FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CG/HNA/2023/0055** **MAN/00CG/HNA/2023/0056**
Property	**:**	**1 Ardmore Street, Sheffield S9 3FE**
Applicants	**:**	**(1) Salih Rehman** **(2) Afrad Rehman**
Respondent	**:**	**Sheffield City Council**
Type of Application	**:**	**Appeal against financial penalty: section 249A, Housing Act 2004**
Tribunal Members	**:**	**Tribunal Judge A M Davies** **Tribunal Member S Kendall, MRICS**
Date of Decision	**:**	**19th June 2024**

DECISION

The Final Notices Imposing a Financial Penalty issued by the Respondent to each of the Applicants on 21st June 2023 in relation to 1 Ardmore Street, Sheffield are varied so as to impose penalties as follows:

First Applicant	Financial Penalty £	Total £
Regulations 3 & 9	1087.74	
Regulation 4	4021.88	
Regulation 7	2413.19	
Regulation 8	2279.06	9801.87
Second Applicant		
Regulations 3 & 9	3263.20	
Regulation 4	12065.63	
Regulation 7	7239.38	
Regulation 8	6837.19	29405.40
Combined total		39207.27

REASONS

1. The Applicants are brothers whose father owned 1 Ardmore Street, Sheffield (the Property) before them. The Property is an HMO, licensed by the Respondent for 9 occupants. The licensees are the Applicants, who jointly own and manage the Property. The current HMO licence will expire in December 2024.

2. Following an anonymous report of poor conditions at the Property, the Respondent's Senior Private Housing Standards Officer Mr Wernham carried out inspections on 10th and 18th October 2022. He found that some 28 offences were being committed under Regulations 3 and 9 (treated together as one Regulation), 4, 7 and 8 of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Management Regulations"). On 5th April 2023 a Notice of Intent to impose financial penalties was served on each of the Applicants. The proposed penalties amounted to £47,812.50 per Applicant, £95,625 in total.

3. The Applicants were granted an extension of time in which to make representations as to the proposed penalties, and following receipt of representations on 15th May 2023 Final Notices were issued on 21st June 2023. A single penalty for breach of each of the 4 Management Regulations was divided between the Applicants as to 25% to the First Applicant and as to 75% to the Second Applicant. This division represented their respective management responsibilities for the Property, according to information they supplied to the Respondent. The final penalties were imposed as follows:

First Applicant	£	Total £
Regulations 3 & 9	1171.41	
Regulation 4	4331.25	
Regulation 7	2598.75	
Regulation 8	2454.38	10555.79
Second Applicant		
Regulations 3 & 9	3514.22	
Regulation 4	12993.73	
Regulation 7	7796.25	
Regulation 8	7363.13	31666.35
Total		42223.12

THE LAW

1. Section 234(3) of the Act creates an offence where a person managing an HMO fails to comply with any of the Management Regulations.

2. Section 249A of the Act provides an alternative to prosecution as follows: "*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.*" An offence under section 234 is a "relevant housing offence". The level of proof required before a financial penalty can be imposed is similar to the proof required for a criminal conviction.

3. On an appeal against a financial penalty, this tribunal is required to make its own finding as to the imposition and/or amount of a financial penalty and may take into

account matters which were unknown to the Respondent council when the Final Notice of Penalty was issued. The tribunal must make its decision in accordance with the Respondent's published policy unless there are compelling reasons to depart from it.

THE PROPERTY

4. The Applicant's case was heard in Sheffield on 19th June 2024. Prior to the hearing the Tribunal visited 1 Ardmore Street and were shown round the common parts by the Applicants and their father. Also present were Mr Wernham and Ms Ferguson, the Respondent's in-house solicitor.

5. The Property is a detached former public house with three floors above ground and extensive cellars. The second floor consists of two attic rooms which the Tribunal understands to be converted for residential use, and store rooms. There are shared bathrooms and toilets on the ground and first floors. To the rear on the ground floor is a kitchen with access to the side yard and to the cellars. At the time of inspection the common parts of the upper floors had been recently painted, and the door to the external fire escape from the first floor landing had been sealed shut.

6. Only one of the upper rooms was available for inspection by the Tribunal. This was on the first floor and had been used as a store and workroom by the Applicants for some years due to problems with the roof which caused ingress of water. None of the rooms available for residential use was shown to the Tribunal, despite the fact that at the subsequent hearing the Tribunal were told that the tenant of one of them had recently vacated the Property.

7. The Tribunal noted that work had been carried out to the kitchen floor and the surface of the yard, to reduce the possibility of ingress by rodents from neighbouring waste land. The doors to the let rooms had been repaired, at least to the extent that there were no holes in them. The Tribunal was not shown whether repair work had been carried out to the self-closers or the intumescent strips. Some repairs had been carried out to the ceilings of the cellars to improve fire safety. A handwritten board in the entrance hall gave telephone numbers for contacting the Applicants, but did not provide an address. The Tribunal was told that there is an active WhatsApp group.

There is extensive scaffolding around the Property, which the Tribunal were told relates to ongoing work to the roof and external decoration.

THE RESPONDENT'S CALCULATIONS

8. The Respondent's published procedures for the imposition and assessment of financial penalties have already been endorsed by Martin Rodger QC in *Sheffield City Council v Naveed Hussain* [2020] UKUT 0292 (LC).

9. Culpability was assessed in relation to each breach of the Management Regulations as "High". This was a correct assessment. The Respondent had inspected the Property in 2018 and as a result of breaches of the Management Regulations noted then, had served an informal Schedule of Works to be carried out. Those works had been signed off in March 2020. The Property was also subject to an Improvement Notice, which was finally revoked on 31 August 2023. In view of the information and warnings they had received from the Respondent, the Applicants had no excuse for failing to maintain reasonable standards in the Property thereafter.

10. Harm was assessed as "Low" in the case of Regulations 3 and 9 (display of information and provision of waste disposal), "Medium" for breaches of Regulations 7 (maintenance of common parts and appliances) and 8 (rooms to be clean at the outset of a tenancy, and maintained in good repair), and "High" in relation to Regulation 4 (fire, electrical and other health and safety measures). These assessments are also deemed by the Tribunal to be correct.

11. At the hearing, Mr Wernham explained why, at Stage 3 of his calculations, he had reduced the penalties by one third. This was because the number of the offences would otherwise result (as suggested by the Notices of Intent) in fines thought to be excessive in all the circumstances. The explanation recorded in the Respondent's Determination Record for breach of each Management Regulation under the heading "Step 3 factors" is: "*The level of the fine also needs to have regard that the Council is proposing to serve multiple financial penalties for multiple breaches of [*the Management Regulations*] in respect of this building. The burden for which will all fall upon the landlord. Therefore, it is fair and proportionate that the level of the fine*

is reduced at this stage, in having regard to the above the Council believe a 30% reduction is appropriate."

12. Finally, a decision was made by the Respondent to impose a single fine, divided between the Applicants, rather than to fine each Applicant separately the full amount of penalty that might otherwise have been applied.

THE APPLICANTS' CASE

13. The Applicants claimed that the Respondent's actions had been premature and that the penalty notice was unreasonable, excessive and unjustifiable. They claimed that the health and safety of the occupiers had not been compromised. They served identical short witness statements dated March 2024. The statements include the words "Before an Immigration Judge" in the heading, the name of each Applicant is mis-spelt, and home addresses are not included. The First Applicant said that he and his brother had prepared the statements together. The Second Applicant said that he did not know who had written his statement. Both Applicants confirmed that the contents of their statements were true.

14. They were represented at the hearing by Mr Karik of Alison Law. Oral evidence at the hearing was given by the Second Applicant. Mr Salih Rehman subsequently confirmed that he agreed with what had been said.

15. In response to questioning, the Applicants confirmed that the property manager referred to in their statements had been appointed and dismissed prior to 2018. The current relevance of the former management contract is that rent had been unlawfully withheld by the manager, who had also failed to pay expenses. The Applicants said that this had led to a debt of some £20,000 to EON which they still owed, and a financial deficit which prevented them from carrying out the property renovation that they wished to undertake. No documents were produced to support these statements. The Applicants also told the Tribunal that neither of them had undertaken any HMO training as required by their HMO licence, and they could not explain why.

16. The Applicants also told the Tribunal that they had had difficulties with more than one builder, who had agreed to undertake works at the Property but had failed to progress them despite having been paid some monies in advance. The Applicants did not

provide any receipt or other documentary evidence of these difficulties and were unable to give the names and addresses of the builders concerned.

17. The Tribunal were told that a £50,000 bounce back loan obtained from the Government was intended to cover renovation of the Property, but that part of it had had to be used for the repairs and improvements required by the Respondent. The Applicants said that the loan was being repaid at the rate of £500 per month, but did not reply to the Tribunal's enquiry as to how much of the original loan was still available to them. No information was provided as to the Applicants' financial circumstances, but they confirmed that each of them is in full time employment.

18. Finally, the Applicants advised the Tribunal that they were concerned for the welfare of some of their tenants, especially those who had been present in the Property for a considerable time and may be considered vulnerable. The rents are low, at around £250 - £350 per month including energy bills and council tax, and the Applicants were reluctant to start possession proceedings in view of the dearth of low-rent properties available in the city. They claimed that in some cases they had allowed tenants to stay in the property rent-free after jobs were lost during the pandemic. Nevertheless the Applicants had been advised, and accepted, that the Property could not be put into financially viable order until it was fully vacated.

CONCLUSION

19. The Tribunal is satisfied that Management Regulation offences have been committed at the Property as identified by Mr Wernham and admitted by the Applicants. The Respondent assessed the degrees of culpability and harm correctly and calculated the financial penalties appropriately at the Notice of Intent and the Final Notice stages of the procedure. The percentage additions and subtractions applied as a result of aggravating and mitigating factors are adopted by the Tribunal. A considerable concession has already been made by the Respondent in terms of dividing a single set of penalties between the Applicants, rather than applying the full penalty to each of them, and this is also adopted by the Tribunal.

20. Although the Tribunal accepts that the financial penalties may render further work on the Property unachievable, the Applicants failed to provide any evidence as to their financial status which would enable the Tribunal to take this into account in assessing

the appropriate penalties. The Tribunal also notes the Applicants' insistence that the health and safety of their tenants has not been jeopardized, which in the Tribunal's view is manifestly untrue.

21. After carefully considering the detail of the offences listed under each of the relevant Management Regulations, the Tribunal concludes that some of the required remedial works overlap. This is not to say that Mr Wernham has duplicated any of the offences when identifying Management Regulation breaches at the Property. Examples of such overlap are (1) that reviewing and repairing the electrical system will cover the four breaches relating to electrical sockets in the bedrooms, and (2) general improvements to the doors of the bedrooms will cover 8 listed breaches. Similarly, a general review of and (where necessary) replacement of the windows will remedy a number of breaches identified under Management Regulation 8. In view of this the Tribunal has amended the Respondent's 30% reduction of each fine to a reduction of 35%, prior to making the final reductions applied by the Respondent following receipt of the Applicants' written representations.