



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

<b>Case Reference</b>	<b>:</b>	<b>MAN/00CG/HNA/2023/0082</b>
<b>Property</b>	<b>:</b>	<b>Flat over 388A Fulwood Road, Sheffield S10 5GD</b>
<b>Applicant</b>	<b>:</b>	<b>Muhammad Abdul Noor</b>
<b>Representative</b>	<b>:</b>	<b>Nozrul Islam</b>
<b>Respondent</b>	<b>:</b>	<b>Sheffield City Council</b>
<b>Representative</b>		<b>Catherine Ferguson (Solicitor)</b>
<b>Type of Application</b>	<b>:</b>	<b>Appeal against a financial penalty – Section 249A &amp; Schedule 13A- Housing Act 2004</b>
<b>Tribunal Members</b>	<b>:</b>	<b>Tribunal Judge J. E. Oliver Tribunal Member J. Gittus</b>
<b>Date of Determination</b>	<b>:</b>	<b>20<sup>th</sup> August and 11<sup>th</sup> October 2024</b>
<b>Date of Decision</b>	<b>:</b>	<b>29<sup>th</sup> October 2024</b>

---

**DECISION**

---

## **Decision**

1. The Final Notice, dated 13<sup>th</sup> November 2023, being the subject of this appeal is varied.
2. Muhammad Abdul Noor must pay a financial penalty of £15,000 to Sheffield City Council within 28 days from the date of the issue of this decision to the parties.

## **Background**

3. This is an application by Muhammad Abdul Noor ("Mr Noor"), to appeal a financial penalty, dated 13<sup>th</sup> November 2024, in the sum of £16500, issued by Sheffield City Council ("the Council") pursuant to section 249A of the Housing Act 2004 ("the Act") in respect of the Flat over 388A Fulwood Road, Sheffield ("the Property").
4. On 13<sup>th</sup> November 2023 the Council issued the Final Notice of Financial penalty for a failure to comply with an Improvement Notice dated 23<sup>rd</sup> December 2022 served by the Council on Mr Noor.
5. Mr Noor's application was dated 1<sup>st</sup> December 2023.
6. The Tribunal issued directions on 15<sup>th</sup> March 2024 providing for the filing of statements and bundles and for the matter to be determined at a hearing. The matter was thereafter listed for determination on 20<sup>th</sup> August 2024, but that hearing was adjourned for an interpreter to be appointed to assist Mr Noor.
7. The application was thereafter listed for further consideration on 11<sup>th</sup> October 2024.

## **Chronology**

8. In November 2020 the Council received a complaint from a tenant of the Property regarding the condition of the Property.
9. In his statement to the Tribunal Mr James Tomlinson, a Senior Private Housing Standards Officer, set out the details of his involvement in respect of the Property.
10. He visited it on 9<sup>th</sup> June 2021 where he found it to be "*in poor condition with multiple parts in disrepair*". The defects included both Category 1 and 2 hazards present, to include damp and mould, excess cold, entry by intruders, collision and entrapment, electrical hazards, falls on level surfaces, falls between levels, fire, gas safety, food safety, domestic hygiene, personal hygiene and sanitation.
11. On the same date, Mr Tomlinson spoke with Mr Noor who advised the Property was jointly owned with Mr Ali, who was a silent partner. He said the management of the Property was dealt with by EBC Lettings. Mr Tomlinson contacted EBC Lettings who stated they "*were no longer involved*". In a further telephone conversation Mr Noor advised he was in the process of evicting the current tenant which would enable him to undertake a full renovation of the Property and, in the interim, would not re-let it.
12. Mr Tomlinson wrote to both Mr Noor and Mr Ali on 22<sup>nd</sup> June 2021, setting out the necessary works and for them to be completed by 18<sup>th</sup> August 2021.
13. On 6<sup>th</sup> June 2021 Mr Tomlinson received an e-mail from Mr Noor confirming the works would be carried out.

14. On 1<sup>st</sup> September 2021 the tenant confirmed he had moved out of the Property.
15. On 23<sup>rd</sup> December 2021 Mr Tomlinson visited the Property where works were ongoing. He then contacted Mr Noor on 5<sup>th</sup> May 2022 who advised EBC Lettings were organising the ongoing works.
16. On 17<sup>th</sup> November 2022 Mr Tomlinson visited the Property and found it was occupied and entry was refused by the tenants.
17. On 18<sup>th</sup> November 2022 Mr Tomlinson spoke again with Mr Noor who “*could not say much about the property or the works*”. He advised EBC Lettings were now managing the Property and access to it could be arranged through them.
18. After serving Notices of Entry on 18<sup>th</sup> November 2022, Mr Tomlinson again inspected the Property on 22<sup>nd</sup> November 2022 and found the issues relating to damp and mould, excess cold and falls on level surfaces had not been addressed. The skylight windows had been replaced with unsuitable and leaking plastic panels. A subsequent HHSRS calculation found both Category 1 and 2 hazards were still present.
19. On 23<sup>rd</sup> December 2022 an Improvement Notice was served requiring remedial works to be completed by 1<sup>st</sup> April 2023.
20. On 9<sup>th</sup> January 2023 EBC Lettings e-mailed Mr Tomlinson to advise the works were proceeding and again on 8<sup>th</sup> February 2023 updating the position on the works. On 8<sup>th</sup> March 2023 he e-mailed EBC Lettings for a further update but there was no response. Mr Noor was copied into the e-mails.
21. On 19<sup>th</sup> May 2023 Mr Tomlinson re-inspected the Property and found the issues relating to damp and mould and excess cold hazards had not been resolved and there had been a further deterioration in the Property showing further damp and mould. A further HSSRS assessment again showed the presence of both Category 1 and 2 hazards.
22. Mr Tomlinson determined the Improvement Notice had not been complied with.
23. On 25<sup>th</sup> May 2023 a Prohibition Notice was served.
24. On 6<sup>th</sup> September 2023 an assessment was carried out and a Civil Penalty Determination Record was completed, pursuant to s 249A and Schedule 13A of the Act. This was assessed Harm as high and Culpability as medium. There were both aggravating and mitigating factors. The penalty was assessed at £18,000.
25. Mr Noor submitted representations to the Council and the penalty was thereafter reduced to £16,500.
26. A Final Notice of Financial Penalty, in the sum of £16,500 was served on 13<sup>th</sup> November 2023.

## **The Law**

27. Section 249A (1) of the Act provides that “a local 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...”
28. Section 249 (2) sets out what amounts to a housing offence and includes at s.249(2)(a) an offence under s.30 of the Act, namely failure to comply with an Improvement Notice. Section 30(4) provides that a person does not commit

the offence if he has a reasonable excuse for failing to comply with the Improvement Notice.

29. It is for the Council to prove, beyond reasonable doubt, that an offence has been committed s.30 of the Act.
30. It is for Mr Noor to prove, on the balance of probabilities, that he has a reasonable excuse for failing to comply with the Improvement Notice.
31. The maximum fine that can be imposed for each offence is £30,000.
32. Paragraph 10(3) of Schedule 13 A of the Act provides that an appeal in respect of a financial penalty is by way of re-hearing.

### **Procedural requirements**

33. Schedule 13A of the Act sets out the procedural requirements a local authority must follow when seeking to impose a financial penalty. Before imposing such a penalty, the local authority must give a person notice of their intention to do so, by means of a Notice of Intent.
34. A Notice of Intent must be given within 6 months of the local authority having sufficient evidence of the conduct to which the financial penalty relates. If the conduct continues beyond that date, then the Notice of Intent may be given at any time when the conduct is continuing or within 6 months of the day when the conduct last occurs.
35. The Notice of Intent must set out:
  - the amount of the proposed financial penalty
  - the reasons for imposing the penalty
  - Information about the right to make representations regarding the penalty
36. If representations are to be made, they must be made within 28 days beginning with the day after that on which the Notice of Intent was given. At the end of this period the local authority must then decide whether to impose a financial penalty and, if so, the amount.
37. The Final Notice must set out:
  - the amount of the financial penalty
  - the reasons for imposing the penalty
  - information about how to pay the penalty
  - the period for the payment of the penalty
  - information about rights of appeal
  - the consequences of failure to comply with the notice

### **Guidance**

38. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties. The Ministry of Housing issues such guidance (“the MHCLG Guidance”) in April 2018: *Civil penalties under the Housing and Planning Act 2016-Guidance for Local Authorities*. This requires a local authority to develop their own policy regarding when or if to prosecute or issue a financial penalty.
39. Sheffield City Council has developed its own guidance (“the Sheffield Guidance”) that follows the MHCLG Guidance in setting out the criteria to be considered when determining any penalty:

- Level of culpability
  - Level of harm
  - Severity of the offence
  - Aggravating factors
  - Mitigating factors
  - The financial circumstances of the offender
  - Any previous action taken against the offender
  - Whether they ought to have known they were in breach of their legal responsibilities
  - The harm or potential harm to the occupier
  - The deterrence of further offending by the offender in question
  - The deterrent values to others (whilst civil penalties will not generally be in the public domain, unlike prosecutions, it is recognised that other landlords may become aware through informal channels)
  - The removal of any financial benefit the offender may have obtained as a result of committing the offence
  - Any other aggravating factors including the reaction of the offender to out intervention
40. The Sheffield Guidance states any financial penalty is determined using culpability and harm factors set out in the Guidance.
41. Culpability is on three levels, these being high, medium and low:

#### **High level of culpability**

- they have a history of non-compliance
- despite a number of opportunities to comply they have failed to comply
- have been obstructive as part of the investigation
- are an experienced landlord/agent with a portfolio of properties who is failing to comply with their obligations
- serious and systematic failure to comply with their legal duties

#### **Medium level of culpability**

- it is a first offence-with no high level of culpability criteria being met
- the landlord/agent had systems in place to manage risk or comply with their legal duties but they were not sufficient or complied with on this particular occasion

#### **Low level of culpability**

- No or minimal warning given to offender
- Minor breaches
- Isolated occurrence
- A significant effort has been made to comply but was inadequate in achieving compliance

42. The same categories apply to harm and the following are given as examples:

#### **High**

- Actual harm to an individual
- High risk of harm to an individual
- Serious risk of overcrowding

- Serious effect on an individual(s) or widespread impact

### **Medium**

- Adverse effect on an individual
- Moderate risk of harm to an individual(s) or broader impact

### **Low**

- Minimal adverse effect on individual(s)
- Low risk of harm to an individual
- Limited impact or effect on occupiers

43. Once the appropriate levels have been determined a matrix fixes the level of penalty. The Sheffield Guidance provides examples of aggravating and mitigating factors from which the Council may choose to deviate from the prescribed level of penalty.

44. The aggravating factors are given as follows:

- Previous relevant convictions having regard to the offence to which it relates
- Landlord motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance-greater the number the greater the potential aggravating factor
- A record of letting substandard accommodation
- A record of poor management/inadequate management provision
- Lack of a tenancy agreement/paid in cash.

45. The mitigating factors are exemplified as follows:

- Co-operation with the investigation e.g. attends the PACE interview
- Any voluntary steps taken to address issues e.g. submits a licence application
- Acceptance of responsibility e.g. accepts guilt and remorse for the offence(s)
- Willingness to undertake training
- Health reasons preventing reasonable compliance-mental health, unforeseen health issues, emergency health concerns
- Has no previous convictions
- Vulnerable individual(s) where vulnerability is linked to the commission of the offence
- Previous good character and/or exemplary conduct

## **Hearing**

46. At the hearing Mr Noor attended and was represented by his son, Nozrul Islam. The Tribunal appointed Mr Hoque, an interpreter, to assist Mr Noor. The Council was represented by Catherine Ferguson and Mr Tomlinson was also present.
47. In evidence the Council submitted Mr Noor had admitted, in his statement to the Tribunal, that he had failed to comply with the terms of the Improvement Notice and, consequently, had committed an offence under s.30 of the Act.
48. The Tribunal accepted this was agreed by the parties but Mr Islam submitted Mr Noor had a reasonable excuse.
49. Mr Noor stated that throughout his involvement with the Council he had relied upon EBC Lettings to deal with all aspects of the Property. This included finding tenants and dealing with all necessary maintenance. He relied upon EBC Lettings due to his limited language skills and knowledge of property maintenance.
50. Mr Noor gave evidence that, at the time Mr Tomlinson made his initial visit to the Property on 9<sup>th</sup> June 2021, EBC Lettings were dealing with the management of the Property. He was experiencing difficulties with the tenant who, it was said, had caused significant damage to the Property, thus explaining the condition Mr Tomlinson had found it in. Mr Noor had instructed EBC Lettings to take steps to have the tenant evicted but he remained in the Property. It was highlighted by the Council it had been unaware of the problems caused by the tenant at the time of its original inspection in June 2021 and, throughout their dealings with Mr Noor and EBC Lettings, there had been no indication of this. It had only been raised in Mr Noor's statement to the Tribunal. It was the tenant who had approached the Council regarding the condition of the Property. Mr Noor stated the Property had been in good condition when let to the tenant.
51. It was a matter of dispute between the parties as to the periods when EBC Lettings were involved with the management of the Property. The Council did not accept they were instructed in June 2021 given Mr Tomlinson's contact with them and their denial of any involvement with the Property at that time. Mr Noor was asked whether he had a management contract for this period. He said he had but that it could not be found. The Council accepted EBC Lettings were dealing with the Property when work was ongoing in December 2021. When Mr Tomlinson visited the Property again in November 2022 he found the Property had been let. The Council produced a copy of a Managing Agents Contract and questionnaire between EBC Lettings and signed by Mr Noor dated 7<sup>th</sup> June 2022. There was no evidence produced to the Tribunal to indicate whether the management contract continued after the 12 month period referred to in the agreement of 7<sup>th</sup> June 2022.
52. Mr Noor stated that EBC Lettings had been instructed in June 2021 regarding the necessary works and had been instructed to arrange for the works to be carried out as identified by the Council in their letter of 22<sup>nd</sup> June 2021. He produced a quote from CS Roofing and Building providing for repairs to the roof at a cost of £18,500. A second quote provided for a lesser scheme of works at a cost of £13,217. A further document set out payments made to CS

- Roofing and Building showing amounts paid on different dates, ranging from 22<sup>nd</sup> April to 10<sup>th</sup> October 2021 amounting to £13500.
53. The Council accepted those works had been carried out but it was sub-standard and resulted in both Category 1 and 2 hazards remaining. The Council subsequently served an Improvement Notice on 23<sup>rd</sup> December 2022.
  54. Mr Noor stated that when he subsequently received the Improvement Notice from the Council he spoke with EBC Lettings who confirmed they would deal with it. He provided them with details of the necessary work and instructed them to contact the Council once the works had been completed.
  55. Mr Noor also confirmed that he did not visit the Property to ensure the works organised by EBC Lettings had been completed. He relied upon them entirely to deal with the issues at the Property and with the Council.
  56. Mr Tomlinson re-inspected the Property on 19<sup>th</sup> May 2023 after serving a Notice of Entry. It was found the Property had been re-let and initially the tenants would not allow entry. When the Property was re-inspected it was found significant work required by the Improvement Notice had not been completed. On 25<sup>th</sup> May 2023 a Prohibition Order was served.
  57. It was accepted by both parties the necessary works had been subsequently completed by Mr Noor and invoices were produced to show the further work had been done at a cost of approximately £30,000. The Council revoked the Prohibition Order on 12<sup>th</sup> March 2024.
  58. During the hearing Mr Isalm advised Mr Noor suffered poor health and had suffered 2 heart attacks, a stroke and had spent time in hospital. It was also said his family suspected he was now suffering from dementia given some of his responses to the questions posed by the Council were inaccurate. The Tribunal adjourned the hearing to allow this matter to be considered but determined it should continue. It was accepted by Mr Islam the family's suspicions regarding Mr Noor's dementia had not been investigated at any level and was currently a matter discussed within the family. He asked for the hearing to continue and not be further adjourned.
  59. In evidence the Council stated Mr Noor was the owner of 4 properties. When asked, it was said Mr Noor and Mr Ali owned the Property and an adjoining flat, the commercial premises below the flats and another property at 584 Staniforth Road Sheffield. This latter property had no management agent.
  60. The Tribunal heard brief details of Mr Noor's income, but no documentary evidence was provided in respect of this.

### **Determination**

61. Mr Noor did not challenge the Council's compliance with the procedural requirements of Schedule 13A of the Act and, from the documents provided, the Tribunal accepted those requirements were met.
62. The imposition of a financial penalty can only be upheld by the Tribunal if it is found, beyond reasonable doubt, that Mr Noor's conduct amounts to an offence under section 30 of the Act. In ***Opara v Olasemo [2020] UKUT 0096(LC)*** it was said:

*"For a matter to be proved to the criminal standard it must be proved "beyond reasonable doubt"; it does not mean "beyond any doubt at all". At*



*the start of a criminal trial the judge warns the jury not to speculate about evidence they have not heard, but also tells them it is permissible for them to draw inferences from the evidence they accept”*

63. Mr Noor has admitted he failed to comply with the terms of the Improvement Notice dated 23<sup>rd</sup> December 2022. However, it is Mr Noor’s position he has a reasonable excuse. There is a defence of reasonable excuse, for which the standard of proof is the balance of probabilities. In ***IR Management Services v Salford [2020] UKUT 0081 (LC)*** the UT observed:

*“The issue of reasonable excuse is one which may arise on the facts of a particular case without an appellant articulating it as a defence (especially where an appellant is unrepresented). Tribunals should consider whether any explanation given by a person ... amounts to a reasonable excuse whether or not the appellant refers to the statutory defence.”*

64. Mr Noor submitted he was not responsible for carrying out the work since he had instructed EBC Lettings Ltd to deal with all aspects of the work required both before and after service of the Improvement Notice. It was their failure to carry out his instructions, to the standard required by the Council, that resulted in the non-compliance of the Improvement Notice.
65. In evidence Mr Noor stated he had not followed up his instructions to EBC Lettings nor had he visited the Property whilst the work was being undertaken.
66. The Tribunal noted the Council’s evidence that when they enquired with EBC Lettings, in June 2021, they denied they were then the managing agents. It does seem that they later became involved, as evidenced by the management agreement dated 7<sup>th</sup> June 2022. It is unclear the length on their subsequent involvement.
67. The Tribunal is not persuaded by Mr Noor’s defence. Whilst work was carried out to the Property in 2021, it was sub-standard. It was at a cost of approximately £13500. Mr Noor said this was arranged by EBC Lettings. Mr Noor then allowed EBC Lettings to further manage the Property and to re-let the Property despite having agreed with the Council, in June 2021, that he would not do so. At no time did he visit the Property to ensure what works were being undertaken, or the quality of it. These are not the actions of a responsible landlord and are not an excuse for failing to ensure the Property was maintained to an adequate standard. The Tribunal does not find Mr Noor has a reasonable excuse and consequently has committed the offence of failing to comply with the Improvement Notice.
68. The Tribunal is therefore satisfied the Council was entitled to impose a financial penalty and must consider the amount of it. When doing so, the Tribunal should make its own decision as to the appropriate amount and, in this, it should consider the AGMA Policy as applied by the Council as referred to in paragraph 38 above.
69. In ***Sutton & Another v Norwich City Council [202] UKUT 0090 (LC)***:

*“It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities, and not by courts and tribunals. The local authority will be aware of housing conditions in its*

*locality and will know if particular practices or behaviours are prevalent and ought to be deterred”.*

The Upper Tribunal continued to state that the starting point should be to apply the local authority’s policy. It stated:

*“If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision”.*

70. This view was endorsed by the Upper Tribunal in ***London Borough of Waltham Forest v Marshall & Another [202] UKUT 0035(LC)***. This decision stated the Tribunal could depart from the Council’s policy but only in certain circumstances, for example, where it had been applied too rigidly. It should also afford great respect to the decision and a Tribunal should be slow to disagree with any decision that is made in accordance with the local policy. Despite this, the Tribunal is conducting a rehearing and not a review and can vary any decision where it disagrees with it.
71. The factors considered by the Council when imposing a penalty are outlined in paragraphs 39 to 45 above.
72. The Council determined Mr Noor’s failure to comply was high in terms of harm and medium in terms of culpability. The Council’s policy stipulated the penalty is therefore £15,000.
73. The Civil Penalties Determination Record stated the penalty for harm reflects actual serious or potential serious harm to individuals, a serious effect on individuals or widespread impact. It also said the Property had been in a poor condition for years. There have been multiple separate tenants affected during the Council’s involvement over a period of 2 years included vulnerable persons including young children living in the Property. The hazards of damp and mould, excess cold, falls on levels would have a significant effect.
74. In respect of culpability, the Council determined this to be medium. The reasons given were that the Mr Noor has more than one property and should have known his responsibilities. He had systems in place to manage risk and comply with his duties but they weren’t sufficient but not so serious to meet a high level of culpability; Mr Noor has managing agents. The breach is significant but not so serious to meet the high level of culpability. There is no previous history of being prosecuted or served with a financial penalty. There has been some effort to comply this was inadequate.
75. The tribunal agreed with the assessments of both harm and culpability as found by the Council.
76. In finding of harm as high the tribunal considered the condition of the Property and that both Category 1 and 2 hazards had been found. The Council had attempted to deal with the issues informally and Mr Noor had agreed that remedial work was required. He also agreed with the Council that whilst the work was outstanding, he would not re-let the Property. Despite this, the Property was re-let to a family with children. It required the Council to serve a Prohibition Order to ensure the Property was not re-let whilst the hazards remained.

77. When considering the issue of culpability with the local authority's policy the tribunal considered a finding of medium to be reasonable. Mr Noor's actions did not justify a finding of high, but nor was low appropriate, when considering its policy.
78. The Tribunal therefore agrees the financial penalty is £15000 before considering both the aggravating and mitigating factors.
79. The Council imposed a total penalty of £16500 after including both aggravating and mitigating factors.
80. The aggravating factors, giving rise to an additional penalty of £4500, calculated at 30%, are listed as:
- (1) Poor management-5%.
  - (2) The vulnerable nature of occupants-5%.
  - (3) Property became vacant and then re-let twice with new tenants during the Council's involvement-10%.
  - (4) The considerable time Mr Noor took to undertake the works. There was a long timeline of involvement by the Council. The issues began in 2021 with long informal timescales before the service of the Improvement Notice in December 2022 and on-compliance in May 2023 -10%.
81. The Tribunal did not consider the aggravating factors to be unreasonable and determined they should remain at 30%.
82. The Tribunal thereafter considered the mitigating factors that were listed by the Council giving rise to a reduction in the penalty of £3000 as follows:
- (1) The schedule of works/quotes provided as part of the representations, one being dated 15<sup>th</sup> October 2021 and the second dated 10<sup>th</sup> January 2023. The first quote appears to have been gained by EBC Lettings. It is unclear exactly who did the works and EBC Lettings inform they have provided quoted which haven't been taken up. These show the extent and willingness to carry out improvement works to the Property. These works have been insufficient and haven't addressed the most serious hazards present-10%.
  - (2) Mr Noor has a managing agent. Mr Noor is blaming them but they were not involved with the Property for many months. Mr Noor's age/standard of English may be a factor in his capability to manage property-10%.
83. The Tribunal considered the mitigating factors to be fair and reasonable and in accordance with the Sheffield Guidance in their description, but the amount of 10% awarded for the first factor was insufficient. The Tribunal considered a more appropriate amount for this would be 20%. This reflects Mr Noor's willingness to rectify the defects despite the apparent ineffectiveness but significant cost of the repairs.
84. The amount of financial penalty payable by Mr Noor is therefore in the sum of £15000. This offence remains serious and the Tribunal considers a penalty in this sum reflects this.
85. The Tribunal did not take into account Mr Noor's ability to pay the penalty. He had given some information regarding his income at the hearing, but had not provided any documentary evidence in support of this, nor any inability to pay.