



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

**Case reference** : LON/00AG/HNA/2023/0055

**Property** : Flat A 12 Swinton Street, London WC1X  
9NX

**Applicant** : Nehar Rahman

**Representative** : Mr M Islam (Litigation friend)

**Respondent** : London Borough of Camden

**Representative** : Mr P Bernard  
Ref: PSH/KBC/Request/297331

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

**Tribunal** : Judge Tagliavini  
Mrs Louise Crane CEnvH MCIEH

**Date of hearing** : 22 March 2024  
**Date of Decision** : 9 April 2024

---

**DECISION**

---

## The tribunal's decision

1. The tribunal finds the applicant has committed the offences alleged under s.72(1) and s.234(3) of the Housing Act 2004.
  2. The tribunal confirms the amount of the financial penalty payable by the applicant in respect of the breach of s.72(1) of the Housing Act is £8,000.
  3. The tribunal confirms the amount of the financial penalty payable by the applicant for breach of s.234(3) of the Housing Act 2004 is £7,000.
- 

## The application

4. The applicant seeks to appeal two financial penalty notices (FPN) made under section 249A of the Housing Act 2004. The details of the alleged offences as set out in the Final Notices dated 7 June 2023 are:

- (i) An offence is alleged to have been committed on or about 16 June 2022, when the applicant was in control of or managing Flat A, 12 Swinton Street, London WC1X 9NX ('the Property') and failed to licence a house in multiple occupation that was required to be licensed under the respondent's additional licensing scheme, contrary to s.72(1) of the Housing Act 2004, as there were 3 tenants who paid rent, shared bathroom and kitchen facilities and confirmed the Property was their only main residence.

CONTRARY to s.72(1) of the Housing Act 2004

**Financial penalty: £8,000**

- (ii) That on or about 16 June 2022, the applicant being a person managing a House in Multiple Occupation at Flat A, 12 Swinton Street, London, WC1X 9NX did without reasonable excuse fail to comply with Regulation 4 of The Management of Houses in Multiple Occupation (England) Regulations 2006 and failed to ensure all means of escape from fire in the HMO are kept free from obstruction; any firefighting equipment and fire alarms are maintained in good working order and all such measures as are reasonably required to protect the occupiers of the HMO from injury;

- No interlinked mains wired automatic fire detection system anywhere within the property (only non-functioning battery smoke detector in hallway)
- No fire blanket provided in the kitchen
- No mains heat detector located within the kitchen area.
- No FD30 fire door to the kitchen area

CONTRARY to section 234 (3) of the Housing Act 2004.

**Financial penalty: £7,000**

### **Preliminary matters**

5. At the hearing, the respondent initially sought to strike out the applicant's case for a failure to comply with the tribunal's directions. However, this application was subsequently withdrawn and therefore the tribunal was not required to make a determination.

### **The hearing**

6. The applicant appeared in person and was assisted by her litigation friend, Mr M Islam. The applicant relied on a bundle of documents of 106 digital pages and an additional bundle of 21 digital pages. The applicant and her husband, Mr Rahman also gave oral evidence to the tribunal.
7. The respondent was represented by Mr P Bernard from the London Borough of Camden. As the application was by way of a re-hearing,
8. As this application was by way of a re-hearing, the respondent first presented its evidence to the tribunal. This was in the form of a 181 page digital bundle and the tribunal heard oral evidence from Kieran Benjamin-Clarke, Graduate EHO, who spoke to his witness statement dated 24 November 2023.

### **The tribunal's findings and reasons**

#### **Breach of s.72(1) Housing Act 2004**

9. Section 72(1) of the Housing Act 2004 states:

*(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.*

10. The tribunal is satisfied the applicant had the control of and was managing the subject Property at the date of the offences. The tribunal accepts the evidence in the letter dated 4 July 2022 from Carter & Reeves. This was in answer to the respondent's enquiries and asserted they did not act as managing agents for the property but were letting agents only. However, at the time of the alleged offences they did not let or manage the Property and were not responsible for the occupation of the persons found to be residing there on 16 June 2022.
11. The tribunal accepts the written and oral evidence of Mr Benjamin-Clarke and is sure there were three unrelated tenants in occupation as three households on 16 June 2022. The tribunal finds this evidence is supported by the witness statements of the tenants in occupation at the date of the offence, namely Andre Rhoden-Paul (9/4/2022 @ £815 pm); Silvia Barrio Garcia (15/4/2022 @ £785 pm) and Sigismund Oslain (28/5/2020 (sic) @ £920 pm). Although the latter stated he had moved in on 16 April 2020 and gave a statement dated 27 June 2020, the tribunal finds these are typographical errors and should read '2022' as there is sufficient information from Mr Benjamin-Clarke and the other tenants to support this conclusion.
12. The tribunal found the evidence of the applicant lacked credibility. The applicant was unable to provide any written agreement establishing the relationship between her and Carter and Reeves, either prior to or at the time of the alleged offences. The applicant admitted she is the owner of the Property but asserted that as she had entered into an agreement with Carter & Reeves and her husband also assisted in the management of the Property, she had not been in control of the person managing the Property. The applicant also asserted that due to personal issues, she did not respond to the respondent's enquiries or provide the information requested in the letter dated 27 June 2022 or the s.235 Notice dated 4 November 2022.
13. The applicant asserted she had not previously heard of 'Alex' who represented himself as the 'manager' of the Property to the tenants in occupation on 16 June 2022. The applicant stated on being alerted by the respondent on 13/07/2022 of the alleged offences, her husband contacted Carter and Reeves on her behalf who stated they would deal with the matter. The tribunal does not accept this evidence and prefers instead the evidence provided by Carter & Reeves denying their involvement with the Property at the date of the offence and finds the applicant did not persuasively seek to dispute this evidence.

14. The tribunal finds that Carter & Reeves did act in some capacity vis a vis the subject Property, as a Statement of Account showing an invoice date of 2 July 2021, shows a tenancy term for the Property from 01/06/2021 – 28/09/2022 at a rent of £1,950 pcm although it unclear to who this Statement is addressed.
15. The tribunal finds the applicant or her husband on her behalf, had by the date of the alleged offences, terminated any arrangement with Carter & Reeves. The tribunal finds any agreement with Carter & Reeves was terminated in or around May 2022 as the applicant's bank statement shows she received a payment of £1,9500 from an account known as Carter Ltd CL A/C on 6 May 2022 as shown on the applicant's bank statement.
16. The applicant told the tribunal she continued to receive monthly rental payments of £1,950 pcm until October 2022. The tribunal finds the tenants in occupation on 16 June 2022 were instructed to pay their rent to Alex at AKZ Ltd, although the identity of this person, was not established at the hearing.
17. The tribunal finds and is sure that as at the date of the alleged offence, the applicant was in control of or the person managing the subject property and this was unlicensed in breach of s.72(1) of the Housing Act 2004.

### **Breach of s.234(3) of the Housing Act**

18. The applicant asserted she did not satisfy the definition set out in s.263 of the Housing Act 2004 as she had not received the rack rent for the Property as the rental income for the Property was less than two-thirds of the £3,410 pcm she assumed was received by the managing agent Carter & Reeves (also referred to as Carter Ruck by the applicant) from the 4 unauthorised tenants. The applicant asserted Carter & Reeves had unlawfully sub-let the Property to 'Alex' who in turn let it to three or four tenants, for their own financial gain and were the de facto landlord and person having the control of or managing the Property at the date of the offences.
19. The applicant also asserted Carter & Reeves and/or its former director Akil Miah had previously been prosecuted on an unspecified date, for failing to obtain an HMO licence in respect of a different property not owned by the applicant. The tribunal finds this evidence not relevant to the issues in these appeals.
20. Section 263 of the Housing Act 2004 states:

*(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.*

21. The tribunal finds the applicant, on her own admission was in receipt of the full rent of £1950 pcm expected to be paid for the Property and told the tribunal she had received this until October 2022 when the tenants moved out.
22. The tribunal finds that in or around May 2022, the applicant terminated the services of Carter and Reeves and on 16 June 2002 was in control of and managing the subject Property with the assistance of her husband.
23. The tribunal finds and is sure that from the oral and photographic provided by the respondent and Mr Benjamin-Clarke’s evidence, that there was as alleged:

No interlinked mains wired automatic fire detection system anywhere within the property (only non-functioning battery smoke detector in hallway)

No fire blanket provided in the kitchen

No mains heat detector located within the kitchen area.

No FD30 fire door to the kitchen area.

24. The tribunal finds the applicant did not substantially dispute these breaches, as she relied primarily on her denial of having control of the Property or being the person managing it. Therefore, the tribunal is satisfied the offence under s.234(3) of the Housing Act 2004 was committed by the applicant.

### **The Financial Penalties**

25. Section 249A of the Housing Act 2004 states:

*(1)The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.*

*(2)In this section “relevant housing offence” means an offence under—*

*(a)section 30 (failure to comply with improvement notice),*

*(b)section 72 (licensing of HMOs),*

*(c)section 95 (licensing of houses under Part 3),*

*(d)section 139(7) (failure to comply with overcrowding notice), or*

*(e)section 234 (management regulations in respect of HMOs).*

26. However, the tribunal finds no application for a temporary exemption was made and in any event, this would not have been of retrospective effect.

27. The applicant asserted the offences (if proved) should be regarded as 'moderate' and attract a penalty in the range of £0-£10,00 (sic). The tribunal finds the respondent has categorised the offences as being of moderate severity rather than serious or severe but fall within Band 2 of the moderate range of £5,000-£10,000 rather than the range in Band 1 of £0 - £50000.
28. Having heard the evidence of Mr Benjamin-Clarke and considered the respondent's documents, the tribunal is satisfied the requirements of Schedule 13A of the Housing Act 2004 were carried out by the respondent when determining to impose a financial penalty.
29. In determining the amount of the financial penalty, the tribunal accepts the respondent's evidence as to the process it followed in calculating the appropriate amount of the penalty and its application of its policy with reference to the guidance document. The tribunal finds the approach taken by the respondent was reasonable and took into account both the extenuating and aggravating features specific to the applicant.

### **Section 72(1)**

30. The tribunal finds the respondent has appropriately regarded the applicant as having the control of one HMO and the fact this was her first offence. However, the condition of the property and the failure to remedy them were aggravating features and justified the imposition of a penalty to reflect the higher range of the moderate severity of the offence. The tribunal finds the applicant was knowingly unresponsive to the respondent's enquiries sent by letter and email to the applicant, in respect of the Property and did little if anything, to remedy to establish the facts or remedy the situation.
31. The tribunal finds the applicant has let the Property since 2007 and is therefore an 'experienced' landlord although her portfolio is small. The tribunal finds the applicant chose not to involve herself in the running of the Property or carry out regular checks to make sure it was not being used as an HMO.

### **Section 234(3)**

32. The tribunal accepts the respondent's view that the lack of compliance with fire safety regulations presented a serious risk to the tenant's safety. The tribunal accepts the respondent's categorisation of the severity of the offence as 'moderate' albeit in the highest of the two bands under this heading.



33. The tribunal finds the applicant made no attempt to remedy the identified fire risks or offer any reasonable explanation as to why she had not done so.
34. The tribunal finds the respondent had regard to its policy when quantifying the amount and that the amount of each penalty is not, in all the circumstances unreasonable. Further, the tribunal finds the applicant put forward no evidence of her financial affairs and did not seek to rely on 'hardship' as a reason for reducing the amount of the financial penalties.
35. Therefore, the tribunal confirms the amount of the financial penalty payable by the applicant in respect of the breach of s.72(1) of the Housing Act is £8,000 and the amount payable for breach of s.234(3) of the Housing Act 2004 is £7,000.

Name: Judge Tagliavini

Date: 9 April 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).