



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

**Case Reference** : **LON/00BB/HNA/2024/0066**

**Property** : **55 Greengate Street, London,  
E13 0BG**

**Applicant** : **Ama Yeboah**

**Representative** : **In person**

**Respondent** : **London Borough of Newham**

**Representative** : **Cosmas Eze**

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

**Tribunal Members** : **Judge Robert Latham  
Stephen Mason FRICS**

**Date and Venue of  
Hearing** : **14 March 2025 at  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **18 March 2025**

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**DECISION**

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**Decision of the Tribunal**

(i) The Tribunal reduces the Financial Penalty imposed on the Applicant from £5,000 to £1,000 in respect of the offence under section 72(3) of the Housing Act 2004. This sum is to be paid by 11 April 2025.

(ii) The Tribunal makes an order for the Respondent to refund to the Applicant the tribunal fees of £330 which she has paid.

## **The Application**

1. On 14 July 2024, Ms Ama Yeboah, the Applicant, issued this application appealing against a Financial Penalty imposed by the London Borough of Newham (“Newham”) under Section 249A & Schedule 13A of the Housing Act 2004 (“the Act”). The Final Notice to impose a Financial Penalty is dated 17 June 2024. The offence specified is one under section 72(3) of the Act, namely failing to comply with conditions of an HMO licence in respect of a property at 55 Greengate Street, London E134 0BG (“the Property”). The Notice imposed a penalty of £5,000.

2. The Grounds of Appeal are:

“I am appealing the financial penalty on the grounds that the conditions of the “request for documentation” received on the 16<sup>th</sup> November 2023 was met by the date the financial penalty was issued and within the time lines of a final warning communication of 27<sup>th</sup> February 2024”.

3. On 4 October 2024, the Tribunal gave Directions (amended on 21 October 2024 and 31 January 2025) pursuant to which:

(i) The Respondent has filed a Bundle of Documents (480 pages). This includes a witness statement from Mr Cosmas Eze, who is a member of the Respondent’s Private Housing & Environmental Health Team, at p.1-11 with a large number of exhibits. This explains the Respondent’s decision to impose the Financial Penalty. References to this bundle are prefixed by “p.\_\_\_\_”.

(ii) The Appellant has filed a Bundle of Documents (158 pages). This includes a witness statement from Ms Yeboah (at B1-B5). References to this bundle are prefixed by “A\_\_\_\_”; “B\_\_\_\_” or “C\_\_\_\_”), the numbering used in the bundle.

(iii) The Respondent has filed a brief supplementary response to the Applicant’s Bundle (2 pages).

## **The Hearing**

4. Ms Ama Yeboah appeared in person. Mr Cosmas Eze appeared on behalf of the Respondent. Both gave evidence.
5. This was a rehearing. Mr Eze therefore presented Newham’s case; Ms Yeboah then presented her appeal. Her case was somewhat different than that in her grounds of appeal. She argued that she had a reasonable excuse for not providing the information that had been requested due to sickness.

Newham had failed to provide her with the assistance to which she was entitled under their policy. Newham failed to have regard to mitigating circumstances and the Financial Penalty was manifestly excessive.

### **The Law**

6. The Housing Act 2004 ("the 2004 Act") introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation.
7. Part 2 of the Housing and Planning Act 2016 introduced a raft of new measures to deal with "rogue landlords and property agents in England". Section 126 amended the 2004 Act by adding new provisions permitting local housing authorities ("LHAs") to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.
8. Section 72 of the 2004 Act creates a number of offences in relation to the licencing of HMOs. Section 72(3) provides:

“(3) A person commits an offence if–

  - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
  - (b) he fails to comply with any condition of the licence.
9. Section 72(5) provides that in proceedings against a person for an offence under subsection (3), it is a defence that he had a reasonable excuse for failing to comply with the condition,
10. Schedule 13A deals with the procedure for imposing Financial Penalties and appeals against them. Paragraph 10 of Schedule 13A provides for a right of appeal:

“(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against–

  - (a) the decision to impose the penalty, or
  - (b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph–

(a) is to be a re-hearing of the local housing authority's decision, but

(b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.”

11. Paragraph 12 of Schedule 13A requires a LHA to have regard to any guidance given by the Secretary of State about the exercise of its functions under s.249A. The current guidance issued by the Secretary of State, is set out in a document “Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities” (April 2008). LHAs are expected to develop and document their own policy on when to prosecute and when to issue Financial Penalties and should decide which option they wish to pursue on a case-by-case basis in line with that policy. LHAs should also adopt their own policies about how to determine the appropriate level of a penalty.
12. Section 3.5 specifies factors which a LHA should take into account when deciding on the level of the civil penalty (p.55-56). Seven factors are listed: (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) Deter the offender from repeating the offence; (f) Deter others from committing similar offences; and (g) Remove any financial benefit the offender may have obtained as a result of committing the offence.
13. In *Hussain (Nasim) v Waltham Forest LBC* [2023] EWCA Civ 733; [2024] KB 154, the Court of Appeal gave importance guidance on the scope of any appeal. The task for this tribunal is to determine whether the decision under appeal had been wrong when it had been taken. In this context, “wrong” meant that the tribunal disagreed with the decision under appeal despite having accorded it the deference or special weight appropriate to a decision involving the exercise of judgment by the body tasked by Parliament with the primary responsibility for making licensing decisions. In reaching its decision, the tribunal could have regard to matters of which the LHA had been unaware, including matters arising after the LHA’s decision, provided those matters were relevant to the assessment of whether that decision had been right or wrong at the time it was taken (see Andrew LJ at [63]).

### **Newham’s Policy**

14. Newham’s policy is set out in a document “Private Housing Enforcement Policy” which was approved on 18 March 2024. In his witness statement, Mr Eze exhibited a different version of the policy to that which he provided at the hearing.

15. The Introduction to the policy describes how Newham will provide advice, guidance and signposting to assist landlords to become more professional and knowledgeable in their roles ([1.6]). Where breaches are minor, Newham will attempt to resolve problems through the signposting of complainants using lesser civil legal routes or informally ([1.10]).
16. Appendix 1 considers the Enforcement Options. There are certain circumstances where formal action is not appropriate. At the next stage, advisory notices may suffice. A “Formal (simple) caution” may be appropriate where it is not in the public interest or where there are other mitigating circumstances that would not merit more formal enforcement action.
17. Appendix 2 sets out a Financial Penalty Matrix. Four Factors are to be considered: (i) Deterrence and Prevention; (ii) Removal of Financial Incentive; (iii) Offence and History; and (iv) Harm to Tenants. The minimum penalty for a small portfolio landlord who fails to comply with a licencing condition is £5,000. The same matrix is to be applied for all the offences in respect of which a Financial Penalty can be imposed.
18. The Matrix lacks any consideration of the seriousness of the offence, a factor which is specified in the statutory guidance. In the view of this Tribunal, the failure to provide auditing information is less serious than failing to licence an HMO, or breach of a management regulation or breach of an improvement notice.
19. We note that in the version of the policy exhibited to Mr Eze’s witness statement (at p.41-42), the seriousness of the offence is specified as a relevant factor. Breach of a licencing condition is considered to be less serious, and the starting point is £1,000. The Tribunal was not provided with any explanation for the change of policy.

### **The Background**

20. Ms Yeboah described how she has worked in the financial services sector. She lives in rented accommodation in Wimbledon. She owns two properties as buy to let investments. She has a company, AMAS HMOS Ltd, which offers a “rent to rent” service. She manages one other property for a private landlord.
21. Ms Yeboah acquired the property at 55 Greengate Street on 27 June 2012 for £205,000 (p.151). This is a two-storey terraced house with five bedrooms, the two ground floor living rooms being used as bedrooms. The property has always been licenced as an HMO. The current licence was granted for a period of five years from 1 January 2023 (at p.103-120). In November 2020, Newham had carried out an audit. They had also inspected the property in January 2021.
22. The licence is in the name of “Ama Yeboah of AMOS HMOOS, Hold Everything, 207 Regent Street, London, W1B 3HH”. The Tribunal is

satisfied that Ms Yeboah, and not her company, is the relevant licence holder. 207 Regent Street is no more than a correspondence address.

23. On 7 January 2021, Ms Yeboah's company granted an assured shorthold tenancy to Ms Miriam Olaniyan. The tenant had been introduced to her by the London Borough of Hackney who paid a deposit of one month's rent and the first monthly instalment of the rent of £530. Ms Olaniyan was not a satisfactory tenant. She did not pay her rent. She brought proceedings in the County Court alleging that Ms Yeboah had not put a deposit, which she had not paid, in a rent deposit protection scheme. This claim was eventually dropped, but not until Ms Yeboah had incurred substantial legal fees. Ms Yeboah stated that Ms Olaniyan turned the other tenants against her.
24. The current audit was initiated because, on 27 October 2023, Ms Olaniyan made a complaint to Newham (at p.121-123). This complaint was investigated by Shesan Adebawale who concluded that it was without substance. Mr Eze conceded that this further audit would not have been carried out, but for this malicious complaint.
25. On 16 November 2023 (at p.125-128), Newham sent Ms Yeboah a "Request for Documentation". Eleven items were requested: (i) Written Statement of Terms of Occupancy; (ii) Gas Safety Certificate; (iii) Fire Alarm/Emergency Lighting Test Certificate (Including battery powered smoke detectors and battery powered Carbon Monoxide alarms); (iv) Electrical Installation Condition Report (EICR); (v) Electrical appliance test certificate; (vi) Property Inspection Records; (vii) Pest Control Treatment Records; (viii) Tenancy Deposit Scheme Paperwork; (ix) Tenancy Management Arrangements; (x) Copies of References for Occupants; and (xi) Name and Details of Occupant. The request was sent to 207 Regent Street. The documents were requested by 14 December 2023 and were to be emailed to Newham.
26. Ms Yeboah did not provide the information that had been requested. On 22 December (at p.129), she sent an email to Newham stating that she had mislaid the letter. She asked Newham to shed light on what was required. On 22 December (p.131), Newham responded stating that they were unable to access a copy of the letter but provided a checklist of the documents that were required. These should be submitted by 11 January 2024.
27. Ms Yeboah did not provide any of the documents which had been requested. On 20 February 2024 (p.133), Hackney sent a final letter requiring the documentation by 27 February 2024. This was sent by email.
28. On 22 February (p.139), Ms Yeboah responded. She stated that she was now actioning the request. She noted that she had last been audited in November 2020. Newham had inspected the property in January 2022. She suggested that there might have been a mistake in arranging a further audit.
29. Newham responded on the same day (p.141). Mr Eze stated that the auditing was a routine procedure which was part of the licencing conditions. He did

not notify her that this had been instigated as a result of the letter from Ms Olaniyan.

30. Ms Yeboah had provided none of the documentation by the deadline of 27 February. However, on 6 March (p.143), she emailed Mr Eze stating that she had uploaded the documents on her SharePoint drive. She noted that this made more sense, rather than trying to attach all the documentation to an email. She recalled that she had done this on the last audit. On 9 March, a Saturday (p.145), Ms Yeboah sought confirmation that her email had been received.
31. On 12 March (p.147), Mr Eze responded stating that Newham did not use SharePoint. Documents could be provided as a PDF attachment or hard copies could be posted. Ms Yeboah told the Tribunal that another member of the Newham staff had told her that the LHA were able to view documents on SharePoint. We are satisfied that Mr Eze was entitled to require a PDF or hard copies which Newham could keep on file. Mr Eze suggested, in evidence, that screen shots would have sufficed. We are satisfied that this was not a practical solution, given the extent of the documents that was required.
32. On 14 March (p.197-202), Newham sent the Notice of Intention to issue a Financial Penalty. The reason for imposing the penalty was that on or about 27 February 2024, being the licence holder of the property, she had failed to comply with conditions of her licence and had therefore committed an offence contrary to section 72(3) of the Act. The proposed penalty was £5,000. The letter set out the conditions of the licence pursuant to which the documentation had been requested. Ms Yeboah was invited to make written representations within 28 days.
33. On 22 March (p.223-272), Ms Yeboah sent Newham two emails enclosing the documentation which had been requested. On 11 April (p.277), Ms Yeboah made written representations in response to the Notice of Intent. She stated:

“I would like to apologize for the delay in complying with this order by Newham council and can confirm that as of 27th March 2023 I had satisfied this requirement for the ‘request for documentation’ issued to me on the 16th November 2023 and indeed had partially satisfied the requirements relating to the ‘request’ by the 27th February 2024 – the date you have recorded the offence took place. My delay was due to several factors, some of which you highlighted in your letter of 14th March 2024 namely that, having conducted an extensive audit in November 2020 as well as an inspection in January 2022, the belief that another audit so soon after the last may have been a mistake and the confusion on the method of submission of documents. Additionally, resource constraints due to sickness, meant that I had no resource available to dedicate to the exercise of pulling together documents and making them available to yourself in a timely manner.

My hope is that in view of the 1. reasons for delay highlighted above. 2. The fact that I had previously successfully completed an Audit in 2020 3. I have now satisfied the requirements of the ‘request for documentation’. 4. Sincere regret I have expressed for delay and any inconvenience caused. London Borough of Newham will desist from pursuing their intent to issue a financial penalty.”

34. On 8 May (p.287), Mr Eze responded to these representations. He noted that none of the documents had been received by the deadline of 27 February. Ms Yeboah had provided no evidence or timeframe of any sickness. She had still only provided only 4 of the 11 documents which had been requested.
35. On 9 May (p.291), Ms Yeboah responded summarising the difficulties that she had faced in scanning the documents and compressing them to a size that could be submitted by email. On the same day (p.293), Ms Yeboah emailed further documentation. There were problems in Newham downloading some of the documentation that had been provided. By 14 May (p.305), all the relevant documentation had been received, save for the PAT report and fire safety certificate which needed to be updated. The audit had only been partially completed.
36. On 17 June (p.417-426), Mr Eze served the Final Notice imposing the Financial Penalty of £5,000. A 20% reduction would be applicable if paid within 28 days. Full reasons were given imposing the penalty.
37. It is understood that the audit has now been satisfactorily completed. There was some dispute as to what documentation was required with regard to the fire safety. However, that is not a matter for this tribunal.

### **The Tribunal’s Decision**

38. This is a rehearing. The Tribunal is satisfied beyond reasonable doubt that Ms Yeboah committed an offence under section 72(3) of the 2004 Act, in failing to comply with conditions of the HMO licence in respect of the Property. On 16 November 2023, Newham had served a “Request for Documentation”. Newham was entitled to request this pursuant to the conditions of the HMO licence which are specified in the Final Notice. Ms Yeboah was required to provide these documents by 14 December 2023. On 20 February 2024, Newham sent a final letter requiring this information to be provided by 27 February 2024. None of the documentation was provided by this deadline.
39. We reject Ms Yeboah’s suggestion that she has a defence of reasonable excuse. She has adduced no sufficient evidence to support such a defence. She provided no evidence that she was unable to do so due to sickness. She stated that the illness was “personal”. Evidence could have been provided to the Tribunal in confidence. At this time, her company did not employ



anyone. She was personally responsible for providing the evidence that had been requested.

40. The Tribunal is satisfied that the penalty of £5,000 is excessive. Newham had carried out an audit in November 2020. The further audit had only been carried out because of the malicious complaint from Ms Olaniyan. Ms Yeboah attempted to provide the extensive documentation that had been requested by 17 June 2024, the date on which the Final Penalty was imposed. She had difficulty to providing this information electronically in the manner required by Newham.

41. We remind ourselves of the Tribunal’s restricted role when considering an appeal against a financial penalty. As Newey LJ explained in *Sutton v Norwich City Council* [2021] EWCA Civ 20 at [31]:

“A Tribunal’s decision as to what civil penalty it should impose for either a breach of the 2007 Regulations or failure to comply with an improvement notice involves, as I see it, both evaluation and discretion. An appellate tribunal is not, accordingly, entitled to overturn a penalty just because it thinks it would have imposed a different one. To interfere, the Court/Tribunal must conclude that the decision under appeal was an unreasonable one or is wrong because of “an identifiable flaw in the Judge’s reasoning such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion”.”

42. We are satisfied that Newham was entitled to impose a Financial Penalty for this failure to provide the documentation that had been requested, provided that the penalty was proportionate. We consider a penalty of £5,000 to be disproportionate for Ms Yeboah’s delay in providing the documentation that had been requested.

43. Mr Eze provided the matrix calculation that led him to assess the penalty in the sum of £5,000. In respect of three of the four factors, the lowest score of 1 had been awarded, namely: (i) Deterrence and Prevention; (iii) Offence and History; and (iv) Harm to Tenants (NB: this score is doubled). However, a score of 10 had been awarded for (ii) Removal of Financial Incentive. The criterion for this score is “small portfolio landlord (between 2-3 properties), low asset value, low profit made by the offender”. Had the score been 1-5, the penalty would have been £1,000. However, the award of 10 for Criterion (ii) increased the score to 14. The penalty for any score between 11-15 is £5,000.

44. We are satisfied that there were serious flaws in Newham’s decision-making process:

(i) The statutory guidance advises that a LHA should have regard to the severity of the offence. Newham’s policy does not do this. Financial Penalties may be imposed for a range of offences. The offence of failing to provide auditing information is at the lower range of seriousness. Newham’s Matrix makes no provision for this.

- (ii) Newham’s Matrix required Mr Eze to award a score of 10 under Criterion 2: “Removal of Financial Incentive”. Ms Yeboah did not profit from her delay in providing the documents which had been requested. We are satisfied that this criterion was an undue fetter on his discretion.
45. On the three other criteria, Mr Eze had given the lowest score of 1. Had the Matrix permitted him a similar discretion in respect to Criterion 2, the score would have resulted in a Penalty of £1,000. We are satisfied that this in the appropriate penalty.
46. We are satisfied that the authorities give us the jurisdiction to reduce the penalty in these circumstances. Had we felt that we were bound by Newham’s Matrix, we would have been obliged to consider whether the minimum penalty of £5,000 was a proportionate response to Ms Yeboah’s default. We are satisfied that it would have been disproportionate. In such circumstances, we would have needed to consider whether any penalty was justified. Newham’s policy considers a range of enforcement options. A Financial Penalty would only be merited if the penalty was a proportionate response (see *Shorr v Camden LBC* [2024] UKUT 202 (LC) per Martin Rodger KC, Deputy Chamber President at [73]). A penalty of £5,000 would not have been proportionate.
47. Ms Yeboah has succeeded in her appeal in that the Financial Penalty has been reduced from £5,000 to £1,000. In these circumstances, we are satisfied that Newham should reimburse to her the tribunal fees of £310 which she has paid. Ms Yeboah will be able to set off this sum against the Financial Penalty of £1,000 which she is required to pay.

**Judge Robert Latham**  
**18 March 2025**

### **RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.