



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

**Case Reference** : **MAN/00CA/HNA/2024/0009**

**Property** : **38 Bold Street, Southport PR9 0ED**

**Applicant** : **Ali Habib**

**Representative** : **Jam Gazzain (Counsel)**

**Respondent** : **Sefton Metropolitan Borough Council**

**Representative** : **Sian Edwards (Solicitor)**

**Type of Application** : **Appeal against a financial penalty –  
Section 249A & Schedule 13A-  
Housing Act 2004**

**Tribunal Members** : **Tribunal Judge J. E. Oliver  
Tribunal Member H. Lewis**

**Date of  
Determination** : **3<sup>rd</sup> February 2025**

**Date of Decision** : **5<sup>th</sup> February 2025**

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**DECISION**

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## **Decision**

1. The Final Notice, dated 11<sup>th</sup> August 2023, being the subject of this appeal, is varied.
2. The penalty payable is reduced from £15000 to £10500, such penalty to be paid within 28 days of the receipt of this decision by the parties.

## **Background**

3. This is an application by Ali Habib to appeal a financial penalty of £15000 issued by Sefton Metropolitan Borough Council ('the Council') pursuant to section 249A of the Housing Act 2004 ('the Act') in respect of Flat 3, 38 Bold Street, Southport ('the Property'). The Property consists of 10 self-contained flats.
4. The Property is owned on the joint names of Hafiz Habib-Ullah and Fouzia Habib and is managed by their son, Ali Habib.
5. The Property is a HMO in respect of which a licence was issued on 31<sup>st</sup> October 2022. Condition 3.9 (iii) requires the licence holder or manager to comply with The Licensing & Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 ('the Regulations'). The Council issued a financial penalty for breach of Regulation 7, namely a failure to maintain an electricity supply at the Property.
6. The Final Penalty Notice was issued on 11<sup>th</sup> August 2023 in the sum of £15000.
7. The matter was listed for determination on 3<sup>rd</sup> February 2025.

## **The Law**

8. 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..."
9. Section 249 (2) sets out what amounts to a housing offence and includes at s.249(2)(c) an offence under s.95 of the Act, namely licensing. Section 95(2) states that a person commits an offence if he is a licence holder or person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6) and he fails to comply with any conditions of the licence. Section 95(4) provides that a person does not commit the offence if he has a reasonable excuse for failing to comply with this requirement.
10. It is for the Council to prove, beyond reasonable doubt, that an offence has been committed.
11. It is for Ali Habib to prove, on the balance of probabilities, that he has a reasonable excuse for failing to comply with a condition of the licence.
12. The maximum fine that can be imposed for each offence is £30,000.
13. Paragraph 10(3) of Schedule 13A of the Act provides that an appeal in respect of a financial penalty is by way of re-hearing.

## **Procedural requirements**

14. 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.
15. 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.
  16. 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
  17. 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.
  18. 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**

19. 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.
20. The Council has developed its own guidance (“the Sefton Guidance”) that follows the MHCLG Guidance in setting out the criteria to be considered when determining the penalty:
  - Culpability and track record of the offender
  - Harm caused to the tenant
  - Severity of the offence
  - The punishment of the offender
  - Deter the offender from repeating the offence
  - Whether it will deter others from committing similar offences
  - Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.
21. The Council uses a table of the starting point and range to calculate any penalty can be imposed dependent upon the level of culpability and harm.
22. The table to determine culpability is as follows:

Very high	Where the offender intentionally breached, or flagrantly disregarded, the law
High	Actual foresight or wilful blindness to, risk of offending but risk nevertheless taken. Serious and systematic failure by a person or organisation to comply with legal duties
Medium	Offence committed through act or omission which a person exercising reasonable care would not commit Systems were in place to manage risk or comply with legal duties but these were not sufficiently adhered to or implemented
Low	Offence committed with little fault because: <ul style="list-style-type: none"> <li>• Significant efforts were made to address the risk but were inadequate on this occasion</li> <li>• There was little or no warning of the offence</li> <li>• Failings were minor and occurred as an isolated incident</li> </ul>

23. The table used to determine harm is as follows:

High	<ul style="list-style-type: none"> <li>• Serious adverse effect on individual(s) and/or a widespread impact</li> <li>• High risk of serious adverse effect on individual(s)</li> <li>• Provides a serious market advantage over rivals</li> <li>• Harm to a vulnerable individual. A wide definition of vulnerability will be used. For a non-exhaustive list please see Appendix 1</li> <li>• Serious level of overcrowding</li> </ul>
Medium	<ul style="list-style-type: none"> <li>• Adverse effect on individual(s) (not amounting to High Harm)</li> <li>• Medium risk of adverse harm to an individual or low risk of a serious adverse effect</li> <li>• The Council's work as a regulator is undermined by the offender's behaviour</li> <li>• Consumer/tenant mislead</li> </ul>
Low	<ul style="list-style-type: none"> <li>• Low risk of adverse effect on an individual(s)</li> </ul>

24. When determining the level of any penalty the Council will then consider any mitigating and aggravating factors. The following are the guidelines to determine this:

Aggravating Factors	Mitigating Factors
Relevant previous convictions having regard to (a) the nature of the offence to which the conviction relates and its relevance to this offence and (b) the time that has elapsed since the conviction	No relevant unspent previous convictions/good character
Relevant previous cautions within the last two years having regard to (a) the nature of the offence to which the caution relates and its relevance to this offence	No relevant cautions within the last two years
Relevant previous civil penalties includes civil penalties imposed for offences under the Housing Act 2004, The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 or The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc (England) Order 2014. Also includes civil penalties imposed by other regulatory agencies and Council(s) within the last two years having regard to (a) the nature of the offence to which the caution relates and its relevance to this offence	No relevant civil penalties within the last two years
The offence has been committed whilst the landlord is on bail/on summons for other relevant proceedings at court	Mental disorder or learning disability, where directly linked to the commission of the offence
Established evidence of wider/community impact	Serious medical conditions requiring urgent, intensive long-term treatment
Recent record of providing substandard accommodation	One off event, not commercially motivated
Record of poor management or not meeting legal requirements	Good record of maintaining property
Evidence of harassment of tenant and/or illegal eviction (actual or attempted) in this case	Tenant's behaviour a contributing factor to the offence

Motivated by financial gain	Steps taken voluntarily to remedy problem
Obstruction of justice, for example failing to comply with a request for information or documents including requests for information under s.16 Local Government (Miscellaneous Provisions) Act 1976 or requests for documents under s.235 Housing Act 2004 or other behaviour amounting to an obstruction	High level of co-operation with the investigation, beyond that which will always be expected
Offending happened over a long period of time	
Property management is/was their only or main business	

25. The Sefton Guidance gives examples as to how financial penalties are to be calculated based upon the level of culpability and harm and provide a range of penalties, together with a starting point. The level of penalty is graded which then determines the amount to be added/deducted for each mitigating and aggravating factor.

### **Hearing**

26. At the hearing Ali Habib was represented by Jam Gazzain, Counsel. The Council was represented by Sian Edwards, Solicitor. Sarah Price-Collinson, Senior Housing Officer and Claire Taylor, Housing Standard Teams Manager, attended as witnesses for the Council.

### **Council's Evidence**

27. In her evidence to the Tribunal, both written and oral, Sarah Price-Collinson set out the events leading to the imposition of the financial penalty upon Ali Habib.
28. On 9<sup>th</sup> January 2023, the Housing Team received a complaint from the tenant of Flat 3, 38 Cold Street, Southport, Daniel Kambatuku ("the tenant"). He advised his electricity had been disconnected. He had been served with an eviction notice, but that had expired. On the following day she had contacted the tenant who advised his payment meter had been loaded with a debt of £1000 and that had resulted in the disconnection on 8<sup>th</sup> January 2023.
29. On 10<sup>th</sup> January Sarah Price-Collinson contacted Ali Habib regarding the electricity supply. He maintained the tenant was no longer at the Property because he had been evicted. He would not co-operate and ended the call. She and a colleague visited the Property on 11<sup>th</sup> January and found the tenant sitting in the dark. He had on layers of clothes and a blanket. The power to the Property was all electric and consequently there was no means of heating the flat, making a hot drink or having a shower in addition to any lighting. She checked the meter which showed a debit of £995.70. There were no issues with the consumer unit. In cross-examination Jam Gazzain queried how she was qualified to determine the effect of the lack of electricity upon the tenant.

- Sarah Price-Collinson confirmed she is qualified to undertake HHSRS assessments and can therefore determine the impact of the lack of electricity.
30. On the same date she contacted Meters Uk, the operator of the meter in the Property who advised it was possible to debit the account as suggested by the tenant, but that further enquiries would be made. Later, on the same day it was confirmed the electricity supply had been reinstated. It transpired that Meters Uk had taken this step when they had become aware there was a tenant in the flat. They had originally disconnected the supply on 8<sup>th</sup> January at the request of Ali Habib when he had advised the Property was vacant. On 5<sup>th</sup> March Meters Uk provided a copy of an e-mail from Ali Habib instructing them to cease the supply to the Property at 9am on 8<sup>th</sup> January. It was clarified by Sarah Price-Collinson with Meters Uk this could be done by adding an “add credit “to the account that would create a negative value. Meters Uk had taken the step to add £1000 to disconnect the supply.
  31. Sarah Price-Collinson confirmed she had checked the eviction notice with her housing team (Housing Options) and was advised it was invalid. She confirmed in cross-examination that she was not given the reason for this advice.
  32. On 13<sup>th</sup> January the tenant advised the electricity had again gone off again and, on this occasion, was not restored until 20<sup>th</sup> January 2023. On the same date Sarah Price-Collinson contacted Ali Habib regarding the electricity supply who again advised the tenant had left. He was advised he had not. An e-mail was sent to him on 16<sup>th</sup> January asking for the electricity to be reinstated. He responded to say the tenant was in arrears and some of the utilities were included within the rent. It was later clarified from the responses given by Ali Habib to his PACE interview the utilities included in the rent were water bills and any standing charges for any installed fittings, including meters and submeters, but not electricity. The tenant alleged Ali Habib had been in the Property and had interfered with the electricity supply.
  33. On 8<sup>th</sup> March the tenant advised he had been visited by Ali Habib regarding his tenancy and on the following day received an eviction notice.
  34. On 13<sup>th</sup> May 2023 a meeting was held and a decision reached to issue a Notice of Intent to Impose a Financial Penalty of £15000. This was based on very high culpability and medium harm. It was only due to the tenant not being a vulnerable adult that had prevented a finding of high harm. Certain aggravating and mitigating factors had been included to reduce the penalty to the minimum within the appropriate band. In evidence it was confirmed the Council did not include the disconnection from 13<sup>th</sup> to 20<sup>th</sup> January in making the determination to impose the financial penalty. Their determinations were based upon the events from 8<sup>th</sup> to 11<sup>th</sup> January 2023.
  35. There were 2 aggravating factors. The first was a record of poor management or not meeting legal requirements. In support, the Council referred to a fire at the Property in December 2020 issued by the Fire Service due to deficient/inadequate fire separation. The Council subsequently inspected the Property and found serious Category 1 hazards, several breaches of The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 and that it was unlicensed. The second factor of harassment was based on the tenant having been served with an invalid eviction notice, nor did Ali Habib follow the full legal eviction process.
  36. The mitigating factors were:

- No relevant unspent previous convictions
  - No relevant cautions within the last two years
  - No relevant civil penalties within the last two years
  - Tenant's behaviour a contributing factor to the offence-the tenant had rent arrears.
37. Sarah Price-Collinson confirmed the Council had considered whether to prosecute Ali Habib, rather than impose a financial penalty. However, although the tenant had provided a statement, this was subsequently retracted and there was a concern there would be insufficient evidence to secure a conviction at that time. This decision was, however made before it had the evidence now available to it. It was only upon receipt of the bundle of documents in preparation for the hearing had she become aware the tenant had remained in the Property until his eviction on 13<sup>th</sup> June 2024.
  38. Ali Habib made no representations upon receipt of the Notice of Intent and it was therefore confirmed by the issue of the Final Notice on 11<sup>th</sup> August 2023.
  39. In evidence, Claire Taylor confirmed the Sefton Guidance did not attribute any value to the aggravating and mitigating factors. Consequently, there were no exact figures available to show how the penalty had been reduced from £16500 to £15000.
  40. The Tribunal was advised that since the Final Notice was issued, the Council had amended its policy and there was a value now given to both aggravating and mitigating factors. The policy had been revised in 2024.

#### Evidence of Ali Habib

41. It was accepted Ali Habib is the manager of the Property, managing it on behalf of his parents. On 22<sup>nd</sup> October 2022 he had served an eviction notice for the Property since the tenant was in arrears of rent in the sum of £2750. He requested an extension to the eviction date to allow him to remain over the Xmas period and it was agreed he would vacate on 1<sup>st</sup> January 2023. He visited the Property on 31<sup>st</sup> December to see the position when a further extension of time was requested. It was agreed the flat would be vacated by the end of the first week of January 2023 and the keys would be left in the letterbox. It was said the tenant had advised he could secure alternative accommodation either with the Council or with friends.
42. Ali Habib confirmed that on 3<sup>rd</sup> January he instructed Meters Uk to disconnect the electricity in the Property at 9am on 8<sup>th</sup> January 2023 in the expectation the Property would then be empty. On 10<sup>th</sup> January he was contacted by the Council regarding the electricity supply. At that time, it was his understanding the tenant would have left and he had no reason to think otherwise.
43. It was confirmed Ali Habib did not go to the Property on 8<sup>th</sup> January 2023 to confirm whether the tenant had left because he was not in the area, nor did he ask anyone else to check on his behalf.
44. It was also confirmed he was not involved in the restoration of the electricity supply on 11<sup>th</sup> January 2023.
45. In cross-examination the Council referred to the answers given to the PACE interview and, in particular, with reference to the agreement reached with the tenant to allow him to stay in the Property until 8<sup>th</sup> January 2024. In his replies to the question regarding the original eviction notice, he said it expired



on 1<sup>st</sup> January 2023. It was longer than the usual 2 month notice period because he had agreed to an extension over the Xmas period. It was not until, he had provided a statement within these proceedings, on 10<sup>th</sup> October 2024, was there any mention of an agreement to extend the eviction notice to 8<sup>th</sup> January 2023.

46. With regard to the reasons why there were 2 eviction notices, the first eviction notice had been issued on 22<sup>nd</sup> October 2022. The second notice was issued in March 2024 because he was told the tenant was disputing the first one.
47. In respect of the penalty imposed, it was submitted by Jam Gazzain there was no evidence to support a finding of Very High culpability. There had to be evidence of an intention to disregard the law and here this had not been proved. There had been a satisfactory explanation that Ali Habib believed the tenant to have vacated the Property. Culpability should therefore be low, if the Tribunal found that an offence had been committed. In respect of harm, again, there was nothing in the evidence to support a finding of medium harm and this should also be low. This would give rise to a penalty within a range of £750-£2250 before considering any aggravating and mitigating factors. When considering these further factors, there is no evidence of harassment as claimed as the second aggravating factor. The first refers to a prohibition order imposed in 2020 by the Fire Service. There was only a suggestion for improvements and there is no evidence to support it as an aggravating factor. Consequently the only factors should be the mitigating factors which are all agreed.

## **Determination**

48. The Applicant 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.
49. The imposition of a financial penalty can only be upheld by the Tribunal if it is found, beyond reasonable doubt, the Applicant's conduct amounts to an offence under section 95 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"*

50. The Tribunal finds Ali Habib has committed the offence of failing to maintain the electricity supply at the Property contrary to Regulation 7 of the Regulations. He instructed Meters Uk to disconnect the supply at 9am on 8<sup>th</sup> January 2023 and is therefore directly responsible for the electricity being turned off. Regulation 7(4) provides:

*"The manager must not unreasonably cause the gas or electricity supply that is used by any occupier within the HMO to be interrupted"*

It cannot be said the disconnection was reasonable in the absence of any steps taken to ensure the Property was vacant. Whilst there is an assertion an agreement had been reached with the tenant he would leave, his conduct, as stated by Ali Habib, had shown him to be unreliable. Any responsible landlord would have checked he had left the Property, if only to ensure possession. Whilst Ali Habib was said to be away from the area, he had confirmed he had other members of staff, namely a maintenance team, who could have fulfilled that role.

51. 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.”*

52. The Tribunal does not find there is a successful defence of reasonable excuse for the reasons stated above. In addition, Ali Habib failed to take any steps to have the electricity reinstated when he was told the tenant remained in the Property. He had notice of this in his first telephone conversation with Sarah Price-Collinson on 10<sup>th</sup> January 2023 when he was told the electricity had been disconnected and simply insisted the tenant was no longer at the Property. This was despite the fact he had not checked that this was the case and must have known the tenant had not been properly evicted, since there had been no possession proceedings. He made no attempts to engage with the Council to correct the position and it was only through the intervention of Meters Uk the electricity was reinstated on 11<sup>th</sup> January 2023.
53. The application before the Tribunal is by way of a rehearing and it should make its own decision as to the appropriate amount of any financial penalty and apply the Sefton Guidance as referred to in paragraphs 19-24 above. Here, the Tribunal has been advised of changes to the Sefton Guidance in 2024 and the parameters for setting the penalties have changed from the original Record of Determination. Upon this basis it is appropriate for the Tribunal to use the 2024 version of the Sefton Guidance to determine the penalty now payable.
54. In ***Sutton & Another v Norwich City Council [2021] 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”.*

55. This view was endorsed by the Upper Tribunal in ***London Borough of Waltham Forest v Marshall & Another [2020] 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.
56. The Tribunal noted that in respect of culpability the Council had placed this as Very High, the criteria being there was a flagrant or intentional breach of the law. The criteria for High Culpability is that an offender has “*actual foresight or wilful blindness to, risk of offending but risk nevertheless taken.*” The Tribunal finds the offence to be High rather than Very High. It considered the actions of Ali Habib were determined; he instructed Meters Uk to disconnect the electricity and was deaf to any suggestions that it should be cancelled, despite being advised his tenant had not left the Property. However, the Tribunal finds this falls more into the category of High culpability than otherwise. The Council has failed to prove it was an intentional breach of the law. It was certainly wilful blindness.
57. When considering the issue of harm, the Tribunal agrees with the Council in that it is medium. It further accepts that had the tenant been vulnerable this too would have been high. The Tribunal does not agree it could be low as suggested on behalf of Ali Habib. It cannot be said the disconnection of the electricity supply gives “*a low risk of adverse effect upon an individual.*”
58. In the Sefton Guidance the combination of High Culpability and Medium Harm gives rise to a penalty of £9000-£15000 with a starting point of £12000. Under the previous Sefton Guidance the range was the same.
59. The revised Sefton Guidance gives a band to each combination of culpability and harm which then determines what value should be given to both aggravating and mitigating factors. Here, the Band for High culpability and Medium Harm is Band 5. The value then given to each aggravating and mitigating factor is £500.
60. The Tribunal considered the factors adopted by the Council. In respect of the aggravating factors the Tribunal accepted that there had been previous a record of providing substandard accommodation by reason of the Prohibition Order in 2020. It did not however agree to the second factor relating to the allegation of harassment and an illegal eviction. The evidence with regard to the first notice of eviction was unclear. Whilst Sarah Price-Collinson had referred the eviction notice to Housing Options and it had said it was invalid, there was no good explanation why this was so. She had said the reasons for this advice had not been explained to her. Ali Habib had said he had served a second eviction notice, but this was because he had been told the first was invalid, but not why. As a consequence, the single aggravating factor gives rise to an additional £500, increasing the penalty to £12500.
61. The Tribunal agreed with all the mitigating factors awarded by the Council, giving them a value of £2000, thereby reducing the penalty to £10500.

62. The Final Notice, dated 11<sup>th</sup> August 2023, is varied to replace the penalty of £15000 with £10, 500, such sum to be paid within 28 days of the receipt of this decision by the parties.