



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

Case Reference : **MAN/00EX/HNA/2024/0016**

Property : **Canterbury House, 65 Canterbury Street,
Blackburn, BB2 2HT**

Applicants : **Chaudry Mazzar Hussain**

Respondent : **Blackburn with Darwen Borough Council**

Type of Application : **Appeal against financial penalty: section
249A, Housing Act 2004**

Tribunal Members : **Judge J Stringer
Judge A M Davies
Mr P Mountain**

Attendees : **Mr C M Hussain, Applicant
Mr C Addison, Counsel for the Respondent
Mr G Johnston, Witness for the Respondent**

Date of Decision : **7 March 2025**

DECISION

DECISION

1. The Final Notice Imposing a Financial Penalty issued by the Respondent to the Applicant on 20 February 2024 is varied to £4499.50.

REASONS

Preliminary Matters

2. The hearing was conducted by video. The parties consented to a video hearing and the Tribunal was satisfied that it was appropriate that the application be heard by way of video hearing.
3. In accordance with the *‘Practice Direction from the Senior President of Tribunals: Reasons for decisions’*, this decision refers only to the main issues and evidence in dispute, and how those issues essential to the Tribunal’s conclusions have been resolved.
4. The Tribunal was provided with a 31-page bundle of documents from the Applicant, and a 192-page bundle from the Respondent.

The Law

5. The Tribunal has had regard to the following sections of, or Schedules to, the Housing Act 2004 (HA 2004): section 249A (financial penalties/relevant housing offences), section 72 (offences in relation to licensing of HMOs), Schedule 13A (financial penalties under section 249A).
6. The Tribunal also had regard to the Secretary of State’s Guidance *“Civil Penalties under the Housing Act and Planning Act 2016 – Guidance for Local Housing Authorities”* (“the Guidance”); in accordance with that Guidance, the Tribunal has also had regard to the Respondent’s *“Protocol on Civil Penalties as an Alternative to Prosecution Under the Housing and Planning Act 2016”* (“the Protocol”).

Background to the application

7. The background information to this application is taken from the written material made available to the Tribunal, and unless that information was challenged in the hearing, it is accepted as substantively accurate.
8. A brief summary of the relevant information in that written evidence is as follows.
9. The Applicant has been the HMO licence holder in relation to Canterbury House, 65 Canterbury Street, Blackburn (“Canterbury House”) since 6 August 2010; his current licence is effective from 29 September 2020.

10. On 22 May 2023 an inspection of Canterbury House was carried out by Jayne McGill, at the time, an Environmental Health Officer employed by the Respondent, and Samantha Edwards, at the time, a Fire Safety Officer employed by Lancashire Fire and Rescue Service.
11. Following that inspection the Respondent decided that on 22 May 2023 there had been the following breaches of the Applicant's licence conditions (and, accordingly, offences under section 72(3) HA 2004) in relation to Canterbury House:
 - a. the Applicant failed to comply with a condition of the licence namely Mandatory Condition 1 which states: *"The licence holder must produce to the local Housing Authority annually for their inspection, a gas safety certificate obtained in respect of the house within the last 12 months."* in that no gas safety certificate for the house dated within the preceding 12 months was supplied ("**Breach 1**");
 - b. the Applicant failed to comply with a condition of the licence namely Mandatory Condition 3 which states: *"The licence holder must: i. Ensure that smoke alarms are installed in the licensed property on each storey in which there is a room used wholly or partly as living accommodation and must keep them in proper working order."* in that there were faults in the fire alarm system at the time of visit ("**Breach 2**");
 - c. the Applicant failed to comply with a condition of the licence namely Other Condition 4 which states: *"The licence holder must ensure that all amenities, facilities and equipment provided for occupants are adequately maintained and remain available for use at all times."* in that the fire doors of rooms 5, 17 and 18, the door to the corridor on the ground floor and the door between the ground floor corridor and the staircase did not fit flush into the frame ("**Breach 3**");
 - d. the Applicant failed to comply with a condition of the licence namely Other Condition 4 which states: *"The licence holder must ensure that all amenities, facilities and equipment provided for occupants are adequately maintained and remain available for use at all times"* in that the fire doors of rooms 20, 21 and 23 were compromised due to breaches around locking mechanisms and handles ("**Breach 4**");
 - e. the Applicant failed to comply with a condition of the licence namely Other Condition 36 which states: *"The licence holder must carry out portable appliance testing of all portable electrical appliances within the building on an annual basis and provide the relevant certification to the Housing Standards Team. Any new appliances brought into the building by residents or provided by the licence holder must also be tested before they can be used within the building."* in that no annual PAT testing certificate dated within the preceding 12 months was supplied ("**Breach 5**").
12. A Notice of Intent to Issue a Financial Penalty ("Notice of Intent") was served on the Applicant on 20 November 2023; written representation in relation to

that Notice were received from the Applicant on 20 December 2023; following consideration of those representation by the Respondent a Final Notice to Issue a Financial Penalty (“Final Notice”) was served on 20 February 2024, relying on the 5 breaches identified above.

Issues

13. The following issues were identified for determination by the Tribunal:
 - a. Has the Respondent complied with the procedural requirements in Schedule 13A HA 2004?
 - b. Is the Tribunal satisfied beyond reasonable doubt that that the Applicant has committed a “relevant housing offence” (in this case, by failing to comply with conditions of his licence)?
 - c. Is there a “reasonable excuse” defence?
 - d. Was it appropriate to issue a Financial Penalty for the breaches/offences?
 - e. Is the amount of the financial penalty imposed appropriate, having regard to DCLG guidance and the Respondent’s policy, including any aggravating and mitigating factors?

Evidence

14. The Tribunal has carefully considered all the written evidence available at the hearing, specifically the documents contained in the Applicant and Respondent bundles.
15. The Tribunal has also carefully considered the oral evidence given at the hearing from the Applicant and Mr Johnston.

Relevant Evidence and the Tribunal’s Conclusions on the Issues

16. **Has the Respondent complied with the procedural requirements in Schedule 13A HA 2004?** No issue was raised by the Applicant in relation to procedural requirements and the Tribunal was satisfied on the basis of the written evidence in the Respondent’s bundle that the requirements of Schedule 13A to HA 2004 had been met.
17. **Is the Tribunal satisfied beyond reasonable doubt that that the Applicant has committed a “relevant housing offence” (in this case, by failing to comply with conditions of his licence)?** The Tribunal finds as follows:
 - a. Breach 1 – the Applicant confirmed in the hearing that he accepted this breach; he had not produced a gas safety certificate obtained in the last 12 months; he was unable to give any explanation for this nor when the last gas safety certificate was obtained. The Tribunal is satisfied to the requisite standard of proof that the Applicant breached this licence condition (the conditions being attached to the licence sent to the

Applicant under cover of the letter dated 29 September 2020 contained within the Respondent's bundle and the failure to provide the relevant certificate being confirmed in the evidence of Mr Johnston and Ms McGill, acting in their professional capacity), and accordingly committed the offence;

- b. Breach 2 – the Respondent's evidence is that the 'fire detection system' for the premises, as referred to in the Fire Detection, Inspection & Servicing Certificate dated 6 July 2022 produced by the Applicant, comprises heat sensors and smoke detectors, and that faults were identified to that system at the inspection on 6 July 2022, and at the time of the Respondent's inspection on 22 May 2023; that evidence was not challenged by the Applicant and it is accepted by the Tribunal as reliable and credible because it is evidence contained in the witness statements of Samantha Edwards and Jayne McGill, both providing that evidence in their capacity as qualified professionals.
- c. Breach 3 – the Respondent's evidence in relation to this alleged breach is that *"The ground floor office door had a large gap at the top, with would allow the passage of smoke in the event of a fire. I produce a photograph of this identified as JHO/CH/1"* and *"Several fire doors did not close fully into the casing"* (statement of Jayne McGill) and Samantha Edwards noted *"deficiencies which consisted of Article 8 Duty to take general fire precautions, Article 9 Risk Assessment, Article 10 Principles of prevention to be applied, Article 13 Firefighting and fire detection, Article 15 Procedures for serious and imminent danger and for danger areas, Article 17 Maintenance, and Article 21 Training"* at the inspection on 22 May 2023; the Applicant's evidence as to this alleged breach was that the issues raised had not been identified on previous inspections, the doors and frames had not changed since those inspections, but that *"if the Council officer says there were gaps, there were gaps"*. The Tribunal is satisfied that this licence condition was breached because there is credible evidence to that effect from Ms Edwards and Ms McGill and that evidence is not substantively challenged by the Applicant.
- d. Breach 4 – the Respondent's evidence in relation to this alleged breach is that *"There was no handle on the inside of the fire door to the ground floor support/meeting room"* and *"Some bedroom fire doors were compromised due to breaches around the locking mechanisms and handles. I produce a photograph of one particular door identified as JHO/CH/12"* (statement of Jayne McGill) and the evidence of Samantha Edwards referred to in relation to Breach 3; the Applicant's evidence in relation to this alleged breach is that this related solely to covers on door locks not being covered; this issued was remedied, when identified, with the locks being "filled by putty", but that in any event it was not possible to "see through the door" (which was relevant to the nature of the fire risk). The Applicant did not otherwise challenge the Respondent's witness evidence, and the Tribunal is satisfied that the licence conditions were breached on the basis of the evidence of Ms McGill and Ms Edwards, given in their professional capacity, and which evidence was not substantively challenged by the Applicant.

- e. Breach 5 – the Applicant accepted in the hearing that he had been unable to produce electrical certification in relation to portable appliance testing (“PAT”) for the preceding 12 months; he was unable to confirm the date of the last PAT; he had understood that the requirement related to communal areas only (but in any event did not have certification in relation to appliances in those areas) and there were periodic checks to identify any electrical equipment in residents rooms, which were then removed if found. No substantive challenge was made to the Respondent’s evidence of breach of this licence condition (as referred to in Mr Johnston and Ms McGill’s evidence) and the Tribunal accept that evidence as credible, because it is not challenged and is given by witnesses acting in their professional capacity.
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18. **Is there a “reasonable excuse” defence?** No defence of reasonable excuse was raised by the Applicant and the Tribunal was satisfied that there was no defence of reasonable excuse to offences because the Tribunal has found that Mr Hussain is an experienced manager of HMO properties, he did breach licence conditions, he was aware of those licence conditions, and because the Tribunal is satisfied that steps could, and should, have been taken to avoid breaches of those conditions by, for example, obtaining and providing the relevant licences, ensuring appropriate inspections were undertaken in a timely manner, and ensuring that appropriate repairs or works were undertaken in a timely manner in accordance with inspections.
 19. **Was it appropriate to issue a Financial Penalty for the breaches/offences?** The Applicant suggests in written representation that was not in the “*public interest*” to issue a financial penalty (as referred to in the Initial Notice), and relies on the following as reasons as to why the “*public interest threshold*” was not met: a. actual harm and risk of harm was low; b. the Applicant derived no benefit from the “*offending action*”; c. the “*offending*” is not likely to be repeated as he is no longer an HMO licence holder; d. “*the offence is partly of the LA’s own making*”; e. “*no harm was caused to the community*”.
 20. The Tribunal does not accept that it was inappropriate to issue a financial penalty on the ground that it was not in the public interest to do so; section 72 HA 2004 gives the Respondent a discretion as to whether to prosecute or impose a financial penalty for a relevant housing offence (“an offence”); that discretion should be exercised in accordance with the Guidance; Chapter 3 of the Guidance provides guidance as whether prosecution or a financial penalty may be appropriate, but emphasises that both require a housing authority to be satisfied “*that if the case were to be prosecuted in the magistrates’ court, there would be a realistic prospect of conviction*”, and refers to the Crown Prosecution Service *Code for Crown Prosecutors* (“the Code”) for advice on the extent to which there is likely to be sufficient evidence to secure a conviction, and the two stage test: (i) the evidential stage and (ii) the public interest stage”; the public interest stage factors are set out at paragraphs 4.14 of the Code and address issues of harm and culpability; for the reasons set out

below in relation to the amount of the financial penalty the Tribunal is satisfied that the public interest test was, and is, met, and that a financial penalty was an appropriate sanction for, what the Tribunal accept, are a number of breaches of HMO licence conditions.

21. **Is the amount of the financial penalty imposed appropriate, having regard to DCLG guidance and the Respondent's policy, including any aggravating and mitigating factors?** The Applicant challenges the amount of the financial penalty, in particular, having regard to the Respondent's Protocol and the harm/culpability 'matrix' in that document: in particular, no harm was caused as a result of the breaches; the risk of harm was low (in particular, due to "*waking watches*" initiated following the inspection and the 24 hour presence of staff); in relation to culpability, the breaches were in part caused to due financial pressures caused by the refusal of the Respondent's Housing Benefit department to allow for "building related costs" and delays in Housing Benefit payments; the breaches were minor, such as would be found in "*most hostels on virtually any day*"; the breaches were identified due to an "*aggressive approach*" to standards by the Housing Standards team. The Respondent's position, in Mr Johnston's evidence and the submissions of Mr Addison was that whilst there was no actual harm due to the breaches, the potential harm was "*catastrophic*"; in relation to culpability, there was no impropriety on the part of the Housing Benefit department and licence holders should be aware, and had been notified of their licence obligations.
22. The Tribunal is satisfied that the Respondent's Protocol is rational and has due regard to the Guidance.
23. The Tribunal is also satisfied that the Respondent's assessment of harm is appropriate because: the risk of harm was, as is contended for by the Respondent, potentially serious; the Guidance expressly provides for '*risk of harm*' to be taken into account when assessing '*harm*'; the risk of harm was very serious because of the multiple failures, including a failure to evidence gas safety checks, a failure to evidence electrical safety tests, and failures to adequately maintain the smoke alarm system, fire doors, door locks and handles, could, individually and cumulatively, have resulted in significant harm by way of fire in a building with numerous residents (the property being licenced for 24 rooms with a maximum occupancy of 2 persons per room over 10 years); and even taking into account the factors identified by the Applicant the Tribunal find there was a risk of harm (and, arguably, a serious risk). The Tribunal is satisfied that the 'Low Risk' assessment of the Respondent is entirely justifiable.
24. The Tribunal finds that the Respondent's assessment of culpability ('Medium Culpability') is appropriate because: the Applicant has longstanding experience as an HMO licence holder and was, at best, negligent in ensuring that appropriate systems and maintenance were in place; there is no evidence of any impropriety on the part of the Respondent's Housing Benefit department; that the subsequent provision of certification is of limited relevance given the lack of evidence of historic compliance; the extent to which other hostels may or may not have met the standards imposed by the

licence conditions is irrelevant to culpability, and, in any event, unsupported by evidence; and there is no evidence of an “*aggressive attitude*” to enforcement on the part of the Respondent.

25. Accordingly, by reference to the Respondent’s Protocol, the penalty band is appropriate.
26. In relation to aggravating/mitigating factors, the Applicant submitted that there had been a failure to have regard to relevant mitigating factors, including the assertion that the Applicant did not derive “*any benefit from the ‘offending’ actions*”, that the “*‘offending’ is not likely to be repeated due as [he] is no longer an HMO licence holder*”. Mr Johnston confirmed that the Protocol did not specifically identify aggravating/mitigating factors; Mr Addison submitted that relevant factors identified in the Guidance had been taken into account and that an appropriate reduction (in accordance with the Protocol) had been applied for the Applicant’s cooperation through the investigation. However, notwithstanding the Tribunal’s findings in relation to the actions of the Respondent’s Housing Benefit department, the Tribunal accepted the Respondent’s evidence that the only funds available for maintenance were those which had historically been paid by Housing Benefit for “*building related costs*” and that those were not paid in 2022, resulting in financial pressure and a need to prioritise maintenance spending, that the Applicant had no notice of the breaches following previous inspections, and that the Applicant did not personally benefit financially from the breaches; the Tribunal also accept the Applicant’s evidence (which is consistent with the Respondent’s evidence) that the identified breaches were remedied within a short period of time and the Tribunal takes account of the fact that this is the Applicant’s first offence; the Tribunal find that these factors are additional mitigating factors (in addition to “*cooperation*”), and that the Financial Penalty should be further reduced, in accordance with the Respondent’s Protocol, by £2000.00, to £4499.50.

J Stringer
Tribunal Judge

7 March 2025