FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/32 UB/HNA/2022/0056 - 0058**
Property	**:**	**28 PADDOCK GROVE, BOSTON**
Applicants	**:**	**(1) JAMAL PARVEZ** **(2) SOHIFA PARVEZ**
Respondent	**:**	**BOSTON BOROUGH COUNCIL**
Type of Application	**:**	**Appeal against financial penalty: section 249A, Housing Act 2004**
Tribunal Members	**:**	**A M Davies, LLB** **A Davis, MRICS**
Date of Decision	**:**	**26 May 2023**

DECISION

The Final Notice Imposing a Financial Penalty for failure to licence a House in Multiple Occupation issued by the Respondent to the First Applicant on 22 June 2022 in relation to 28 Paddock Grove, Boston is cancelled.

The Final Notice Imposing a Financial Penalty for failure to licence a House in Multiple Occupation issued by the Respondent to the Second Applicant on 22 June 2022 in relation to 28 Paddock Grove, Boston is cancelled.

The Final Notice imposing a Financial Penalty of £10,000 for breach of Management Regulations issued by the Respondent to the First Applicant on 22 June 2022 in relation to 28 Paddock Grove, Boston is amended to impose a financial penalty of £5,000.

REASONS

BACKGROUND

1. On 3 May 2022 the Respondent local housing authority issued Notices of Intent to impose financial penalties on the Applicants as follows: Mr Parvez £22,500 for managing an HMO for which no licence had been issued and £10,000 for breach of The Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Management Regulations") in relation to that HMO; and Mrs Parvez £22,5000 as owner of an HMO for which no licence had been issued. The penalties related to a three bedroomed house owned by Mrs Parvez at 28 Paddock Grove, Boston ("the Property"). The date of the offences was given as "October 2021 (reviewed in February 2022) – Ongoing". At the hearing of this application the Respondent confirmed that the first date of the offence was 5 October 2021.

2. Written representations were made by the Applicants' solicitor in response to the Notices of Intent. Final Notices were issued on 22 June 2022, imposing the penalties proposed in the Notices of Intent. The Applicants appeal against the imposition of the penalties and (if penalties were found to be payable) their amount.

3. With the agreement of the parties the Tribunal did not inspect the Property. The hearing was held by video link initially on 7 March, when technical difficulties resulted in an adjournment, and finally on 26 May. The Tribunal was provided with a comprehensive bundle of the parties' documents and statements. At the hearing the Applicants were represented by Mr Clarke of counsel and the Respondent was represented by its senior housing standards officer, Mr Luke Settle. Evidence was given by the Applicants, and by Mr Settle, PC Hurley-Row, Fire Officer Best, Housing Standards Officer Mr Serdjuks and Housing Officer Ms Hanson for the Respondent. Written statements on behalf of the Respondent were also supplied by Immigration Officer Donnelly and Environmental Enforcement Officer Mr McGrath-Reid.

THE LAW

4. Section 249A of the Housing Act 2004 ("the Act") enables a local housing authority to impose a financial penalty on landlords and/or their property managers as an alternative to prosecution in the Magistrates Court for specified offences. These

include the section 72 offence of having control of or managing an HMO without having a licence as required by section 61 of the Act, and the section 234 offence of managing an HMO but failing to observe the Management Regulations in relation to it. Schedule 13A to the Act deals with the procedure for imposing financial penalties.

5. At section 254 of the Act an HMO is defined as (among other definitions not relevant here) a property consisting of one or more units of living accommodation which is occupied by 3 or more persons who do not form a single household as their only or main residence, where their occupation is the only use of the accommodation, rent is being paid, and two or more of the households living in the property share one or more of the following facilities: toilet, washing facilities and kitchen.

6. Under section 258 of the Act, persons are to be regarded as not forming a single household unless they are all members of the same family, further defined at subsection (3) as persons
"(a)….married to each other or live together as husband and wife [or equivalent];
(b) one of them is a relative of the other; or
(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple."
and "relative" is defined at subsection (4)(b) as *"parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin."*

7. An HMO in which 5 or more people are living must be licensed. Under Regulation 1 of the Management Regulations, any house which is an HMO must be managed in accordance with the Management Regulations.

8. It is a defence to the offences listed at Section 249A of the Act for the person having control of or managing the property to show (on a balance of probabilities) that he had a reasonable excuse for his conduct. The imposition of financial penalties requires the housing authority to be satisfied to the criminal standard (beyond reasonable doubt) that the offence has been committed at the relevant time.

9. Paragraph 1 of Schedule 13A requires a housing authority to issue a notice of intent to impose a financial penalty, to enable the person to whom it is addressed to make representations prior to a final decision as to whether to impose a penalty and if so as to the amount. Paragraph 2 of Schedule 13A states

"(1) *The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates*

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given –

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs."

EVENTS NOVEMBER 2020 TO 21 OCTOBER 2021

10. The following events were not disputed between the parties: the Property was owned by Mrs Parvez along with a portfolio of 6 other properties in Boston. Mr Parvez owned two other properties in Boston. He managed all the properties on behalf of himself and his wife.

11. In November 2020 Mr Parvez arranged for the Property to be let to Ms Podlach who said she would be occupying it with her partner Mr Kasper Kamil Gwozdziowski, known for the purpose of these proceedings as Mr Kamil. Shortly afterwards the Respondent received a report of some disrepair and contacted Mr Parvez. The necessary repairs were carried out. Mr Parvez told the Tribunal that in view of the pandemic and as no visit was requested by the tenant, he did not attempt to visit the Property again until the Respondent contacted him in July 2021. He said that rent was paid in cash by Mr Kamil via a local restaurant where Mr Kamil worked.

12. The police received a complaint about the Property. As a result Mr Serdjuks visited the Property on 28 June and took photographs seen by the Tribunal which indicate squalid and potentially unsafe conditions. Mr Settle visited the Property on 13 July 2021 together with PC Hurley-Roe, Immigration Officer Donnelly and Fire Officer Best. They were told by the 4 occupants who were present that there were some 6

Bulgarian people living in the Property. The officers decided that these occupants "did not appear to form one household". None of the residents were the tenant Ms Podlach or Mr Kamil. During their visit the Respondent's representatives took photographs, most of which relate to the condition of the Property rather than to its occupancy, but there are images of 3 double beds and 3 single beds, all apparently in use. The living room was in use as a bedroom. There were locks on the interior doors.

13. The Respondent contacted the Applicants to advise that the Property appeared to be in use as an HMO. Correspondence took place between Mr Settle and Mr Parvez. Mr Parvez stated that he and Mrs Parvez did not wish to own an HMO, and he was advised that in that case the number of occupants must be reduced so that the Property no longer met the definition of an HMO. Mr Settle allowed a period of time to enable Mr Parvez to do this. He later said that he had expected Mr Parvez to issue court proceedings. Mr Parvez told the Tribunal that he tried visiting the Property but was not admitted by the occupants who did not recognize him as landlord or landlord's agent. It appears that they paid rent either to Mr Kamil or by transfer to someone in Bulgaria.

14. Following a further report to the police, Mr Settle inspected the Property again with Ms Hanson on 10 September. On this occasion at least 6 people were noted as living there, only one of them with the same name as one of the occupants on 13 July. Correspondence with Mr Parvez continued regarding the statutory certificates required for the Property and its apparently continuing use as an HMO.

15. Another visit was arranged for 5 October. This is the date on which the Respondent says that the three offences began, ie the first date on which Mr Settle considered that he had sufficient evidence that they were being committed. Photographs were taken and show no material difference in the Property since the visit of 13 July. None of the names recorded on that visit were the same as the occupants' names noted on 10 September.

16. On 21 October Mr Settle received a report from PC Hurley-Roe stating that 6 to 8 people were still occupying the Property, including Donka Angelova, Veselin Ivanov

and Dida Dimitrova who had been present on 5 October. Mr Settle wrote to Mr Parvez on the same day with a summary of the situation, advising of his intention to serve an Improvement Notice and requiring production of an EICR and EPC for the Property. His email ended "*Please be advised that the opportunity for you to reduce the occupancy was requested on more than one occasion and to reiterate, to date there has been no evidence to suggest that this has been progressed…….28 Paddock Grove has been in the same condition for three months and unfortunately my informal attempts at resolution have been unsuccessful.*
I am on leave until the 1st of November where upon my return I look forward to receiving the required certification."

17. It appears to the Tribunal that the Respondent had evidence that the Property was in use as an HMO as early as 13 July. In any event, if as the Respondent claims the first date on which it had sufficient evidence of the offences was 5 October 2021 the limitation date for service of a Notice of Intent was 4 April 2022 except in relation to any offence which was continuing.

EVENTS FROM 21 OCTOBER 2021

18. By 29 October 2021 the previous occupants of the Property had left, except for Donka Angelova (born 1976), her partner V Angelov (born 1976), Dida Dimitrova (born 2001) and Veselin Ivanov (born 2000). Mr Parvez was told that Dida Dimitrova was Donka Angelova's daughter, and Veselin Ivanov was her boyfriend. Mr Parvez granted an assured shorthold tenancy to Donka Angelova, who promised him that no-one would live at the Property other than herself, her partner, her daughter and Mr Ivanov. Each of these 4 people had already been living at the property on 5 October (along with a Mr and Mrs Mitev, whose relationship to the others, if any, has not been established). It follows that on 29 October the house was an HMO in that there were 2 households living there because Mr Ivanov was not related to Mr and Mrs Angelov. However as there were fewer than 5 people living in the Property it was not an HMO that required to be licensed.

19. Mr Settle attempted to check on occupation levels at the Property when he visited on 17 November 2021. It seems that there was no-one at home to give him access to the interior. Photographs were taken of the exterior and Mr Settle inferred from

these – but without direct evidence - that the living room was still in use as a bedroom. A further visit took place on 15 February, when Mr Settle was again unable to visit the interior of the Property but took similar photographs of the exterior. Mr Settle says that he then served a section 239 notice providing for entry to the Property on 17 February, when he and Mr Parvez were both able to inspect the interior. Mr Settle explains that the intention was that "*we would both visit [the Property] in order to discuss the situation"* and *"in order to provide one final opportunity at informal resolution…"*

20. During this final visit to the Property Mr Settle noted the locks on internal doors which had already been noted the previous July. He found "*excess condensation/damp and mould from small room sizes, deterioration in other areas of the property and four double beds in situ*". Present during this inspection were the tenant Donka Angelova and the other three persons authorised to live there under the terms of her tenancy agreement, together with Mrs Stoykova (born 1982) and Mr Atanasov (born 1979) who were said to be Mr Ivanov's parents, visiting on holiday. Their passports had been issued in January 2022. Mr Settle describes the occupation of the Property at that time as "*6 occupants within four bedrooms who appeared to be independently living as separate households."*

21. Photographs taken during this visit mainly show the condition of the Property, including condensation and a build-up of mould. None of the images are accompanied by a note of where in the house they were taken, but some information can be gleaned. Photographs of the sleeping arrangements as at 17 February 2022 are exhibited to Mr Settle's first witness statement at numbers LS96 (double mattress, first floor). LS105 (double bed, first floor) and LS114 (double bed, ground floor). No fourth double bed is shown. The general condition of the house seems to have been somewhat improved since July 2021 although a mould/condensation problem may have worsened over the winter. The photographs also show vegetation in the gutters, and unfinished electrical work. The Tribunal has not been provided with a floor plan or any indication of room sizes but a three bedroomed property of this sort is considered unlikely to have had 3 first floor double bedrooms. It may well have been more convenient for guests to sleep in the living

room and there may have been other reasons – including the presence of mould on first floor walls and ceilings – to prefer using the ground floor room as a bedroom.

22. Mr Settle confirmed that he did not take any steps to verify or disprove the information given him regarding the relationships between the occupants.

23. On a further visit to the Property some days after 17 February 2022 Mr Parvez found that it had been vacated. Mrs Parvez has since let it to a family, and the Applicants' property portfolio is now managed professionally. Mr Settle suggested that the transfer of management to a commercial firm indicated that Mr and Mrs Parvez were not sufficiently aware of their responsibilities as landlords, and amounted to an admission that there was likely to have been unlicensed activity at the Property. This is not accepted by the Tribunal as a valid inference.

CONCLUSIONS AS TO SECTION 72 OFFENCES

24. The Tribunal sees no evidence that more than the 4 people stated were living at the Property as their main residence between 29 October 2021 and 17 February 2022, or that Mrs Stoykova and Mr Atanasov were not visiting their son on holiday in February as claimed. Mr Settle told the Tribunal that "*We can tell if a property is occupied on a permanent basis or not….we have experience of over-occupation…it is easy to say that they are all relatives when questioned…..one can assume it was a knee-jerk response if they don't understand the reason for the enquiries…the occupiers were unaware of each other.*" These views, however well-founded in experience, do not amount to evidence on which to base a financial penalty for an offence under section 72 of the Act.

25. The Tribunal finds that the Respondent has not proved beyond reasonable doubt that the Property was subject to mandatory HMO licensing after 29 October 2021. The Notice of Intent is dated more than 6 months after that date and is therefore invalid. No financial penalty is payable by the Applicants in relation to licensing obligations imposed by section 72 of the Act.

MANAGEMENT REGULATIONS

26. The Respondent's notice of the offence in respect of which the First Applicant Mr Parvez has been fined £10,000 in his role as manager of the Property specifies (so far as relevant) the following failings:
Regulation 3(b) – failure to display manager's details
Regulation "4(a) and 4(b)" Mr Settle confirmed that this was a reference to Regulation 4(1)(a) and(b) – failure to ensure that all means of escape from fire are kept free from obstruction and maintained in good order and repair.
Regulation 7(1)(b) – failure to ensure that all common parts of the HMO are maintained in a safe and working condition. The Final Notice states that this relates to a loose handrail on the stairs.

27. Additional failures identified by the Respondent are therefore not relevant to the financial penalty currently under consideration, namely the presence of damp and mould, lack of electrical and gas certification (Regulation 6), and other issues raised by Mr Settle, for example at paragraph 20 of his witness statement dated 1st December 2022.

28. Mr and Mrs Parvez confirmed that Mr Parvez had received a small amount of rent from Mrs Angelova during her tenancy, and that he was manager of the Property on behalf of his wife.

29. The Tribunal had first to consider whether Mr Parvez had a statutory defence of reasonable excuse for his management failures. Despite the difficulties caused by the Covid pandemic in 2021, Mr Parvez had had from July 2021 to February 2022 to ensure that his details were displayed in the property, that proper fire precautions were in place and that the banister was secure. Particularly once a tenancy had been granted to Mrs Angelova on the basis that the Property was to be occupied as an HMO, there seems to have been no reason why these matters should not have been dealt with urgently and in any event by the end of 2021. It follows that the Applicants have not made a case that Mr Parvez had a reasonable excuse for the management failings.

30. In his first witness statement Mr Settle explained the Respondent's calculation of the financial penalty imposed under section 234 of the Act on the basis set out in the

Respondent's Civil Penalty Matrix. Each factor taken into consideration is dealt with below:

Factor 1 – Deterrence Scored as 5, ie "*that publicity is likely to deter*".

Score 5 applies where there is Medium Confidence "that a financial penalty will deter repeat offending". Score 1 applies where there is High Confidence. In view of the Applicants' prompt transfer of management of their let properties to professional property managers once the Property was vacated, the Tribunal considers that Score 1 - High Confidence is the appropriate factor to apply.

Factor 2 – Removal of Financial Incentive Scored as 15, ie *"determined following receipt of section 235"*.

Section 235 is a reference to the information supplied by the Applicants in response to a request from the Respondents. The Applicants provided bank details and details of their property portfolio, excluding mention of one property belonging to Mrs Parvez which was added later. Score 15 indicates "clear financial benefit made by the offender. Probable medium portfolio landlord (between 7 and 10 properties) ….. medium asset value". Despite the lack of rent recovered from the occupants of the Property, given the number of houses owned and let by the Applicants this is accepted as a correct assessment.

Factor 3 – Offence History Scored as 1, ie "*single offence*"

The Civil Penalty Matrix refers to Score 1 as a single offence with no previous enforcement and this is clearly correct.

Factor 4 – Harm to Tenants Scored as 10, ie "*determined by moderate level of harm*." This score is doubled under the terms of the matrix.

The matrix provides that a score of 10 refers to "Potential for moderate level of harm." Given that the failures included fire safety and risk of harm on the stairs, this is considered correct. Doubled to 20.

Factor 5 – Culpability Scored as 15, ie "*determined by a reckless act in that the person confirmed to be managing the property made no attempt to address the dangers and risks brought about by an omission. There was a failure to comply with electrical safety requirements and failure to remedy obvious serious repairs"*

This score does not appear to relate to the breaches of which Mr Parvez was accused – namely failure to display his details, failure to manage routes of escape from fire, and the loose handrail. The matrix may have been correctly applied if lack of electrical certification was an issue, but that is not a breach for which the financial

penalty has been levied. The Tribunal finds that there were delays on the part of Mr Parvez, particularly after 29 October 2021 when he had an agreed tenant in place. However as indicated above the potential harm was moderate. The Matrix states that for a score of 15 "there has been a reckless act, error or omission …ie the danger and risk…would be obvious to most people yet the landlord made no attempt to address such obvious matters eg failure to comply with gas and/or electrical safety requirements …. Failure to remedy obvious serious disrepair". Score 10 on the Matrix is described as being for "a negligent act…ie a landlord has failed to take reasonable care and did something or failed to do something that would have been reasonable to do eg failing to act upon the findings of an inspection or in a timely manner to reports from tenants." The Tribunal considers that Mr Settle's explanation for a score of 15 is inappropriate to the circumstances, and substitutes a score of 10.

31. The Tribunal's revision reduces the score from 56 attracting a penalty of £10,000 to 47 which attracts a penalty of £5000.