



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

Case Reference : **MAN/00DA/HNA/2024/0602**

Property : **51 Sutherland Terrace, Leeds**

Applicant : **Westgate Estate Agents (Leeds) Limited**

Respondent : **Leeds City Council**

Type of Application : **Appeal against Financial Penalty, paragraph 10, schedule 13A to the Housing Act 2004**

Tribunal : **Tribunal Judge A M Davies
Tribunal Member J Jacobs**

Date of Decision : **2 June 2025**

DECISION

The financial penalty imposed by the Respondent on the Applicant on 18 September 2024 is varied so as to apply a penalty of £9,500 payable by the Applicant.

REASONS

THE SELECTIVE LICENCE

1. With effect from 6 January 2020 the Respondent City Council designated Harehills a Selective Licensing Area. This included 51 Sutherland Terrace. On 17 December 2020 the owner of the property, Mr Zahid Mahmood, applied for a selective licence, naming the Applicant as the property manager. The Respondent sent a draft licence to the Applicant on 11 February 2022 with a letter advising the Applicant to ensure that its staff were familiar with the licence conditions attached to the draft. The Applicant was given

16 days in which to make representations to the Applicant about the draft licence and it made none. A Selective Licence was finally issued on 27 April 2022 to Mr Mahmood as licence holder and to the Applicant as property manager. The front page of the licence gives the Applicant's name and address as being a "*person on whom restrictions or obligations under a licence are imposed (other than the Licence Holder)*" and states in upper case "*This licence is issued subject to the conditions attached. It is an offence for a Licence Holder or person who has consented to the imposition of an obligation on him/her to fail to comply with the conditions.*" Neither Mr Mahmood nor the Applicant applied to vary the terms of the licence.

2. The licence conditions require the licence holder and property manager to install a smoke alarm on each floor of the house on which there is living accommodation, to ensure that the alarms are in proper working order, to keep any electrical appliances supplied by the landlord in a safe condition, and "*to ensure that the internal structure of the house and every window and other means of ventilation is maintained in good repair and that any fixtures and fittings and appliances made available are maintained in good repair and working order*". The licence also referred Mr Mahmood and the Applicant to the Respondent's online guidance "How to Comply with a Selective Licence". The guidance recommends that the smoke alarms are tested by the property manager at least once a month, and that records are kept of such checks. This recommendation is not a condition of the licence.

THE PROPERTY

3. 51 Sutherland Terrace is a mid-terrace back to back house with three floors of living accommodation and a basement. There is a bathroom and bedroom on the first floor and a bedroom on the second floor.
4. Mr Dixon, the Respondent's Senior Housing Manager, visited the property on 26 March 2024 following receipt of a letter written on behalf of the tenants by Engage Leeds. He completed a report and took photographs. The breaches of licence conditions for which the Respondent has imposed a financial penalty on the Applicant relate to Mr Dixon's findings during that inspection. At the time the property was occupied by Mr Asibey and his family, who had lived there since May 2019.

5. Mr Dixon's report shows that considerable amounts of mould had built up in the bedrooms and the bathroom. The smoke alarms were not working. The dormer window of the second floor bedroom could not be opened. The kitchen flooring was defective, and the stair carpet was loose. The gas central heating radiators on the first and second floor were not in use and secondary heating had been provided by the tenant. Due to the cold and damp on the second floor, the family (parents and children aged 3, 6 and 8) were all sleeping in the first floor bedroom. Overall Mr Dixon listed 30 breaches of the licence conditions inside the house and 10 breaches to the exterior of the property.

THE LAW

6. Section 249A of the Act enables a local housing authority to impose a financial penalty on managers of rented properties, where they are satisfied beyond reasonable doubt that an offence (such as breach of the licence conditions, section 95(2) of the Housing Act 2004) has been committed. The imposition of a fine is an alternative to prosecution. The level of financial penalty must be calculated in accordance with the housing authority's published policy, which itself must comply with government guidelines. Schedule 13A to the Act governs the procedure for imposition of a financial penalty, and allows for an appeal to this Tribunal.
7. On appeal the Tribunal is to re-hear the Respondent's decision but may take into account matters of which the local authority was unaware when the financial penalty was calculated. The Tribunal may confirm, vary or cancel the notice (paragraph 9(4) of Schedule 13A). In reaching its decision, the Tribunal must generally assess the financial penalty in accordance with the policy of the local authority.
8. The overall intention of the powers given to local authorities to impose financial penalties under the Act is stated to be: (1) punishment of the offender (2) deterring the offender from re-offending (3) deterring others from committing similar offences and (4) removing any financial benefit obtained by the offender from committing the offence.

THE RESPONDENT'S FINANCIAL PENALTY CALCULATIONS

9. The Respondent asked Mr Mahmood and the Applicant to provide working smoke alarms urgently, and to undertake all other necessary work to the property.

Unfortunately Mr Mahmood was ill, and he died in June 2024. The Respondent considered that an offence (breach of the licence conditions) had been committed by the Applicant, and that it was appropriate to impose a financial penalty as a punishment and deterrent. The financial penalty is calculated in accordance with a matrix, with a maximum penalty of £30,000 being reserved for the very worst cases. The Respondent assessed the penalty to be paid by the Applicant at £15,000, on the basis that the level of culpability was “medium” and the level of harm caused by the offence was “high”. The Respondent found no aggregating factors which would increase the penalty, but reduced the penalty by 10% (in accordance with its policy) for two mitigating factors. These were (1) that the Applicant cooperated with the Respondent’s investigation, and (2) that the Applicant had no previous convictions. The resulting penalty was £13,500.

10. Having issued a notice of intention to impose this penalty, the Respondent received written representations from the Applicant’s director Mr Tosief Hussain. These were duly considered but the Applicant found no reason to alter the initial decision and the financial penalty was confirmed at £13,500.
11. The Applicant appealed to this Tribunal on the ground that it had not committed any offence and consequently no penalty should have been imposed.

THE HEARING

12. The appeal was heard by video link. Mr Hussain was unable to attend due to ill health and the Applicant was represented by Ms Begum, a member of its administrative staff. Ms Begum informed the Tribunal that she had direct knowledge of the property, and that Mr Hussain had provided her with his notes for use at the hearing. Mr Hussain had not submitted any witness statement, but his written representations were taken by the Tribunal to be his evidence, albeit unsupported by his presence at the hearing. The Respondent was represented by Ms Vodanovic of counsel. Mr Dixon was present to give evidence in line with his witness statements.
13. The Tribunal had hearing bundles from the Applicant and the Respondent. During the hearing a full copy of the selective licence and a copy of the Respondent’s financial penalty matrix, which were missing from the Respondent’s bundle, were emailed to the Tribunal and Ms Begum.

THE APPLICANT'S CASE

14. Ms Begum confirmed the case put forward by Mr Hussain in writing, ie that no offence had been committed. Her points in support of this position were
- (1) The Respondent had a verbal agreement with Mr Mahmood that Mr Mahmood was to be responsible for all repairs to the property.
 - (2) The Applicant collected the rent. It did not carry out any repairs except on receipt of instructions from Mr Mahmood. Consequently Mr Mahmood's family held all receipts for work done to the property and the Applicant had not been able to produce them.
 - (3) The Respondent had only decided to impose a penalty on the Applicant after Mr Mahmood's death on 14 June 2024.
 - (4) It was unethical for the Respondent to pursue the matter in view of Mr Mahmood's illness and death. The Respondent should have closed its file at that time.
15. Further, Ms Begum said that the Applicant had in fact arranged for all necessary work to be done to the property on becoming aware of defects. The Applicant carried out a mid-term inspection on 16 November 2023 and had made a note of the damp and other issues to be rectified. Immediately after the inspection a roofer was asked to investigate the causes of damp by checking the property's roof and inspecting internally. The roofer's brief report indicated that the mould in the property was caused by the tenants' lifestyle: this included keeping windows shut and drying washing indoors. The smoke alarms, which were not working at the mid-term inspection, were promptly put in working order along with correction of other electrical faults. Ms Begum confirmed that no further inspection of the property took place until Mr Dixon visited on 26 March 2024.
16. Ms Begum told the Tribunal that the Applicant could not be held responsible for the tenants' behaviour which included removing the smoke alarms and other breaches of the terms of their tenancy agreement.

THE RESPONDENT'S CASE

17. At the hearing Ms Vodanovic conceded that following the Applicant's inspection of the property in November 2023 the Applicant had made an effort to establish the cause of damp in the house, and that the smoke alarms had been put in working order. In view

of this, counsel suggested that setting the degree of harm at “medium” rather than “high” on the Respondent’s matrix might be considered appropriate. This would result in a starting penalty of £10,000 and, allowing for the 10% reduction for mitigating circumstances as previously applied, the penalty to be imposed would be £9,000.

18. As Mr Hussain was not available for examination, Ms Vodanovic chose not to ask questions of Ms Begum.
19. The Respondent’s case was that under the terms of the licence the Applicant was responsible for compliance with the licence conditions. There was no evidence of an alternative agreement with Mr Mahmood and in any event that would not be a matter to be taken into account by the Applicant.
20. Mr Dixon gave evidence in support of his witness statements. He had visited the property three times in total. The first visit was on 26 March 2024, when he found that the offence had been committed. He inspected again on 26 April and 31 May 2024. By 31 May the property complied with fire safety requirements save that the intumescent seal to the fire door between kitchen and living room remained apparently ineffective. There were a number of other outstanding defects which remained to be addressed at the property, and it was unclear whether the mould problem had been resolved or merely painted over.
21. In response to the Tribunal’s questions, Mr Dixon said that he had not been able to establish why the upstairs central heating was not working during his first visit to the property.
22. Ms Vodanovic pointed out that as a director of the property management company Mr Hussain was liable separately to pay a financial penalty equal to that imposed on the company. However the Respondent had chosen not to impose the penalty twice in this instance.

DETERMINATION

23. The Tribunal finds that as the named property manager, the Applicant was responsible for ensuring that the selective licence conditions were complied with. Mr Dixon’s evidence clearly shows that on 26 March 2024 those conditions were not met. The Tribunal has no difficulty in finding that a housing offence was committed under section

95(2) of the Housing Act 2004 . The arguments put forward by Ms Begum are not relevant to the statutory obligations undertaken by the Applicant, which had not at any time sought to have the selective licence varied.

24. The Tribunal agrees that the level of culpability was “medium” according to the Respondent’s published policy in respect of financial penalties. There is no evidence of regular inspections having been carried out by the Applicant, but an inspection did take place in November 2023 and remedial action in respect of the smoke alarms was undertaken promptly after that. As the alarms were in working order by the end of November, it is reasonable to suppose that the tenants removed the batteries or otherwise disabled the detectors between then and 26 March 2024. The Applicant took no effective action to enforce the terms of the tenancy. Despite the potential for serious harm, the damp and mould problems were not addressed, except that it appears that a contractor was instructed to use stain blocker and to “paint throughout”. The Applicant did not visit again to check that the tenants were complying with advice regarding ventilation, the drying of washing and using the central heating radiators. The dormer window could not be opened, and the Applicant did not replace the handles. The tenants’ ability to ventilate the house therefore remained compromised.
25. The Tribunal assesses the level of harm as “medium”. Mr Dixon’s photographs show that as at 26 March 2023 the mould issues in the property were a hazard, especially to the children. However the Tribunal finds on the basis of the evidence presented that this hazard was caused in large part by the tenants’ lifestyle. Mr Dixon noted that the central heating thermostat was blank, which suggests that it needed a new battery and this may have been the reason that the upper floor radiators (controlled by thermostatic valves) were not coming on. There is no evidence that the central heating system itself was faulty. There were a number of other hazards, such as damage to flooring and carpets, a broken pan-stand on the hob, and exposed electrical wiring, of which the Applicant would have been aware if regular inspections had been carried out. Nevertheless the level of harm is reduced from “high” to “medium” in view of the evidence that the greatest risks – namely the accumulation of mould and the lack of effective smoke detectors – seem to have been caused by the tenants in the period between early December 2023 and 26 March 2024.

26. On the basis of these assessments, the Respondent's civil penalty matrix gives a starting figure of £10,000. The Respondent's policy provides for adjustment of 5% for each aggravating and mitigating factor. The Tribunal notes the two mitigating factors applied by the Respondent. "Cooperation with the investigation" was one of these. The Tribunal adopts this mitigating factor. Although the Applicant's cooperation was limited in that two months after the offence was identified by no means all the defects at the property had been addressed, it is likely that Mr Mahmood's extreme ill-health caused some difficulties or delays in having work carried out at the property. The Applicant seems to have dealt promptly with the Respondent's correspondence and to have supplied the requested copy certificates, albeit after a short delay.
27. When the Respondent originally imposed the financial penalty it was unaware that the Applicant would persist in denying that an offence had been committed. In its publication "Civil Penalties", the Respondent's guidance sets out a non-exhaustive list of potential aggravating factors including "lack of insight into [the offender's] failings". Even at the hearing the Applicant persisted in denying that it was responsible and claimed to have committed no offence. The Tribunal considers that this is a relevant aggravating factor which attracts a 5% increase in the financial penalty.
28. The consequence is that the financial penalty to be imposed on Applicant for the offence identified by the Respondent on 26 March 2024 is reduced from £13,500 to £9,500.