



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

**Case reference** : **MAN/30UD/HUA/2024/0002**

**Properties** : **81 Raglan Rd, Burnley, BB11 4LB**

**Applicant** : **Quality Homes North West Limited**

**Representative** :

**Respondent** : **Burnley Borough Council**

**Type of Application** : **Appeal against a financial penalty -  
Electrical Safety Standards in the  
Private Rented Sector (England)  
Regulations 2020**

**Tribunal Member** : **Judge John Murray  
Mr. William Reynolds MRICS**

**Date of Decision** : **30 April 2025**

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**Decision**

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The Tribunal confirms the Financial Penalty dated 4<sup>th</sup> March 2024.

## **BACKGROUND**

1. The Tribunal received an appeal from the applicant against a financial penalty made under Paragraph 5(1) of schedule 2 to the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“the 2020 Regulations”). The appeal was received by the Tribunal on 2 April 2024, within the time limit for an appeal stated in paragraph 5(2) of Schedule 2 to the 2020 Regulations. The final notice imposing the penalty was suspended until the appeal was finally determined or withdrawn.

## **FACTS**

2. The parties agreed that the matter might be determined on the papers. A Tribunal was convened and considered the matter on the 30<sup>th</sup> April 2025.
3. The Council imposed a financial penalty of £5,000 (“the Financial Penalty”) in accordance with the powers given to it by The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, Part 5, regulation 11.
4. The Tribunal was told that the Property was let on 8th February 2019, by the Applicant on an assured shorthold tenancy.
5. The Respondent sent to the Applicant by email dated 12th September 2023 a 7-day Notice requesting an Electrical Inspection and Testing Certificate requesting a copy of the most recent Electrical Inspection and Testing Certificate relating to the fixed electrical installation at the Property by the 21<sup>st</sup> September 2023. No certificate was sent.

6. On 25th September 2023, a Remedial Notice was sent to the Applicant by e-mail address, stating that in order to remedy the breaches of their duty, he must have the premises inspected by a qualified person and obtain a valid, satisfactory Electrical Installation Condition Report (EICR) and submit it to the Respondent by 25th October 2023. The satisfactory EICR was not received by this date.
7. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 specify that when the Regulations came into force on the 1<sup>st</sup> June 2020 they applied to all existing specified tenancies and to ensure the first inspection and testing was carried out by the 1<sup>st</sup> April 2021.
8. On 1<sup>st</sup> November 2023, an Officer of the Council visited the Property where the tenant confirmed there was no EICR in place. The Officer of the Respondent spoke on the phone with the Applicant and stated that it was in their best interest to get the EICR completed.
9. On 13th November 2023, the Applicant provided the Respondent with a satisfactory EICR. The EICR had been carried out on the 10th November 2023 and expires on 10th November 2028. The EICR states that the last inspection took place on 29th September 2014.
10. Consequently there had been a gap of over 2 and a half years where the electrics had not been tested as per the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

#### **THE APPEAL**

#### **SUBMISSIONS FOR THE APPLICANT**

11. The Applicant in his appeal stated the following:
12. "We do accept full responsibility that no EICR was not carried out between 1<sup>st</sup> April 2021- 11th November 23. We also do accept that it is a very important regulation to be adhered to.
13. However, we do feel, especially on the basis that our record previously with Burnley Council has been exemplary, that the fine is very much excessive.

14. Once contacted by the Council to undertake the required work, we made numerous attempts for our electrician to visit. Unfortunately, due to ill health and holidays he was unable to complete. Also, on at least a couple of occasions, the tenant had to cancel due to her little boy requiring medical help and last minute appointments. The EICR and work was fully completed on 13.11.23. Also please note that the council were kept informed of any progression.

#### **SUBMISSIONS FOR THE RESPONDENT**

15. The Respondent stated that they had not received notification that the Applicant had a reasonable excuse for failing to comply with the regulations.

16. The Applicant has not been convicted of the Offence and there were no ongoing criminal proceedings in relation to it;

17. At the time the Civil Penalty notice was issued, there was no evidence of the Applicant previously failing to comply with relevant legislation and there were no previous convictions, including civil penalties, recorded against the Applicant in relation to any such failure.

18. The Offence was assessed by the Respondent as falling within Band 2 of the Banding Levels as set out in the Respondent's Policy and Matrix for the use of Civil Penalties" which they included as Appendix 6 to their submission because it was of Medium Culpability as the previous inspection had been completed on 29<sup>th</sup> September 2014. The Property should have been inspected 1st April 2021 but was only completed because of a request by the Respondent.

19. A 7-day letter had been sent on 12<sup>th</sup> September 2023 ; the EICR inspection undertaken on 11<sup>th</sup> November 2023 which was 59 days after expiry of the 7 days. The Remedial Notice had been served on 25<sup>th</sup> September 2023 for compliance by the 25<sup>th</sup> October 2023. The satisfactory EICR was received by the 13<sup>th</sup> November 2023, 19 days after the expiry of the notice.

20. It was considered of Low Harm as although the inspection was not undertaken when the regulations came into force, there was no indication that the electrics were unsatisfactory throughout that period.
21. The penalty proposed was considered to be set at a high enough level to help ensure that it has a real economic impact on the Applicant and demonstrates the consequences of not complying with their responsibilities, and to deter the Applicant from repeating the Offence and to deter others from committing similar offences. It removed any financial benefit that the Applicant may have obtained as a result of committing the Offence.
22. The Respondent gave notice of proposal to impose the Financial Penalty by Notice of Intent on 15th January 2024. The Respondent received written representations regarding the proposal to impose the Financial penalty in accordance with regulation 12 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and responded to them.
23. In relation to the grounds set out in the Application to appeal, the Respondent comments as follows as to why the grounds of appeal are opposed:
24. They did not accept that the Applicant's record had been exemplary with them as suggested. The Respondent runs an accreditation scheme for landlords and managing agents that offer a higher property and management standard than the minimum that is required. Neither Quality Homes North West Limited or Mark Hogg had applied or gained accreditation with the Respondent and therefore they could not say that the Applicant's record was exemplary. Furthermore they were also aware that the Respondent and Mark Hogg were sentenced on 13th November 2024 at Preston Magistrates' Court for 10 offences each for breaching House in Multiple Occupation Regulations within the Borough of Pendle. They produced as evidence a copy e-mail from Pendle Borough Council informing of the HMO offences)
25. Whilst the Selective Licensing application for the property was being completed and processed, the Applicant had been informed by the Respondent on the 10th and 17<sup>th</sup> September 2020 through their Selective Licensing account that, "After 1st July 2020 new tenancies must have an Electrical Installation Condition Report (EICR). As of 1st April 2021 all rental properties must have a EICR. Please tick to confirm you understand this.". On 17th and 25th September 2020, the Applicant ticked the task on the Selective Licensing application to confirm that they understood this. Despite warnings, he failed to act.

26. On 29th November 2021, the Respondent had sent a further task through the Selective Licensing application to the Applicant which stated, "From 1/4/2021 landlords must ensure that every electrical installation in the house is inspected and tested at least every five years by a person who is qualified and competent. Please provide a copy of the EICR." No EICR was provided at this point.
27. On 1st August 2022, the Respondent had sent yet a further task through the Selective Licensing application to the Applicant stating that, "We note that we either do not have a copy of the valid Electrical Safety Certificate (EICR) or that this has expired; he was asked to provide a copy but did not do so.
28. On 8th June 2023, the Respondent sent a final task through the Selective Licensing application to the Applicant which stated that, "We note that we either do not have a copy of the valid Electrical Safety Certificate (EICR) or that this has expired. He was again asked to send a copy. Follow-up e-mails were sent to the Applicant by the Respondent on 9th and 16th June 2023 reminding him that his Gas Safety certificate had expired and the EICR had not been provided.
29. Further to this, on the 12th September 2023, a 7-day Notice was sent by email to the Respondent requesting an EICR by the 21st September 2023.
30. On 25th September 2023, a Remedial Notice was sent to the Applicant by email stating that in order to remedy the breaches of duty, he must have the premises inspected by a qualified person and obtain a valid, satisfactory Electrical Installation Condition Report (EICR) and submit a copy to the Selective Licensing Team, Housing and Development Control, Town Hall, Manchester Road, Burnley, BB119SA. The required remedial action was to be undertaken by 25th October 2023. The satisfactory EICR was not received by this date but was received on the 13th November 2023.
31. The Respondent believed that the Applicant was given ample opportunity to obtain an EICR, prior to the formal Remedial Notice required them to do so.
32. In relation to the assertion that they had been kept informed of any progression, the Respondent stated that they were not provided with any updates with regards to the electrics being tested or any delays between 12th September 2023 and 13th November 2023. No communication had been received prior to this when informal reminders about the EICR were sent to the Respondent between 10th September 2020 and 16th June 2023.

## **THE LEGISLATION**

The procedure for financial penalties, and appeals for the same is set out in Schedule 2 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

## **SCHEDULE 2**

Procedure for and appeals against financial penalties

Notice of intent

1.—(1) Before imposing a financial penalty on a private landlord for a breach of a duty under regulation 3, a local housing authority must serve a notice on the private landlord of its intention to do so (a “notice of intent”).

(2) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority is satisfied, in accordance with regulation 11, that the private landlord is in breach (“the relevant day”), subject to subparagraph (3).

(3) If the breach continues beyond the end of the relevant day, the notice of intent may be served—

(a)at any time when the breach is continuing; or

(b)within the period of 6 months beginning with the last day on which the breach occurs.

(4) The notice of intent must set out—

(a)the amount of the proposed financial penalty;

(b)the reasons for proposing to impose the penalty; and

(c)information about the right to make representations under paragraph 2.

Right to make representations

2. The private landlord may, within the period of 28 days beginning with the day after that on which the notice of intent was served, make written representations to the local housing authority about the proposal to impose a financial penalty on the private landlord.

## Final notice

3.(1) Within 28 days of the end of the period mentioned in paragraph 2 the local housing authority must—

(a) decide whether to impose a financial penalty on the private landlord; and

(b) if it decides to do so, decide the amount of the penalty.

(2) If the authority decides to impose a financial penalty on the private landlord, it must serve a notice on the private landlord (a “final notice”) imposing that penalty.

(3) The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was served.

(4) The final notice must set out—

(a) the amount of the financial penalty;

(b) the reasons for imposing the penalty;

(c) information about how to pay the penalty;

(d) the period for payment of the penalty;

(e) information about rights of appeal; and

(f) the consequences of failure to comply with the notice.

## Withdrawal or amendment of notice

4.(1) A local housing authority may at any time—

(a) withdraw a notice of intent or final notice; or

(b) reduce the amount specified in the notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the private landlord on whom the notice was served.

## Appeals

5.(1) A private landlord on whom a final notice is served may appeal to the First-tier Tribunal against—

(a)the decision to impose the penalty; or

(b)the amount of the penalty.

(2) An appeal under this paragraph must be brought within the period of 28 days beginning with the day after that on which the final notice was served.

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

(4) 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 when it made that decision.

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

(6) The final notice may not be varied under sub-paragraph (5) so as to make it impose a financial penalty of more than £30,000.

#### **DECISION**

33. The appeal was dealt with by way of a re-hearing of the Respondent's decision to impose the penalty and/or the amount of the penalty. The Tribunal may have regard to matters of which the authority was previously unaware.

34. When deciding whether to confirm, quash or vary the final notice imposing the financial penalty, the issues for the Tribunal to consider will or could include:

- a. Whether the Tribunal is satisfied, beyond reasonable doubt, that the applicant had breached a duty under regulation 3 of the 2020 Regulations;
- b. Whether the local housing authority had complied with the necessary procedural requirements in Schedule 2 of the 2020 Regulations and/or

- c. Whether the financial penalty was set at an appropriate level.
- 35. The Tribunal is satisfied beyond reasonable doubt , and the Applicant accepts, that he breached the duty under regulation 3(1)(c) of the Regulations by failing to have the EICR inspection carried out to Property which was subject to an existing tenancy by 1<sup>st</sup> April 2021.
- 36. The Tribunal found that the Respondent had complied with the necessary procedural requirements in Schedule 2 of the 2020 Regulations in that they:
  - a. served a notice of intent on 15<sup>th</sup> January 2024 which was within six months of the last day of the breach (12<sup>th</sup> November 2023) in accordance with Schedule 2 regulation 1(3)(b).
  - b. served a financial penalty notice on the Respondent on the 4<sup>th</sup> March 2024 which was within 56 days of the period during which the Applicant could make written representations about the proposal to impose a financial penalty notice thereby complying with Schedule 2 regulation 3(1).
  - c. Served a final notice compliant with Schedule 2 regulations 3(3) and (4).
- 37. As the offence was admitted, and the Tribunal found the Respondent had complied with the process contained in Schedule 2, the only issue for the Tribunal to determine therefore is whether the financial penalty was set an appropriate level.
- 38. The Applicant appealed on the basis that the fine was excessive, on the basis that their previous record with the Respondent had been exemplary; and that once contacted by the Respondent to undertake the work, numerous attempts were made for their electrician to visit, which was thwarted on "at least a couple of occasions" due to health issues of a child at the property, and ill-health and holidays on the part of the chosen electrician.
- 39. The Applicant put forward no evidence or even details of delays due to the electrician, or the occupants, or indeed of their exemplary record with the Respondent.
- 40. The Respondent put forward evidence that the Applicant had been told of the need to provide an EICR for a period in excess of three years before he finally produced it, via his selective licensing application. The Respondent had not put forward evidence

that the electrician was ill/on holiday for three years, or that health issues of the child at the Property had lasted this long.

41. In relation to the Applicant's assertion of an exemplary record with the Respondent, the Tribunal was provided with evidence that the Applicant was not a party to the Respondent's accreditation scheme, which may have satisfied the Tribunal that they held, or aspired to hold an exemplary record with the Respondent.
42. Additionally, evidence of a series of serious offences in the neighbouring Pendle area dating from November 2024 which would not have been available when the Financial Penalty was imposed are now matters of public record and can be taken into account by the Tribunal when dealing with this appeal, in accordance with Schedule 2, regulation 5(4(b)).
43. The Tribunal considered increasing the level of financial penalty on account of the Respondent's convictions in Pendle. The Tribunal considered there may have been an attempt to mislead the Tribunal by stating that he had an exemplary record in Burnley, at a time when he must have been aware his reputation in neighbouring Pendle was far from exemplary. The Tribunal ultimately determined not to increase the penalty given the Respondent had not suggested it, and the Tribunal was not in a position to ask the Applicant about those convictions. Additionally, there was an element of contrition on the part of the Applicant; Mr. Hogg accepted there had been a breach, and that it was serious.
44. The Tribunal reviewed the Respondent's reasoning, and their consideration of their scoring matrix, and saw no reason to depart from their decision. The amount of the financial penalty was appropriate in terms of their matrix, the need to provide a deterrent, and to prevent the Respondent gaining a financial advantage from the offence.
45. The Tribunal confirms the final notice.

**Judge John Murray**

**30 April 2025**