FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00DA/HNA/2024/0042**
Date of Hearing	**:**	**04 July 2025**
Property	**:**	**8 Northcote Drive, Beeston, Leeds LS11 6NH**
Appellant	**:**	**Ms Sarah Louise Topley**
Respondent	**:**	**Leeds City Council**
Type of Application	**:**	**Housing Act 2004, Section 249A & Sch. 13A**
Tribunal Members	**:**	**Mr Phillip Barber (Tribunal Judge)** **Mrs A Ramshaw MRICS (Valuer Member)**

DECISION AND REASONS

Decision

We have decided that the appropriate financial penalty under section 249A of the Housing Act 2004 for the offence of failing to comply with a selective licencing requirement under section 95(1) of the Housing Act 2004 is £2000 which we substitute for the Respondent's civil penalty of 2825.00.

Reasons

Introduction

1. This Decision and Reasons relates to 1 appeal against the imposition by the Respondent of a financial penalty under section 249A of the Housing Act 2004 ("the Act") in relation to 1 property owned by the Appellant, Ms Sarah Louise Topley. The property is 8 Northcote Drive, Beeston, Leeds LSW11 6NH ("the property").

2. We held an oral face to face hearing of this appeal. The Appellant came to the hearing and was represented by her MacKenzie Friend, Mr O'Brien. The Respondent was represented by Ms Lloyd-Henry, Solicitor. We heard evidence from Mr Winspear, Housing Officer for Leeds City Council whose witness statement had superseded that of the investigating officer, Ms Heaton who has left Leeds City Council employment and was unable to attend the hearing. We also heard evidence from Ms Topley, the Appellant.

3. There was no inspection of the property by the Tribunal, which was unnecessary, and we had a bundle of documents from the Respondent and a bundle of documents from the Appellant.

Findings of Fact

4. The Appellant is the registered owner of the Property which she rented to a paying tenant at the relevant time, a property which she has owned for several years and initially occupied herself as her only home. The Appellant has rented this property, at a rent well below the market rent for a property in this area, to the same man whom she described as her ex-brother-in-law. Ms Topley gave evidence to the Tribunal, and we can generally accept that what we were told. We found her evidence to be reliable and fair and decided that she is generally of good character with otherwise exemplary conduct.

5. We accept that she decided to help her ex-brother-in-law as a family favour, and he moved in shortly after she moved out. She has maintained and insured the property throughout to a high standard and she has only charged him an amount to cover her expenses for owning and maintaining the property. We also accept that Ms Topley was unaware of the requirement to obtain a selective licence for the property and that she was therefore not motivated by gain or any other nefarious reason. As soon as she knew about the requirement to obtain a licence, she did so notwithstanding the fact that her ex-brother-in-law had moved out of the property, we were told, highly distressed by the accusations levelled at his ex-sister-in-law, in order to navigate a canal boat to Swindon.

6. It appears that, as part of the proactive approach to Leeds City Council to ensure that properties are appropriately licenced, Ms Heaton visited the Property on the 16 January 2024 and spoke with the tenant. Following a Land Registry check, Ms Topley was identified as the landlord, and her address was ascertained. A "PACE" letter was sent on the 23 January 2024 but it appears that Ms Topley did not receive this letter and therefore did not respond in time, as she was working away. Ms Heaton thereafter calculated an appropriate civil penalty at £3166.45 which was comprised of the minim level of fine together with the costs of an application and the costs of the investigation, serving this notice on the 21 February 2024 after it had been agreed by the Selective Licencing Case Review Panel.

7. Ms Topley responded to this notice by telephone call on the 26 February 2024 and it was agreed that checks would be made to determine if Ms Topley's ex-brother-in-law came within the definition of "family member" for the purposes of the offence. This seems to have given rise to a period of confusion and what might be missed calls. Ms Topley told us that she simply waited for Ms Heaton to get back to her and even left a voicemail for an update on the 12 March 2024 but received no reply. She pointed to a history of events in the bundle and the records of a telephone call, telling the tribunal that she never received the voicemail from Ms Heaton as otherwise she would have responded. We can

accept her evidence that she did not receive the voicemail. We are satisfied on the evidence that Ms Topley did as much as she could when she first became aware of the investigation and generally cooperated with Ms Heaton in helping her identify the issues and remedy the situation.

8. Subsequently, arising out of caselaw preventing a Local Authority from recovering their costs as part of the financial gain element, the penalty was reviewed and reduced to £2825 – i.e. the penalty arising out of the matrix together with the cost of the application (the financial gain element). A subsequent penalty notice was sent to the Appellant on the 05 March 2025.

9. The final point here, which is a legal point and was not in dispute at the hearing so will not be addressed further, is that Ms Topley's tenant did not come within the definition of family member or relative and the property could not, for this reason, be an exempt property for the purposes of Article 2(1)(f) of the *Selective Licensing of Houses (Specified Exemptions)(England) Order* 2006.

The Promotion of the Selective Licencing Regime

10. On the 06 January 2020 the Beeston area of Leeds (as designated in a map) became a selective licensing area. The full designation is set out on pages 44 to 55 of the Respondent's bundle and the Property is situated in that area. There are some 4000 properties in the Beeston selective licensing area of which around 65% are privately rented. Prior to the designation, the Respondent carried out an extensive city-wide consultation and advertisement campaign starting in August 2018 which we are satisfied was in accordance with Government guidance and sufficient for the purposes of a public awareness campaign and for public consultation. Ms Heaton sets out, in her witness statement, the steps which were taken to bring the licensing requirements to public awareness and tells the Tribunal, for example, that this included a series of drop in events, leaflet drops at relevant properties, advertisements on buses and digital billboards, awareness campaigns with local managing agents and estate agents; campaigns through Facebook and Twitter, radio adverts and all the things one might expect in a major campaign promotion. It is true that Ms Topley lived in another part of the UK and the campaign probably did not reach her, but it was otherwise generally well known nationally that this was a Government initiative and a responsible landlord, even one who lived in a different part of the country, might reasonably be expected to keep up to date with all of the rules and regulations relating to renting property. Individual landlords were not written to as there is no public register of privately rented properties and in any event, it seemed to us, the task of identifying privately rented properties would have been difficult, time consuming and simply not proportionate.

11. The fact that Ms Topley was unaware of the requirement to obtain a selective licence is, therefore, no defence to the imposition of a penalty notice.

The Legal Framework

12. By section 249A of the Housing Act 2004:

> (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.
>
> (2) In this section "relevant housing offence" means an offence under—
> .....
>
> (c)section 95 (licensing of houses under Part 3),
> .....

13. Section 90 of the Act provides that a local housing authority in granting a licence "may include such conditions as the local housing authority consider appropriate for regulating the management, use or occupation of the house concerned."

14. Section 95 of the Act provides that "(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed but is not so licensed."

15. Subparagraph 95(4) provides that "it is a defence that he has a reasonable excuse (a) for having control or managing the house in the circumstances mentioned in subsection (1)…".

16. By subsection (4) of section 249A the maximum penalty is £30,000 and subsection (6) provides that the procedure for imposing such a fine and for an appeal against the financial penalty is as set out in schedule 13A to the Act.

17. Paragraphs 1 to 3 of Schedule 13A set out the provisions in relation to a "Notice of Intent" which must be served before imposing a financial penalty. Paragraph 2 provides that the notice must be served within 6 months unless the failure to act is continuing (which is the case in this appeal) and paragraph 3 sets out the information which must be contained within the Notice.

18. After service of the Notice of Intent and following consideration of any representation made, paragraph 6 provides for the service of a "Final Notice", which must set out the amount of the financial penalty and the information required in paragraph 8: i.e., the amount, the reasons, how to pay and information about the right of appeal.

19. Paragraph 10 of schedule 13A sets out the provisions in relation to such an appeal:

> (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—
>
> (a) the decision to impose the penalty, or
>
> (b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

(a) is to be a re-hearing of the local housing authority's decision, but

(b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

20. Accordingly, the Tribunal, in this appeal, has jurisdiction over the decision to impose a penalty; the amount of the penalty and can confirm, vary or cancel the final notice including increasing, if it so determines, the amount of the penalty. The appeal is by way of a re-hearing, which we have conducted.

21. We had to be satisfied beyond reasonable doubt that the conduct of the Appellant amounts to a "relevant housing offence" under section 95(1) of the Act – i.e. that Ms Topley failed to comply with the licensing requirement under Part 3 and in particular section 85(1) of the Housing Act 2004.

Our Assessment of the Appeal

22. This is a re-hearing of the decision to impose a financial penalty for a purported offence committed by the Appellant as a result of contravening section 95 of the Housing Act 2004.

23. We find as fact that the Notice of Intent and Final Notice were properly served and that they contained the proper statutory information. There were no procedural irregularities. In any event the Appellant did not take issue with the process he was more concerned with the outcome. As mentioned above, the apparent mix-up over the telephone calls does not create any form of procedural irregularity and therefore makes little difference to the outcome of this appeal.

Reasonable Excuse

24. The Tribunal has already made findings of fact in relation to Ms Topley's defence that she was unaware of the licensing requirements by claiming that the information campaign carried out by the Respondent was insufficient as it did not reach Lincolnshire, where she lived, thereby giving rise to a defence under section 95(4)(b) of the 2004 Act. We do not agree that this constituted a reasonable excuse for the reasons set out above. We accept that Ms Topley was unaware of the licensing requirements, but we do not accept that her lack of knowledge was reasonable. The advertisement campaign was extensive and timely

and had Ms Topley, for example, checked the Leeds City Council website under the relevant landlord section at any time from late 2018 through to when her property was identified, she could have become aware of the requirement and obtained a licence.

Our Findings in relation to the alleged breach

25. We find, therefore that of the items listed above as proven beyond reasonable doubt, that the Appellant, Ms Topley has committed an offence under section 95(1) of the Housing Act 2004 and that she is liable for a financial penalty as follows.

The Amount of the Penalty

26. The starting point is the Respondent's policy in relation to civil penalties which has been provided in the Respondent's bundle. The policy document generally requires consideration of a matrix comprising of the level of culpability set against the level of harm. There are three levels of culpability ranging from high (intentional or reckless) through to medium (negligence) down to low (no fault) and likewise, three levels of harm, high (serious effect/vulnerability), medium (adverse effect that is not high) and low (low risk of harm or potential harm).

27. The policy thereafter sets out a harm/culpability matrix in which the level of harm is assessed in line with the level of culpability so as to provide a starting point banding with a starting point within which a range of financial penalties might be expected. That starting point can then be increased or reduced within that range by reference to aggravating and mitigating factors.

28. The harm/culpability matrix on page 156 of the bundle indicates that the "MINIMUM FINE LEVEL" (i.e. the rightmost column) for a low/low offence should be £2000, which suggests that the maximum amount which can deducted for mitigation at 5% would be 2.

29. The Respondent has included its Civil Penalty Policy. The policy has a section headed "Final determinate of the level of any civil penalty" with the overriding requirement that the "final determinate of any civil penalty MUST be the general principle: THE CIVIL PENALTY SHOULD BE FAIR AND PROPORTIONATE BUT IN ALL INSTANCES SHOULD ACT AS A DETERRENT AND REMOVE ANY GAIN AS A RESULT OF THE OFFENCE". It seems to us that this section is to be given extra weight as it is capitalised and in bold and it gives a general discretion on the Authority and on the Tribunal when it comes to applying the policy as to the amount so as to ensure that the outcome is "fair and proportionate". Underneath this paragraph is a list of matters which might be included as "financial gan" including "Any licence fees avoided". At the end of this section is a lower case paragraph in bold advising that the penalty should be utilised to ensure that it "removed any gain obtained" and that the eventual level "should not be less than the amount of financial gain…plus £2000…".

30. From the above paragraphs there is, it seems to us, an element of mismatch between the various sections of the policy but reading the policy as a whole we are satisfied that it gives a broad discretion to identify the level of penalty by reference to the matrix and thereafter apply the general principle that the penalty should be "fair and proportionate" and remove any financial gain. The lowest amount of fine by reference to the policy is £2000.

Culpability and Harm

31. Taking account of the Respondent's Civil Penalty Policy, and assessing the issues anew, we think this offence gives rise to a low level of culpability for ostensibly the same reasons as those put forward by the Respondent. Ms Topley has no other property, and this is her only offence. The Tribunal also recognises that Ms Topley lives outside the area and her failure to obtain a licence was inadvertent. Finally, we note that she was not advised by her tenant of the requirements to obtain a licence despite the fact that he probably had a leaflet drop and might have seen advertisements himself in the area.

32. In relation to harm, we also accept that this is a situation with a low level of harm. The property was well maintained and insured (we were told this at the hearing) and it was occupied by a family friend at a low rent.

33. It follows that as the level of culpability is low and the level of harm is low, the appropriate starting point is £2500.

Aggravating/Mitigating Factors

34. We also agree with the Local Authority that there are no aggravating factors in Ms Topley case and the fine under the matrix should be reduced by 5% to account for the mitigating factor that Ms Topley has no other offences to her name but we also think that a reduction should be applied for other factors identified in the list of "mitigating factors" in the Respondent's policy in that we have found that she cooperated with the investigation; that she took voluntary steps to address the issues – she submitted a licence application and that she has a good character and otherwise her conduct has been exemplary – providing accommodation to her ex-brother-in-law at a low rent.

35. Taken together these mitigating factors reduce the financial penalty to £2000, although we note that in its calculation on page 120 of the bundle the "Minimum Fine Level for Initial Determination" had been reduced by the Local Authority to £2000 under what must be the "fair and proportionate" part of the policy.

Financial Circumstances

36. Ms Topley claimed impecuniosity as part of her appeal, but we found that this is unfounded. Firstly, the bank statements do not demonstrate impecuniosity. We can accept that they might not give an accurate reflection of her monthly income and expenditure but taken in the round her bank statements demonstrate an ability to pay, so for example a savings account on page 196 of the bundle has a balance of £5682.48 and the current account on page 185 has a closing balance of £2295. We also take into account the fact that Ms Topley owns the property the subject this appeal outright.

Financial Gain

37. The one area where our decision is different from the decision of the Respondent is in relation to financial gain. We do not find that there has been any financial gain by Ms Topley for a number of reasons. Firstly, we have found that Ms Topley inadvertently failed to obtain a licence. There is no evidence that she was in any way motivated by financial gain. Secondly, the Policy suggests that "Any licence fees avoided" can amount to financial

gain but as we have found that Ms Topley applied for and paid the appropriate licence fee as soon as she found out that this was a requirement, by the date of the penalty notice she had not, in fact, avoided the licence fee. In fact, she applied for and paid the fee despite the fact that her tenant had moved out of the property.

38. In those circumstances it would clearly not be "fair and proportionate" for the costs of the licence fee to be added onto the penalty. If anything this would amount to a form of double recovery by the local authority in circumstances where a penalty of £2000 is almost certainly sufficient to act as a deterrent as well as penalise Ms Topley for the commission of an offence.

Conclusion

39. In those circumstances from the Respondent's matrix set out in its Civil Penalty Policy as reproduced in the bundle and taking that Policy as a whole in determining the level of fine we have decided that the degree of culpability is low; that the degree of harm is low. From this we take a 5% deduction for the mitigating factors set out above, to give a financial penalty of £2000.00 for the offence under section 95(1) of the Housing Act 2004 which we think is fair and proportionate in all the circumstances of this case and is the minimum level of fine possible within the scope of that policy.

40. That is the decision of the Tribunal.

Signed 

Dated 18 July 2025

Phillip Barber, Judge of the First-tier Tribunal