline. We have considered whether the Covid-19 pandemic amounted to a 'reasonable excuse' for Mr Khan's non-compliance. We note that Mr Khan did not provide the Tribunal with any evidence that he had tried to get the work done and been unable to due to the pandemic – for example, there was no suggestion that he had attempted to engage contractors who were not working at that point in time. Whilst that immediate period from March 2020 onwards would have been difficult to carry out the required works, in the absence of any evidence directly addressing the matter we are persuaded that there was sufficient time between March and October to have adjusted the bedroom doors, dealt with the rodent infestation and installed a mechanical extractor fan.
58. We also considered whether Mr Khan having relied upon Mr Owez Khan to carry out maintenance on his behalf was a 'reasonable excuse' but we concluded that it was not. Not only was there not any evidence of this arrangement, or the extent to which Mr Owez Khan was responsible to carrying out works at the Property, the ultimate responsibility still rests with Mr Iliyas Khan to supervise and ensure any necessary works were done. This did not take place, and indeed the evidence from Mr Iliyas Khan is that Mr Owez Khan told him that he needed to carry out the works within the Improvement Notice, and yet he failed to do so for a considerable period thereafter.
59. 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.
60. We next considered the procedural compliance of the Respondent. We find that the Notice of Intent was given within 6 months of the local authority becoming aware of the offence to which the penalty relates and set out the amount of the proposed financial penalty the reasons for imposing the penalty and information about the right to make representations regarding the penalty. We find the Respondent's approach of treating Mr Khan's email correspondence as his representations was appropriate and note that these representations reduced the amount of penalty which they imposed. We find that the Final Notice correctly 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.

61. In our view the Respondent has complied with its procedural obligations in respect of the issuing of the financial penalty

Penalty

62. We next considered the penalty imposed by the Council.

63. We remind ourselves that our task is not simply a 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.

Culpability

64. We considered the Guidance on Civil Penalties and the Respondent's own Guidance [page 164] and note that this states that 'a landlord will be deemed to be highly culpable where "*Despite a number of opportunities to comply they have failed to do so*". We find this to be particularly relevant in this case, as of the items set out in the Improvement Notice, the ones marked in bold in the table below were included on the original Informal Notice of Works from 2019:

Hazard	
Domestic Hygiene, Pests and Refuse	Investigate and take remedial action to abate problem of rodent infestation
	Hack off perished ceiling plaster to ground floor bedroom and wall plaster to left hand wall in entrance of property and replaster to match existing.
Excess cold	Repair/replace window to front right hand bedroom
Collision/Entrapment	Ease and adjust bedroom doors
Electrical Hazards	Arrange Electrical Inspection
	Provide additional sockets in kitchen at lower level
	Provide minimum of two double socket outlets to 1 st floor bedroom
	Provide a minimum of 4 double socket outlets to the living room
	Seal gap at top of double plug socket in kitchen above the worktop
Position and Operability	Provide mechanical extractor to kitchen wall or modify kitchen window

65. We accept the evidence of Mr Khan that he is an inexperienced Landlord and that this is his first property but having been given the opportunity to comply with the informal requirements set out by the Council he failed to do so for a prolonged period of time. We do not accept his evidence that he could take as long as he needed to comply. This is contrary to both the compliance date on both the informal notice and the improvement notice, and contrary to the evidence of Ms Twynan which we found balanced, persuasive and which we accept.
66. For the reasons above we consider culpability in this case to be high. We note that the assessment of the Respondent in this matter was also High.

Harm

67. The Council categorised the level of harm in this matter as medium. We agree with this assessment noting that category 1 and 2 hazards persisted as a consequence of the non-compliance, which in particular with regard to the rodent infestation had a medium risk of harm to the tenants. Whilst we agree with Mr Khan that tenant culpability may have contributed to the rodent problem, we are persuaded that the pest-proofing at the Property which was Mr Khan's responsibility was inadequate. In reaching this conclusion we found the contemporaneous notes for Ms Hudson to be persuasive.
68. A high level of Harm and a Medium level of Culpability places the initial level of fine under the Respondent's policy at £15,000. This is therefore the starting point prior to considering aggravating and mitigating factors.
69. We agree with the Council's analysis that the aggravating factor is that there were both Category 1 and 2 hazard items outstanding but that the number of items was less than 5. Indeed, we note some items were still outstanding in February 2021. We agree that a 5% uplift for this is appropriate.
70. We next considered mitigating factors. We agree with the Council that a 5% decrease should be applied for Mr Khan's attendance at inspections and level of contact with the department. This was not a situation where the Landlord failed to engage with the Council. In addition, we note that the Council confirmed at the hearing that Mr Khan had no previous convictions and we have given an additional 5% credit for this as a mitigating factor. We considered whether an element of tenant responsibility was a further mitigating factor but on balance we concluded that we were not persuaded that Mr Khan's efforts to remediate the problem had been thwarted by his tenants. We concluded, as above, that whilst the conduct of the tenants was potentially not helpful, there were matters of pest-proofing which could and should have been carried out by Mr Khan notwithstanding the way in which the house was being lived in.
71. We therefore vary the financial penalty to £14250.

Means

72. Mr Khan informed the Tribunal that he was of limited means. Indeed, he stated that this was in part the reason why he had not carried out the works when asked to do so. No information about Mr Khan's financial situation was provided to the Tribunal, although we note that Mr Khan referred to having borrowed money from family members to purchase the property and to complete the remedial works.

73. In the absence of any substantive information about Mr Khan's financial situation we make no further finding here as to means, save as to note that the Tribunal is in any event entitled to take into account the value of properties held in determining means, and therefore we do not make any adjustment to the sum determined on the basis of means and ability to pay.
74. 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.
75. 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.
76. 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.
77. 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

15 November 2023