



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

Case reference : **MAN/ooCH/HNA/2023/0040-0043**

Property : **The Angel Inn, 6 Front Street,
Gateshead, NE16 3DW**

Applicants : **Clean Socks Ltd (1)**
Mrs Kim Moore (2)

Respondent : **Borough of Gateshead Council**

Type of application : **Appeal against financial penalties
under section 249A of the Housing Act
2004**

Tribunal : **Tribunal Judge L Brown,
Tribunal Member Mr I Jefferson**

Date of decision : **26 September 2024**

DECISION

The six Civil Penalty Notices dated 20 April 2023, the subject of these Applications, are quashed.

The Application and background

1. By Applications dated 18 May 2023, the Applicants (here referred to as Mrs Moore and CSL) appealed against Civil Penalty Notices (CPNs) imposed upon them by the Respondent in Final Notices dated 20 April 2023 for a total of £57,654 in respect of the Property.
2. Directions were issued by the Tribunal on 6 September and 11 March 2024
3. The Applications were opposed by the Respondent. Both parties presented their own bundle of documents. Hearings of the Applications took place at Gateshead County Court on 18 April and 2 July 2024. Mrs Moore attended, in her personal capacity and also as the sole Director of CSL. The Respondent was represented by Ms V Vodanovic, Counsel. Its witness was Ms A Tankerville, Assistant Manager Private Sector Housing Team, from whom there were statements presented in evidence dated 25 October 2023 and 5 April 2024. Also present at the hearings was Miss Fullerton, Solicitor for the Respondent.
4. The Tribunal inspected the exterior and interior of the Property in the presence of the parties on 18 April 2024. It was found to be a three storey building comprising communal areas and lockable bedsit rooms, the majority of which appeared to be in occupation.
5. Counsel for the Respondent presented a Skeleton Argument (Skeleton) with caselaw authorities and a Chronology. The content of the Chronology was not disputed and it is annexed to this decision as a helpful record of pertinent actions by the parties. The Tribunal found the Skeleton Argument also to be accurate regarding the background to this matter, which Mrs Moore did not dispute, and extracts are reproduced here for simplicity (omitting page references).
6. This decision is limited to the determination of the Tribunal on a matter it regarded as fundamental – the validity of the Civil Penalty Notices. Therefore, we are limiting this record to facts found and representations affecting that point and we will not deal with other issues upon which there was substantial evidence and outline representations. In addition, this decision is prepared having regard to the Practice Direction dated 4 June 2024 from the Senior President of Tribunals: Reasons for decisions. In consequence it is not intended to record here all of the parties' arguments, but only persuasive evidence found by the Tribunal relevant to its determinations; if our summaries do not reflect every point, that does not mean we have ignored them.

Outline facts and Law regarding alleged offences and procedure

7. As recorded in the Skeleton: "Kim Moore and Colleen Cairns are the freehold owners of the property, having purchased it in 2005. The property is used as a hostel, and is a House in Multiple Occupation (HMO). Kim Moore was granted an HMO licence in respect of the property on 10th February 2021. By way of a Lease dated 20th April 2017, CSL became the lessee of the property and rents it out to homeless persons. CSL receives rent from the property. Kim Moore is the only

director of CSL. Colleen Cairns appears to have no involvement in the management of the property.”

8. Further, the “CPNs are for breaches of section 234 of the Housing Act 2004: i) CPN dated 20.4.2023 for breach of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (2006 Regulations), imposing a penalty of £14,233; ii) CPN dated 20.4.2023 for breach of Regulation 7 of the 2006 Regulations, imposing a penalty of £9,522; iii) CPN dated 20.4.2023 for breach of Regulation 8 of the 2006 Regulations, imposing a penalty of £5,072.50.” The CPNs for each alleged offence were sent individually and separately to CSL and Mrs Moore, as its director, making a total of six Final Notices.
9. Mrs Moore accepted that the Property is a house in multiple occupation (as defined in housing law) (HMO) and that she personally has been the holder of the required HMO licence since 10 February 2021.
10. As to the relevant law in this matter, the Skeleton accurately recorded: “Section 234 of the Housing Act 2004 creates the following offence:

234 Management regulations in respect of HMOs

- (1) *The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations— (a) there are in place satisfactory management arrangements; and (b) satisfactory standards of management are observed.*
- (2) *The regulations may, in particular—*
 - (a) *impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;*
 - (b) *impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.*
- (3) *A person commits an offence if he fails to comply with a regulation under this section.*
- (4) *In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.*

...

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

Section 251 of the Housing Act 2004 further states as follows:

251 Offences by bodies corporate

(1) *Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—*

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) person purporting to act in such a capacity;

he as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

(2) *Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate*

The 2006 Regulations which are the subject of the offences impose duties on ‘managers’. Regulation 2(c) stipulates that “the manager”, in relation to an HMO, means the person managing the HMO, which is further defined by section 263 of the Housing Act 2004:

263 Meaning of “person having control” and “person managing” etc.

... (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.”

11. The Respondent represented that “CSL is the lessee of the property and receives rent from tenants, and is therefore the person managing it. By virtue of section 251 of the Housing Act 2004, Kim Moore is also personally liable for any offences in her role as director of the company.”

12. Following inspection of the Property by officers of the Respondent on 12 and 22 August 2023 the Respondent issued Notices of Intention to impose CPNs on the Applicants, relying upon alleged breaches of Regulations 4, 7 and 8 of the 2006 Regulations concerning the condition of the Property.

13. Section 249A of the 2004 Act 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.”

Section 249A(2) sets out what constitutes a “*relevant housing offence*”. It includes an offence under section 234 of the 2004 Act, by which it is an offence for a person who has control of or manages a HMO to be in breach of the Regulations.

14. In the event that the local housing authority determines that a relevant housing offence has been committed, Schedule 13A to the 2004 Act sets out the procedural requirements which the local housing authority must then follow:

Notice of intent

*1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority’s proposal to do so (a “*notice of intent*”).*

....

3 The notice of intent must set out—

*(a) the amount of the proposed financial penalty,
(b) the reasons for proposing to impose the financial penalty, and
(c) information about the right to make representations under paragraph 4.*

Right to make representations

4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

5 After the end of the period for representations the local housing authority must—

*(a) decide whether to impose a financial penalty on the person, and
(b) if it decides to impose a financial penalty, decide the amount of the penalty.*

*6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “*final notice*”) imposing that penalty.*

7 The final notice 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.

8 The final notice must set out—

- (a) the amount of the financial penalty,*
- (b) the reasons for imposing the penalty,*
- (c) information about how to pay the penalty,*
- (d) the period for payment of the penalty,*
- (e) information about rights of appeal, and*
- (f) the consequences of failure to comply with the notice.*

15. The Respondent found beyond reasonable doubt that both Applicants had committed an offence under s72(1) Housing Act 2004, in that each was considered to be in breach of the aforementioned Regulations.

Tribunal's findings and determination

16. The directed FPNs to Mrs Moore as a director of CSL, and those of the Applications concerning Mrs Moore identified her in that capacity.
17. In making the Applications (although not for the hearings) both Applicants were advised by Landlords Defence Limited, which had drafted the "Grounds for Appeal" document accompanying the Applications. Included in that presented for CSL (but not that for Mrs Moore) the following statement was presented (described as "Ground 0"): "The mode of address on the Final Notice "Mrs Kim Moore (as Director) Clean Socks Ltd" is at best peculiar.

This is exacerbated by the introductory paragraph of the notice which states, nonsensically:

"1. You are the Director of the person managing as owner of the residential premises known as....."

The Notice would appear to be addressed to the Company Clean Socks Ltd) which is both licence holder and manager) and for the attention of its director Kim Moore in her capacity as an officer of the company and not personally.

If so, it is a duplicate of the other Notice to the Company addressed to Clean Socks Ltd and should be withdrawn.

In the alternative, if it was intended by he (*sic*) Respondent LHA to be addressed to Kim Moore personally it is not so addressed and it is therefore not properly served and should be struck out.

Notwithstanding the above, should the tribunal decide that in some peculiar manner this notice was correctly addressed and served, then in the alternative it is represented that all notices and fines should be for the company and not the director, should not be duplicated, and as such it should be struck out."

18. At the first hearing the Tribunal put the Respondent on notice that we considered a preliminary issue in this matter concerned the validity of the notices it relied

upon as fulfilling the requirements of Schedule 13A to the 2004 Act. The Tribunal examined each of the Notices of Intention to issue a CPN and the Final Notices. We found differences between the various documents in describing the addressee and of their responsibility regarding the Property. The relevant content we found is set out in the attached Annex A. We identified these to the parties during the hearing. It was acknowledged at the hearing by the Respondent that there was confusing content and no explanation for it was offered.

19. Mrs Moore's oral evidence was that when she received the various notices she was ".....very confused....." She stated that as she could not find a legal adviser locally she had sent the notices to Landlords Defence Limited. She told the Tribunal that she did not know if the notices affected her personally, CSL, or both and that those advising her likewise could not explain the position.
20. Schedule 13A 2004 Act requires notices to be given to the person (individual or corporate) it has found to be guilty of a relevant housing offence. It is prescribed that a Notice of Intent must set out "*the reasons for proposing to impose the financial penalty*" and a Final Notice to set out "*the reasons for imposing the penalty*"
21. The Respondent's position on whether the various notices were properly directed or provided "reasons" was set out in paragraphs 18 and 19 of the Skeleton and beginning:

"Point raised by As as to Notices of Intent and CPNs being addressed to Kim Moore (as director) and not personally and somehow being confusing

18. The operation of section 251 of the Housing Act 2004 has already been addressed above - both the company and its director can be held liable for the same offence and punished separately. To the extent that any other part of the Notice of Intent or indeed the CPN is said to be confusing, then the same is denied on the basis that the Notices of Intent and the CPNs were sufficiently clear for Kim Moore to understand the meaning of them fully and to be able to respond to the same.

19. To the extent it is deemed necessary to consider this matter further, R will seek to rely on the Upper Tribunal decision of Waltham Forest LBC v Younis [2020] HLR 17 (copy enclosed) and the approach to be adopted where there has been procedural non-compliance (see paragraphs 69 to 76). The aim of the procedural requirements is to ensure that an applicant has ample opportunity to respond to the reasons behind the imposition of the penalty. In this case, Kim Moore has had ample opportunity to do so and is still able to do so at a full re-hearing before the Tribunal. There is no prejudice to her and it is notable that she raises no such prejudice in her grounds of appeal."

22. The Tribunal found:

- (i) The Notices of Intent to CSL incorrectly identified it as "the licence holder" – whereas Kim Moore was at all times the HMO licence holder. The Tribunal found this would cause significant confusion to the officer of CSL expected to deal with this (being Mrs Moore, director);

- (ii) The Final Notices to CSL (for alleged breaches of Regs 4 and 8) presented “You are the person managing as owner....”; and (for alleged breached of Reg 7) presented “You are the licence owner of....” - Kim Moore and Colleen Cairns are the freehold owners, CSL is lessee and CSL is not the licence owner. The Tribunal found these inaccuracies would cause significant confusion to the officer of CSL expected to deal with the allegations (being Mrs Moore, director);
- (iii) All of the Notices of Intent sent to “Kim Moore as director of Clean Socks Limited” state “You are the licence holder....” – in that capacity in CSL she is not the licence holder, only in her personal capacity. The Tribunal found her oral evidence of being confused about the notices to be credible.
- (iv) All of the Final Notices sent to “Kim Morre as director of Clean Socks Ltd” state “You are the Director of the person managing as owner of....” The Tribunal found that these words are of extremely poor grammar and confusing. It was entirely credible that Mrs Moore as freehold owner could easily misunderstand that CSL is not the “owner” (it is lessee).

23. The Tribunal carefully considered the caselaw authority presented by Counsel for the Respondent – the Waltham Forest LBC v Younis case. We accepted Counsel’s submission that the aim of the procedural requirements is to ensure that an applicant has ample opportunity to respond to the reasons behind the imposition of the penalty. We also recognised that where there is ambiguity in a notice relating to a civil penalty Tribunals are directed to look at the whole of the notice to find context, so as to see if any confusion is relieved by the totality of the content. However, we found from the facts before us that the errors in each of the notices mentioned in paragraph 22 were fundamental. It was not as if some of the Notices were clear and unambiguous. All were inaccurate in fact, and confusing. Also, there were further evident inconsistencies between the Notices of Intention and Final Notices creating yet further confusion. Mrs Moore received them for her company and as its director. We found that the content we have referred to was so ambiguous that notwithstanding the narrative in the remainder of the documents the recipient would have struggled to reasonably understand why they were receiving them – as a company or as a director.

24. There is a history of engagement between the Respondent and Mrs Moore over a number of years. We found from the evidence in the notes and correspondence from the Respondent that its officers dealt with Mrs Moore without consistent clear identification of the capacity in which she was expected to respond. As she understood matters, when the Respondent had an issue about the Property its officers mainly spoke or wrote to her without distinction between her legal positions regarding the Property or CSL. When she received 6 notices of intent, followed by 6 notices imposing civil penalties, she was totally confused as to why they were received or what she had to do in response, because they did not make sufficient sense in describing the basis of involvement of CSL or herself as its director.

25. While the Respondent submitted that no major point had been taken for both Applicants regarding the validity of the notices, we found this was not a persuasive point as the Tribunal must consider whether the Notices are valid. We looked at each Notice individually and none were considered to be valid. It also was relevant for us that there was a multitude of inaccuracies across the notices, contributing to the confusion on the part of the recipient, which we did not find cured by the totality of the content of each notice.
26. The Tribunal records also that it had in mind that the consequences for a person to be imposed with a CPN is significant. The standard of proof regarding belief of commission of a relevant offence is a high one – beyond reasonable doubt (i.e. the criminal standard of proof) and that the 2004 Act proposes a CPN as an alternative to prosecution. When a person's suitability to hold a HMO licence or similar under housing management regulations has to be considered by a proper authority, their having committed a relevant housing offence is highly likely to be prejudicial to them – whether that is following a finding of guilt through prosecution, or imposition of a CPN. Therefore, it must be expected that in documents with legal effect in such a process, a local housing authority should be clear in identifying those it believes have committed a relevant offence and in explaining the reasons why a CPN is to be imposed. That is particularly so with the notice of intent, after which the recipient may make representations as to why a CPN should not be imposed. If the recipient is left unclear as to why they have received the notice, the basis of the CPN becomes deficient and therefore invalid.
27. In light of our findings we determined that the Notices of Intent and Final Notices each were invalid and therefore must be quashed.

Tribunal Judge Brown.

IN THE FIRST TIER TRIBUNAL
PROPERTY CHAMBER

KIM MOORE
CLEAN SOCKS LTD

Applicants

and

THE BOROUGH COUNCIL OF GATESHEAD

Respondent

CHRONOLOGY

7.11.2005 Kim Moore and Colleen Cairns purchased the property at 6 Front Street [42RB]

2016 Action taken by R in relation to property and breaches of Management Regulations [196RB]

20.4.2017 A became lessee of the property at 6 Front Street [128 AB]

10.2.2021 HMO licence issued to Kim Moore [32RB]

11.6.2021 Letter of potential breaches of Management Regulations [178RB]

24.1.2022 Letter of potential breaches of Management Regulations [191RB]

10.8.2022 Notice of inspection sent to R [45RB]

12.8.2022 Inspection by R of the property
Photographs of inspection [47RB and 62RB]

16.8.2022 Prevention of Damage by Pests Act 1949 Notice [262RB]

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|-------------|--|
| 19.8.2022 | Improvement Notice in respect of Fire Hazard [99RB] |
| 22.8.2022 | Further inspection by R of the property Photographs [83RB] |
| 23.8.2022 | Improvement Notice in respect of other hazards [110RB] |
| 28.10.2022 | Notice of Intention to impose CPN sent to R <ul style="list-style-type: none"> - based on Regulation 4 [205RB] - based on Regulation 7 [214RB] - based on Regulation 8 [250RB] |
| 28.11. 2022 | Inspection of property by R [269RB] |
| 11.1.2023 | A's written representations to Notice of Intent [300RB] |
| 2.2.2023 | R re-visited the premises for purpose of Improvement Notice compliance visit; see photographs at [337RB]. There was still non-compliance with the Management Regulations as identified in the offences committed in August 2023 (see [321 - 334RB]) |
| 20.4.2023 | Final CPNs imposed on R [393RB] |
| 18.5.2023 | Appeals against CPNs lodged |

ANGEL INN – documents within Respondent's bundle

Below sets out the named recipient of each notice and the relevant content of the first paragraph of each.

In respect of the Notices of Intent, issued 28th October 2022, alleging breaches of:-

Reg 4 –

Page 205 directed to Clean Socks Ltd “You are the licence holder of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Page 232 directed to Kim Moore Director of Clean Socks Ltd “You are the licence holder of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Reg 7 –

Page 214 directed to Clean Socks Ltd “You are the licence holder of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Page 241 directed to Kim Moore Director of Clean Socks Ltd “You are the licence holder of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Reg 8 –

Page 223 directed to Clean Socks Ltd “You are the licence holder of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Page 250 directed to Kim Moore Director of Clean Socks Ltd “You are the licence holder of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Final Notices dated 20th April 2023

Reg 4 –

Page 397 directed to Clean Socks Ltd “You are the person managing as owner of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Page 412 directed to Kim Moore Director of Clean Socks Ltd “You are the Director of the person managing as owner of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Reg 7 –

Page 429 directed to Clean Socks Ltd “You are the licence owner of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Page 446 directed to Kim Moore Director of Clean Socks Ltd “You are the Director of the person managing as owner of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Reg 8 –

Page 460 directed to Clean Socks Ltd “You are the owner of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”

Page 474 directed to Kim Moore Director of Clean Socks Ltd “You are the Director of the person managing as owner of the residential premises known as 6 Front Street, Swalwell, Whickham, Gateshead, Tyne and Wear, NE16 3DW (“the Premises”) to which these provisions apply.”