FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00DA/HNA/2023/0091**
Property	**:**	**3 Cad Beeston Mews, Beeston, Leeds LS11 8AF**
Applicants	**:**	**Mr Arumugam Balaganapathy & Mrs Jayasheela Arumugam**
Respondent	**:**	**Leeds City Council**
Type of application	**:**	**Appeal against a financial penalty - section 249A & Schedule 13A Housing Act 2004**
Tribunal	**:**	**Tribunal Judge L Brown,** **Tribunal Member Mr P Mountain**
Date of decision	**:**	**11 April 2025**

DECISION

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The appeal is allowed in part and the Tribunal varies the financial penalty issued by the Respondent to the Applicants jointly in relation to the Property to £2,250.00

The Applications

1. By Application dated 21 December 2023 the Applicants appealed against a financial penalty of £2,750.00 imposed upon them jointly by the Respondent by a Final Notice dated 30 November 2023 in respect of the Property, varied on 9 December 2024.

2. Directions were issued by the Tribunal on 13 November 2024.

3. The Application is opposed by the Respondent. Both parties presented their own bundle of documents, comprising 20 pages (Applicants) and 452 pages, plus supplementary witness statement of 7 pages (Respondent), which the Tribunal took time to read before the hearing.

4. The Application was heard by video link on 24 February 2025. The Applicants attended and gave oral evidence to the Tribunal. The Respondent was represented by Ms H Lloyd-Henry, Principal Legal Officer. Evidence for the Respondent was given by Mr Liam James Carr, Principal Housing Officer, who provided a statement dated 4 December 2024 and a further statement dated 10 January 2025, as late evidence to which no objection was made. We accepted those statements as his main evidence.

Facts and Chronology

5. The facts were largely agreed. The Property is a 3 bedroom mid-terrace house, located in a residential area of Beeston designated by the Respondent for selective licensing under Part 3 of Housing Act 2004, which commenced on 6 January 2020. Any property occupied under a tenancy within that area would require a licence.

6. The Applicants became registered at Land Registry as the freehold proprietors of the Property in November 2018, subject to a registered charge in favour of Bank of Scotland PLC. They occupied the Property but then moved away for work reasons. It was accepted that by a Tenancy Agreement dated 8 February 2018, for a term of 12 months from that date the whole of the Property was let by the Applicants to The Saviour Trust ("Saviour"), a charity. A further Tenancy for 12 months was entered into dated 17 November 2022. There was no evidence or representation that Saviour's tenancy ceased between those periods. In July 2023 Saviour was appointed by the Respondent as its chosen operator of the its supported housing provider.

7. Council Tax records established that the Property was occupied by two residents – Mr Nathanial Herbert (from August 2018) and Mr Darren Dobson (from September 2021).

8. Acting on information from Leeds Benefit Service, on 29 August 2023 the Respondent began to investigate matters concerning the Property as no relevant selective licence was recorded as issued or in process for the premises. Housing Benefit was being paid to Saviour for each occupier for a date range covering 17 August 2023 from 1 July 2022.

9. On 23 August 2023 Mr Balaganapathy submitted an online Selective Licensing application for the Property. A fee of £825 was paid. On 22 September 2023 a Notice of lntention to Grant a Licence with Modifications was issued by the Respondent to Mr Balaganapathy and Saviour and the relevant licence was granted in 19 October 2023.

10. Suspecting that the Applicants had committed an offence under s. 95 Housing Act 2004 ("HA") the Respondent sent on 29 August 2023 to each of the Applicants questionnaires under the provisions of the Police and Criminal Evidence Act 1984 and replies were received, including the representation from Mr Balaganapathy *"We make sure the house have always complies with all the safety measurements like smoke alarms, heat detectors, carbon monoxide detectors, EICR, gas safety certificates, etc…during our routine every 3 to 6 months inspections"* (email dated 6 September 2023).

11. An enquiry process was undertaken and the Respondent's review panel found beyond reasonable doubt that the Applicants had committed an offence under s95(1) Housing Act 2004 in that they were persons in control of and/or managing premises which were required to be licensed under Part 3 Housing Act 2004, but which were not.

12. The process leading to the Respondent imposing financial penalties for the offence was not in dispute and the Tribunal was satisfied that there had been compliance by the Respondent with the requirements of s 249A and Schedule 13 Housing Act 2004. Notices of Intention to issue financial penalties were issued on 28 September 2023.

13. The basis of calculation of the amounts of the penalties is set out in Mr Carr's statement. Our findings on that matter are set out below. The periods relevant to the Penalty Notices each were 6 January 2020 (when the selective licensing scheme came into force) and 17 August 2023.

14. The Applicants confirmed at the hearing that they accepted an appropriate licence should have been in place for the Property in accordance with the selective licensing regime.

15. The Respondent represented that at the time of the commission of the offence the Applicants were persons in control of the Property (and therefore liable for a penalty) because they were both freehold owners and were in receipt of the rack-rent of £1,000 per month (via Saviour).

The Law

16. Section 249A of the Housing Act 2004 ("the 2004 Act") states that:

"*(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.*"

17. Section 249A(2) sets out what constitutes a "relevant housing offence". It includes an offence under section 95(1) of the 2004 Act, by which it is an offence for a person who has control of or manages a house to do so without a licence where that house is required to be licensed.

18. Section 263 sets out definitions of "person having control" and "person managing", as:

"*(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(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."

19. In the first instance, the local housing authority must ascertain beyond reasonable doubt whether a licence should have been applied for and that it was not applied for.

20. 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, including the service of notices of intent and of final notices, before the financial penalty may be imposed under section 249A.

21. In addition, by paragraph 12 of Schedule 13A, the local housing authority must have regard to guidance which the government has issued to local housing authorities as to how their financial penalty powers are to be exercised. The guidance confirms that local housing authorities are expected to issue their own policies in relation to housing offences and the imposition of civil penalties, and must include the factors which it will consider when establishing the offender's level of culpability and the harm which has been caused by the offence, as well as a matrix for calculating the appropriate level of penalty after taking into account any additional mitigating or aggravating circumstances.

22. In this case, the Respondent's policy is the document in the Respondent's bundle, commencing at page 227 entitled 'Private sector housing enforcement policy', and the 'Civil penalties' guidance (commencing page 274 of the Respondent's bundle.

23. Section 95(4) of the 2004 Act provides that it is a defence to proceedings if the person committing the offence had a reasonable excuse for having control of or managing the house without a licence. It is for the Applicant here to show on a balance of probabilities that he had a reasonable excuse for so doing.

24. On an appeal against a financial penalty, the 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 local housing authority when the Final Notice 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.

Applicant's position

25. The Applicants' argument was based on the premise that they were unaware until 23 August 2023 of the need for a selective licence. Further, that Saviour managed and controlled the Property (and also was unaware of the need for a licence).

26. The Applicants repeated that they inspect the Property "….every 3 to 6 months to make sure all the government rules and laws are being obeyed. Everything was okay; neither harm nor antisocial behaviour was reported. The house was compliant with all regulations of fire safety measures such as smoke alarms in all the bedrooms, kitchen and living room and also heat and carbon monoxide detectors in the house." (Statement of Case dated 29 November 2024)

27. It was also represented that from January 2020 Mr Balaganapathy had become unemployed, that there was no gain as the licence fee ultimately was paid, that making the application was evidence that they did not intend to commit a crime and they had no convictions.

28. The Tribunal heard in oral evidence that the Applicants have 7 properties rented-out, none of which require selective licences. Receipt by the Applicants of the rack-rent (see paragraph 15) was not denied.

Respondent's representations

29. In refuting the Applicant's basis of opposition to the imposition of the penalties on them rather than Saviour, the Respondent referred to the Ministry of Housing, Communities and Local Government April 2018 Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities document (the "Guidance"). This specifically records:

"2.5 Can a civil penalty be imposed on both a landlord and letting agent for failing to obtain a licence for a licensable property?

Where both the letting agent and landlord can be prosecuted for failing to obtain a licence for a licensable property, then a civil penalty can also be imposed on both the landlord and agent as an alternative to prosecution. The amount of the civil penalty may differ depending on the individual circumstances of the case.

2.6 Can a civil penalty be imposed on both a landlord and letting agent in respect of the same offence?

Where both a landlord and a letting/managing agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution. The amount of the penalty may differ depending on the circumstances of the case."

Conclusions and Reasons

28. The Tribunal must be satisfied beyond a reasonable doubt that the Applicant committed a "relevant housing offence" in respect of the Properties for the period to which the Final Notices relate, namely 6 January 2020 to 17 August 2023. The area in which the Properties is situated was designated as a selective licensing area with effect from 6 January 2020. From that date, any property occupied under a tenancy within that area would require a licence.

30. While the dates of commencement of lettings were not established, the Applicants presented no evidence or submission that either of the Properties was unlet throughout the period to which the Final Notices relate. The evidence of letting to Saviour (the Tenancy document) was that this did not commence until 17 November 2022. However, no challenge was presented by the Applicants on the start date for the offence and we found it had no bearing upon the amount of the penalty issued. We found that the Applicants did not have a licence for the Property throughout the period to which the Final Notices relate. Further, no evidence was presented that any other person or body held an appropriate licence.

31. The Tribunal found that notwithstanding Saviour collecting rents from the occupiers (principally through housing benefit) it was the Applicants who

ultimately received the rack-rent for the Property (£1,000 per month) and were persons having control, in relation to the Property, as defined by s263.

32. We considered whether ignorance of the need for a licence throughout the period in question may be relevant, such as to provide a reasonable excuse. This issue also is linked to the Applicants' point regarding his conduct. The Tribunal was persuaded by the evidence of Mr Carr (statement 4 December 2024, paragraph 5) that extensive general communications around the Beeston area were undertaken concerning the proposed selective licensing scheme. There was publicity through various medias, drop-in events and through the Respondent's website. While the Applicants had relocated to Brentwood in or before 8 February 2018 (the date of the Tenancy with Saviour) they were not inexperienced landlords, having 7 properties let-out. They stated they visited the Property to inspect every 3 – 6 months, so remained in touch with the locality. The Applicants provided no compelling evidence that they could not reasonably be aware of their licensing obligation and moreover we found in any event that ignorance was not a reasonable excuse, on the facts before us.

33. We rejected the Applicants suggestion that they were ignorance of the licensing need because of COVID-19 lockdown. That began in March 2020, whereas the Respondent's evidence supported with documents, was that publicity about the intended scheme began in summer 2019.

34. The Tribunal was satisfied that the engagement of Saviour by the Applicants was not of itself a reasonable excuse. We were not persuaded that Saviour had a contractual obligation to either inform the Applicants of the need for licensing or to make applications itself to be the licence holder. The Tribunal was not persuaded that the engagement and functional operations of the Applicants' agent could relieve them of the responsibility of control envisaged by s95(1). Indeed, their position was that they were inspecting the Property every 3 – 6 months, so clearly continued to retain an element of management of it.

34. Accordingly, the Tribunal was satisfied beyond a reasonable doubt that the Applicants committed a "relevant housing offence" in respect of the Property for the period in question.

35. The Tribunal was not persuaded that the Respondent ought to have taken action against Saviour ahead of, or instead of, the Applicants. Neither the legislation nor the Guidance makes direction that a Local Housing Authority should prefer penalising a particular party who has committed the relevant housing offence over another, or provides any criteria to do so.

Amount of the Penalties

36. In its Statement of Case the Respondent provided detail on the method of calculating the penalties, confirmed by Mr Carr. The Applicants' challenge was just in broad terms of unfairness.

37. As noted above, DCLG Guidance has been issued to local housing authorities regarding how their financial penalty powers are to be exercised. The Guidance encourages each authority to issue its own policy for determining the appropriate level of penalty, with the maximum amount being reserved for the worst offenders. Relevant factors include:

a. the severity of the offence;

b. the culpability and track record of the offender;

c. the harm caused to the tenant;

d. punishment of the offender;

e. deterring the offender from repeating the offence;

f. deterring others from committing similar offences; and

g. removing any financial benefit the offender may have obtained as a result of committing the offence.

38. The Tribunal has considered the Respondent's published policy (see paragraph 22), and notes that it is reflective of the DCLG Guidance. We found that the financial penalties imposed were properly calculated in accordance with the Respondent's published policy.

39. The Respondent's process was to identify a starting figure for each penalty. First, by determining the severity of the offence by reference to culpability, and harm (or risk of harm) caused by the offence. On the information available to the Respondent at the time, the Respondent assessed the Applicants' culpability as low. On the information available at the time – and we record that we received no evidence to take a contrary assessment - the Respondent assessed the Applicants' culpability also as low. Therefore, the starting point was at the minimum level 0 as set out in its Civil Penalty Policy – £2,500.

40. Harm to the tenants also was assessed as low.

41. Regarding the element for "Punishment and Deterrence", we found the Respondent's submission cogent and in accordance with policy: "*Central Government statutory guidance10 indicates that a civil penalty should not be regarded as a lesser option compared with prosecution. The penalty should be set at a high enough level to ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their legal responsibilities. The penalty should also have a deterrent effect to ensure the landlord fully complies with their legal responsibilities in future, and to deter other landlords from committing similar offences*."

42. The DCLG Guidance also records that no financial benefit should accrue to the offender. The Respondent applied a 5% increase to the penalty for the aggravating factor of being motivated by financial gain. Then it applied a 5% reduction for the following mitigating factors: a. Co-operation with the investigation; b. Acceptance of responsibility; c. Lack of previous convictions.

43. The net effect was to calculate the fine as £2,250 (per the Respondent's Determination calculation document – page 226 of the bundle), before adding in a sum for financial gain. The Respondent went on to state:

"*In accordance with this guiding principle specified in the Central Government statutory guidance, the Respondent's policy adopts a minimum fine level taking into account financial gain. The policy states: 'To ensure that the penalty both removes any gain obtained from the offence and punishes the offender and deters from future offending, the eventual level of the civil penalty should not be less than the amount of financial gain made from the offence plus £2,000 or 10% of the penalty, whichever is greater (subject to the statutory maximum penalty of £30,000).'*

The financial gain for each offence was deemed to be the selective licence fee plus the Respondent's costs of investigations. However, the Respondent has decided to formally reduce the financial penalty to remove the cost of investigations, which means that the minimum fine level accounting for financial gain would therefore be £2,750.00. As this is greater than the calculated fine level, this is the amount imposed by the Respondent."

44. We agreed with the Respondent that costs of the investigations cannot be included in the calculation.

45. It appears that the Respondent did not bring into the account the actual financial gain from the rack-rent. It identified only the financial gain of £825 – the licence fee – which ultimately was paid by Mr Balaganapathy.

46. Having determined on the criminal standard of proof that the Applicants were responsible for a relevant housing offence we also found that the Respondent was correct in its determination of "harm" and "culpability" as low.

47. No basis was presented to the Tribunal to persuade it to view the assessment of the Respondent of aggravating and mitigating factors as inappropriate, or that any other aspect of the calculations was not in accordance with policy and guidance.

48. Having taken into account all of the evidence before it, the representations and submissions made to it including during the course of the hearing, the Tribunal found that the Applicants had not avoided paying the licence fee of £825 and it should not be regarded as an element of financial gain. The effect was that the sum approved by the Tribunal as the financial penalty reverts to £2,250.

49. In consequence of our findings we determined that the financial penalty imposed on the Applicants jointly should be varied to £2,250.

Tribunal Judge Brown

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).