



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

Case Reference : **MAN/OOCX/HNA/2019 /0038**

Property : **20 St Andrews Villas, Bradford, BD7 1JY**

Appellant : **Mr Tazim Gul**

Respondent : **Bradford Metropolitan District Council**

Type of Application : **Appeal Against a Financial Penalty,
section 249 A, section 95 (1) and
Paragraph 10 of Schedule 13 A of The
Housing Act 2004.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mrs S. A. Kendall, BSc, MRICS.**

Date of Determination : **10 September 2019**

Date of Decision : **24 September 2019**

DECISION

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Application and Background

1. Mr Tazim Gul "the Appellant", has been at all times relevant to this case, the owner of 20 St Andrews Villas, Bradford, BD7 1JY "the property". By an application dated 29 March 2019, "the Appellant" appeals against the issue of a Financial and Penalty of £30,000 imposed by Bradford Metropolitan District Council "the Respondent", under sections 249 A and Paragraph 10 of Schedule 13 A of The Housing Act 2004, "the Act". The appeal being raised on the grounds as particularised by "the Appellant" as, "I was not in charge of the property and I have not handed out any tenancy agreements and I am not aware of any other people living at my house." (Paragraph 9 of the application).
2. The alleged offences are that on 16 August 2018 "the Appellant" managed "the property" which was a House in Multiple Occupation, a "H M O" in breach of regulations 3, 4, 7 and 8 of the Management of Houses in Multiple Occupation (England) Regulations 2006 made under section 234 of "the Act". The penalty for this offence being £25,000. Also that on the same date the HMO was required to be licensed and was not so licensed contrary to section 72 of "the Act". The penalty for this offence being £7,500. The overall penalty being reduced under the totality of sentence principle to £30,000. (Bundle, Tabs 21 and 24).
3. The hearing bundle is 475 pages in length, with additional evidence extending this to 488 pages, with an additional statement from the Case Officer Miss Rachael Kershaw and documents relating to a fire at "the property" on 21 June 2019. "The Appellant" did not serve a witness statement himself or a statement of his case, but did serve a witness statement from the manager of "the property" Ms Semra Bengu, along with two tenancy agreements issued to Ms Jolana Cervenakova for occupancy of "the property".

The Law

The Housing Act 2004

Section 249A Financial penalties for certain housing offences in England

(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—

- (a)section 30 (failure to comply with improvement notice),
- (b)section 72 (licensing of HMOs),
- (c)section 95 (licensing of houses under Part 3),
- (d)section 139(7) (failure to comply with overcrowding notice), or
- (e)section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

Section 234 Management regulations in respect of HMOs

(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—

- (a) there are in place satisfactory management arrangements; and
- (b) satisfactory standards of management are observed.

(2) The regulations may, in particular—

(a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;

(b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

(3) A person commits an offence if he fails to comply with a regulation under this section.

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006

Description of HMOs prescribed by the Secretary of State

3.—(1) An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act where it satisfies the conditions described in paragraph (2).

(2) The conditions referred to in paragraph (1) are that—

- (a) the HMO or any part of it comprises three storeys or more;
- (b) it is occupied by five or more persons; and
- (c) it is occupied by persons living in two or more single households.

(3) The following storeys shall be taken into account when calculating whether the HMO or any part of it comprises three storeys or more—

- (b) any attic if—
 - (i) it is used wholly or partly as living accommodation;

(ii) it has been constructed, converted or adapted for use wholly or partly as living accommodation, or

(iii) it is being used in connection with, and as an integral part of, the HMO.

Management of Houses in Multiple Occupation(England) Order 2006

Duty of manager to provide information to occupier

3. The manager must ensure that—

(a) his name, address and any telephone contact number are made available to each household in the HMO; and

(b) such details are clearly displayed in a prominent position in the HMO.

Duty of manager to take safety measures

4.—(1) The manager must ensure that all means of escape from fire in the HMO are—

(a) kept free from obstruction; and

(b) maintained in good order and repair.

(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.

(3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.

(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—

(a) the design of the HMO;

(b) the structural conditions in the HMO; and

(c) the number of occupiers in the HMO.

(5) In performing the duty imposed by paragraph (4) the manager must in particular—

(a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and

(b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.

(6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.

Duty of manager to maintain common parts, fixtures, fittings and appliances

7.—(1) The manager must ensure that all common parts of the HMO are—

- (a) maintained in good and clean decorative repair;
- (b) maintained in a safe and working condition; and
- (c) kept reasonably clear from obstruction.

(2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—

- (a) all handrails and banisters are at all times kept in good repair;
- (b) such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided;
- (c) any stair coverings are safely fixed and kept in good repair;
- (d) all windows and other means of ventilation within the common parts are kept in good repair;
- (e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and
- (f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.

(3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(4) The manager must ensure that—

- (a) outbuildings, yards and forecourts which are used in common by two or more households living within the HMO are maintained in repair, clean condition and good order;
- (b) any garden belonging to the HMO is kept in a safe and tidy condition; and
- (c) boundary walls, fences and railings (including any basement area railings), in so far as they belong to the HMO, are kept and maintained in good and safe repair so as not to constitute a danger to occupiers.

(5) If any part of the HMO is not in use the manager shall ensure that such part, including any passage and staircase directly giving access to it, is kept reasonably clean and free from refuse and litter.

(6) In this regulation—

(a) “common parts” means—

- (i) the entrance door to the HMO and the entrance doors leading to each unit of living accommodation within the HMO;
- (ii) all such parts of the HMO as comprise staircases, passageways, corridors, halls, lobbies, entrances, balconies, porches and steps that are used by the occupiers of the units of living accommodation within the HMO to gain access to the entrance doors of their respective unit of living accommodation; and

(iii) any other part of an HMO the use of which is shared by two or more households living in the HMO, with the knowledge of the landlord.

Duty of manager to maintain living accommodation

8.—(1) Subject to paragraph (4), the manager must ensure that each unit of living accommodation within the HMO and any furniture supplied with it are in clean condition at the beginning of a person's occupation of it.

(2) Subject to paragraphs (3) and (4), the manager must ensure, in relation to each part of the HMO that is used as living accommodation, that—

(a) the internal structure is maintained in good repair;

(b) any fixtures, fittings or appliances within the part are maintained in good repair and in clean working order; and

(c) every window and other means of ventilation are kept in good repair.

(3) The duties imposed under paragraph (2) do not require the manager to carry out any repair the need for which arises in consequence of use by the occupier of his living accommodation otherwise than in a tenant-like manner.

(4) The duties imposed under paragraphs (1) and (2) (b) do not apply in relation to furniture, fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(5) For the purpose of this regulation a person shall be regarded as using his living accommodation otherwise than in a tenant-like manner where he fails to treat the property in accordance with the covenants or conditions contained in his lease or licence or otherwise fails to conduct himself as a reasonable tenant or licensee would do.

Paragraph 10 of schedule 13A

10(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.

Inspection

4. The Tribunal inspected "the property" at 10.30am on Wednesday 4 September 2019. Present on behalf of "the Appellant" was his manager Ms Semra Bengu. Present on behalf of "the Respondent" were three employees, Miss Rachael Kershaw, Case Officer and Environmental Health Officer, Mr Shonu Miah, Private Sector Housing Manager and Mr Harjit Ryatt, Council Solicitor.
5. "The property" is a back to back and semi detached house, stone built, double fronted villa style property. There is a side extension that houses a bedsitting room and en-suite shower room. The roof is slate with a flat roof over the extension. There is a cellar that is used for storage and contains utility meters. The remainder of the ground floor, contains a shared kitchen and two rooms used as bedrooms. A gentleman was asleep in one of these rooms. The exterior door has a mortice lock, without an internal thumb turn mechanism. A flight of stairs goes up to the first floor where there is a shared bathroom and three more bedrooms. There is a flight of stairs going up to second floor attic where there is a room that leads to a bedroom. On 16 August 2018 these two rooms were both being used as bedrooms with a door in the door frame between them. That door has now been removed.
6. The Tribunal noted that there are 6 new spindles in the banister rail in the ground floor hall. The bedroom to the right of the exterior door is described as Mr Gul's room. It is largely empty. It has a mortice lock without an internal thumb turn mechanism. The bedroom door is not a fire door and has six small panes of glass in it. There is no smoke alarm. One of the exterior windows is broken.
7. The bedroom to the opposite side of the hall has no lock in its door, which is part glazed and is not a fire door. A gentleman was asleep in this room, reducing the Tribunals ability to inspect the room.
8. The shared kitchen is dirty. There is a space under a work top from which two washing machines have been removed and the double electric socket is open exposing wires. The gas oven has been removed but the extractor pipe that would once have been fitted above the oven is still in place, hanging loose. There is a smoke detector on the wall, but when the Tribunal asked if it could be tested Ms Bengu said that it could not because of the gentleman who was asleep. At the far end of the kitchen is a door that is fitted with a hasp that would permit this to be locked with a padlock. There is no padlock presently. This is not a fire door.
9. From the kitchen three lead down into the side bedsitting room. This is currently filled with items in storage but is said to be the room occupied by Jolana on 16 August 2018. There are water penetration marks in the ceiling. At the end of this room furthest away from the kitchen is the second exterior door. This is fitted with a mortice lock without an internal thumb turn mechanism. This lock appears to be faulty because there is a long bamboo pole propping the exterior door shut inside the room and jammed against the steps that lead to the en-suite shower room. There are three steep steps up to the en-suite, the top step having a very much higher rise than the others. There is no hand rail. This room contains a

toilet, sink and shower. The door, that is not a fire door, has a mortice lock without an internal thumb turn mechanism. Some of the floor tiles are cracked. There is a smoke detector in the extension. We were told that the heating in this room is not working.

10. There is a flight of steps going from the hall down to the cellar with a door that is not a fire door.
11. Stairs go up to the first floor landing and there is a smoke detector on the ceiling. A replacement spindle has been fitted to the banister rail. The fourth bedroom does not have a smoke alarm. The door is not a fire door but it is fitted with a Yale style lock that because of its design could be opened in a thumb turn manner and is therefore acceptable as a door lock for health and safety purposes.
12. Bedroom five has a smoke detector on the ceiling. The door is not a fire door and had a Yale style lock fitted on 16 August 2018. There is presently an electric oven on the carpeted floor, plugged into a wall socket. This was not present on 16 August 2018.
13. Bedroom six has a gas heater mounted on the wall, the front has been taken off it. The door is not a fire door and the frame is broken in the area of the Yale style lock so that there is now nothing for the bar of the lock to fit into on the door frame so that the lock cannot work.
14. The shared bathroom has a dated suite that has toilet, sink, bath and shower over the bath. The shower curtain rail is tied with string to the ceiling electric light, helping to hold the rail in position. The suite and room are dirty. There is a large mirror balanced on top of a radiator so that it leans against a wall. There is evidence of the remains of mould above the door. The door is not a fire door but is fitted with an acceptable lock.
15. Stairs lead up to the second floor attic. The door leading into the two rooms that form the attic is one that when fitted would have been a fire resistant door. It has a self closing device and an acceptable lock. The first part of the rooms reached was being used as a bedroom on 16 August 2018. It leads to the seventh bedroom. There is no door fitted to this door frame now, but there was such a door on 16 August 2018. There is a smoke detector outside these rooms.
16. The Tribunal counts five smoke detectors as being present in "the property" and notes that on the date of a fire on 21 June 2019 the smoke detectors did not sound an alarm. The Tribunal does not know if these alarms, seen today, are functional. The Tribunal also notes that after the inspection on 16 August 2018, Miss Kershaw supplied a number of free smoke detectors to Ms Bengu. The Tribunal does not know when these five smoke alarms were fitted.

Written Submissions

17. "The Appellant" has not made a witness statement or a statement of his case. The Tribunal notes the grounds of appeal. (Paragraph 1, above).
18. The hearing bundle is too extensive to permit rehearsal of the Respondent's case at this stage. Reference to written evidence will be made as and where necessary.

The Hearing

19. The hearing at Phoenix House, Bradford commenced at about 12.05 pm Wednesday 4 September 2019. The hearing commenced a few minutes late because "the Appellant" was late arriving. Persons present for the hearing are the same as for the inspection, with the addition of "the Appellant" and Mr Andrew Rudd, Environmental Health Officer. The Tribunal sat again in private session on 10 September 2019 to decide the issues in the case.

Preliminary Point

20. "The Appellant" sought to adjourn the case so that he can be represented by a solicitor. He was permitted to adduce two emails from Platinum Partners Solicitors. These were held in the memory of his mobile telephone it was therefore necessary for the Tribunal to record the content of these emails and then read them out to the persons present. The Tribunal summarises these. The first dated yesterday, 3 September 2019 asking "the Appellant" to contact "the Respondent" at 9am today to ask them to agree an adjournment. The second also dated yesterday, refers to an attachment that had to be completed by "the Appellant" before the solicitor could act in the case and that the solicitor needs to be paid £500. The solicitor suggests that "the Appellant" should ask for an adjournment because he is in the middle of instructing a solicitor and that he should complain that he has not had enough warning of today's hearing date bearing in mind the fact that "the Appellant" has been out of the country.
21. "The Appellant" made the application on the terms as described by the solicitors email. It should be noted that this case had been listed for a final hearing on 1 August 2019, but that was adjourned by the Tribunal Judge because the learned Judge knew one of the persons who attended at the inspection. As such both parties were on notice from that date that a differently constituted Tribunal would soon wish to hear the case.
22. "The Appellant" accepted that had the case been heard on 1 August 2019 he would have dealt with the case without being represented by a solicitor and that he had, at that stage, been content to represent himself. "The Appellant" stated that he now required the assistance of a solicitor because "the Respondent" had served documents since 1 August 2019 that had caused "the Appellant" to become confused.

23. The Case Officer stated that since 1 August 2019 she had sent two documents to "The Appellant". An amended Respondent's Skeleton Argument, that in the opinion of the Tribunal contains two minor and inconsequential amendments. An additional statement made by the Case officer of three and a half pages in length producing an exhibit in relation to Housing Benefit.
24. In relation to lack of warning of the date of today's hearing, the Case Officer received the tribunal's letter warning them of the new date on 24 August 2019. "The Appellant" stated that he had been on holiday, to see his grandmother from 14 August 2019 to 24 August 2019 and produced a boarding stub for a plane journey on 14 August PIA airlines. As a result "The Appellant" had not seen the letter notifying him of the new date for this hearing until 26 August 2019. He had therefore had only nine days notice.
25. Mr Ryatt, on behalf of "the Respondent" objected to the adjournment on the basis that he could not see how the two documents served after the last adjourned hearing had complicated the case. Further, "The Appellant" had plenty of time from 1 August 2019 to instruct a solicitor, if he wished to do so.
26. The Tribunal retired to consider this application and decided to refuse to adjourn the case, for the following reasons.
27. "The Appellant" was prepared to deal with the case without the assistance of a solicitor on 1 August 2019. The Tribunal decides that the new documents served since that date do not make the case any more complicated than it had been before they were served.
28. "The Appellant" has had plenty of time to instruct a solicitor if he thought that he needed to do so since 1 August 2019.
29. "The Appellant" should not have chosen to go on holiday to see his grandmother at a time when he thought that he should be in England instructing a solicitor and at a time when he knew that the relisting of the case was imminent.
30. "The Appellant" has had nine days notice of this hearing date. The Tribunal considers this to plenty of notice for "the Appellant" to be in a position to go ahead with the case.

Oral evidence

31. "The Appellant" came to the hearing without his hearing bundle which he had left at the office of Platinum Partners Solicitors. "The Appellant" left the court building to collect his bundle. The parties had agreed with the Tribunal's suggestion that the afternoon session of the hearing commence at 1.30pm. However, by 1.55pm "the Appellant" had still not returned and had made no attempt to contact the court building or tribunal office. The Tribunal decided to recommence the hearing and did so at 2pm. "The Appellant" arrived shortly

- thereafter . "The Appellant" had not missed any evidence being given, because witnesses were not called until after he had arrived.
32. The Case Officer Miss Kershaw added to her evidence that the fact that bedroom doors were all fitted with locks of one description or another is indicative of the fact that this is a house that was being managed as an HMO. If it were being lived in by just one family the bedroom doors would not need locks. The Case officer referred to the photographs taken during the inspection and the fact that there was a door between the two parts of the bedroom in the attic (Bundle, page 126).
 33. The Case Officer was cross examined by Mr Gul, who amongst other things asked questions about the two addresses that were available to him at different times in Peterborough, his family home and his mother's home. The Case Officer pointed out that Mr Gul had given an address in interview and that address had been used. Later letters were sent to both Peterborough addresses. The Case Officer confirmed that she did not write to "The Appellant" at the commencement of the investigation, dealing instead with Ms Bengu, the manager.
 34. Mr Rudd was cross examined by Mr Gul, who put it to Mr Rudd that he was wrong in his witness statement when he said that he had spoken to "The Appellant" by telephone on 16 August 2018 (Bundle, page 385). Mr Rudd maintained that his statement was correct, it was Semra Bengu who had telephoned "The Appellant" and after telling Mr Rudd that it was "The Appellant" on the telephone, had handed the phone to Mr Rudd.
 35. "The Appellant" gave evidence. He had not served a witness statement so had to give evidence in chief in full.
 36. "The Appellant" stated that he had inherited "the property" from his father. He had rented it out to one family, including Jolana Cervenskova (shown to be a citizen of the Czech Republic by a copy of a passport produced as part of "the Appellant's" case.) He had received rent in the form of Housing Benefit paid into his bank account for Jolana and produced a letter from "the Respondent" indicating that this benefit would be paid to "the Appellant" from 9 March 2018. "The Appellant" stated that this was the only rent that he had received. He had not known about the other tenants.
 37. He was contacted by telephone by Semra Bengu and had visited "the property" on 20 August 2018, where he had seen the Case Officer.
 38. "The Appellant" stated that the five tenancy agreements sent to the Case Officer by Semra Bengu had been written by Semra Bengu. He had not known that Semra Bengu would do this. When he became aware of the other tenants he told them all to leave. He said that Jolana had told him that all the tenants were her family from Slovakia and could not leave because they had nowhere to go. All the tenants did eventually leave having been given eviction notices.

39. "The Appellant" said that the first person to leave was Maria Gasova. As far as he was concerned it is a family house. He said that he had not applied for an HMO licence or enquired about such a licence as alleged by "the Respondent", between 8 September 2008 and 27 April 2009 (bundle, pages 229 to 235). "The Appellant" when asked said that those pages must refer to a neighbour commencing such an application. Mr Gul was asked to consider a letter sent to him about this application for an HMO (bundle, page 245) he agreed that he had received that letter.
40. "The Appellant" when asked about the fire at "the property" on 21 June 2019 stated that it was a minor fire started by Jolana Cervenakova, who had returned to "the property" by then, despite the council saying that significant works would be required even if only one family was renting. He said that the six people seen at "the property" by the Fire Officer were Jolana Cervenakova and her friend and four people that "the Appellant" said were his family.
41. Ms Semra Bengu was called to give evidence and her statement was permitted to stand as her evidence in chief. The statement indicates that she had written out the five tenancy agreements, without the knowledge of "the Appellant" (bundle, pages 65 to 81). Ms Bengu accepted that on 15 August 2018 she had told Mr Rudd that there five tenants at "the property".
42. Ms Bengu was taken to her record of taped interview (bundle pages 159 to 171). She accepted that she had told the officers that she collected gas, electric and rent payments from the tenants and that this was paid directly into Mr Gul's bank account. She explained that by this she meant that she was collecting rent from Jolana only and this was because Jolana had not paid her deposit when she moved in and the rent was in fact not rent but money owed because no deposit had been paid. It was put to Ms Bengu that the tenancy agreements for Jolana that are attached to Ms Bengu's statement indicate that there was no deposit to be paid.
43. Ms Bengu accepted that she had told the officers that there were three households resident at "the property" on 16 August 2018 (bundle, page 165). She said that she had been mistaken about this, that Helena (one of the tenants whom she believed was not related to the family group of Jana (mother) and Martina and Renata (adult children), was in fact the aunt of the adult children. Thus making the tenants one family group with the addition of Jolana.
44. The Tribunal pointed out to Ms Bengu that in her witness statement Ms Bengu states that she had told the interviewing officers in her taped interview that she had signed the tenancy agreement without Mr Guls knowledge. Ms Bengu was taken to the record of her taped interview where on two occasions she clearly said that Mr Gul had signed the tenancy agreements (bundle, pages 168 and 169). Ms Bengu indicated that she wanted the Tribunal to accept that both her statement and her record of taped interview are correct.

The Deliberations

45. The Tribunal first considers whether it has been established, beyond all reasonable doubt, that "the property" is an HMO as required for the offence under section 234 of "the Act" and whether it required a licence as required for the offence under section 72 of "the Act".
46. The Tribunal notes that "the Respondent's" witnesses state that "the property" has seven bedrooms when counting the two parts of the attic as one room (because even though on 16 August 2018 there was a door between the two rooms in the attic, it is necessary to walk through the first room to reach the second). The Tribunal notes that there was no challenge to this description of the property during the hearing. This accords with the Tribunal's inspection of the property. The Tribunal determines that "the property" has seven bedrooms. These are on three floors, ground, first and the attic second floor.
47. The Tribunal has seen that the bedroom in the extension has its own en- suite shower room, but all other residents would have to share the bathroom on the first floor. All residents would have to share the kitchen.
48. The Tribunal notes that Mr Gul accepts that he has been in receipt of Housing Benefit to pay the rent for Ms Jolana Cervenakova, paid directly to him. On 16 August 2018 this tenant was resident in the side extension. Putting on one side the issue of whether the other tenants were paying rent as required by their tenancy agreements and as confirmed by Ms Semra Bengu in interview, there is no doubt that Ms Jolana Cervenakova was paying rent as required by section 254 (2) of "the Act", the standard test.
49. The Tribunal notes that "the Respondent's" witnesses state that on 16 August 2018 there were five tenants resident at "the property" and that these were Jolana (in the extension) as a separate household, Helena as a separate household and Jana, Martina and Renata as a household of mother and children. This is accepted by Semra Bengu (bundle, page 165). The Tribunal determines that this evidence is correct and that the Tribunal is satisfied beyond any reasonable doubt that on 16 August 2018 "the property", satisfying the standard test (section 254 of "the Act") and the remaining requirements discussed above and was an HMO that required a licence.
50. The Tribunal then considers "The Appellant's" case that he did not sign or issue the five tenancy agreements that were sent by his manager, Semra Bengu to the Case Officer. That he did not know that these people were resident in "the property". The Tribunal determines that if this might reasonably be correct, then statutory defences in both the sections creating these offences would result in a determination that "the Appellant" is not guilty of the offences. This account is supported by Semra Bengu in her witness statement, but discounted by Semra Bengu in her record of interview.

51. The Tribunal determines that it necessary to closely examine the case for "the Appellant" to assist in determination of this issue.
52. "The Appellant" seeks to rely upon the witness statement of Semra Bengu, contradicting her evidence as given to "the Respondent's" witnesses. The Tribunal determines that it cannot rely upon this exculpatory evidence. It flies in the face of reason that this manager should take it upon herself to forge five tenancy agreements, even more so that this should happen without the knowledge or consent of "the Appellant". The Tribunal also notes that the witness statement put forward as a statement of truth is clearly wrong in the fact that Semra Bengu states that in her taped interview she told the interviewing officers that she had signed the tenancy agreements without the landlords knowledge. She did not do this. On the contrary, she told the interviewing officers that "the Appellant" had signed the tenancy agreements (bundle, pages 168 and 169).
53. "The Appellant" has given evidence that he did not speak to Mr Rudd on the telephone on 16 August 2018. The Tribunal determines that this is not correct and accepts the evidence of Mr Rudd that Semra Bengu spoke to "The Appellant" on her mobile telephone and then handed the telephone to Mr Rudd stating that he was to speak to the owner of "the property"(bundle, page 385).
54. "The Appellant" has given evidence that he did not contact Bradford City Council between 8 September 2008 and 27 April 2009 with a view to obtaining an HMO licence for "the property". The Tribunal has considered the evidence contained within the bundle, pages 229 to 235 and is satisfied beyond any reasonable doubt that "The Appellant" did act in this manner.
55. The Tribunal considers the record of taped interview with "the Appellant" (bundle, pages 201 to 222). "The Appellant" in the interview states that Ms Semra Bengu had his agreement to put tenants into "the property"(bundle, page 204). "The Appellant" further states that if he needed tenants Semra would take care of that (bundle, page 206). Further, he states, 'I had to issue them with temporary agreements' (bundle, page 209). Further, speaking about the tenancy agreements that they had been issued by Semra with his permission and on his behalf (bundle, page 218).
56. The Tribunal then considers the record of interview with Semra Bengu (bundle, pages 159 to 171). In that interview Semra Bengu makes it clear that "The Appellant" signed the five tenancy agreements Bundle, pages 168 and 169. The five tenancy agreements are contained within the bundle at pages 65, 67, 69, 71 and 81. They all suggest that they are signed by "The Appellant" on various dates for five different tenants at "the property".
57. Taking all the above factors into consideration the Tribunal determines that it is satisfied beyond any reasonable doubt that "The Appellant" either signed the five tenancy agreements himself or that his manager, Semra Bengu signed them on his behalf with his knowledge, permission and authority to do so. It is not

necessary to decide which of these apply because in either case the statutory defences do not apply.

58. "The property" did not have a licence permitting its use as an HMO. The offence under section 72 of "the Act" has therefore committed, by "The Appellant" on 16 August 2018.
59. "The Appellant" has not sought to challenge the observations of the Case Officer and Mr Rudd regarding the condition of "the property" on 16 August 2018. There is clear photographic evidence of the deficiencies amounting to breaches of regulation 3, 4, 7 and 8 of Management of Houses in Multiple Occupation (England) Order 2006 and therefore an offence under section 234 of "the Act". The Tribunal accepts that there was no notice displayed as required by regulation 3. There is nothing to be gained by repeating here all the faults found by "the Respondent's" witnesses. A summary is contained within the Final Notice (bundle, page 293) with more detail provided in a more extensive summary in the Case Officers additional statement (dated 8 August 2019), first, second and third pages.
60. The Tribunal is satisfied beyond any reasonable doubt that on 16 August 2018 "the property" was being managed in such a way and in such a condition that "The Appellant" committed the offences as detailed upon the Notice of Intention to Impose a Financial Penalty (bundle, tab 21) and the Final Notice of the Imposition of a Financial Penalty (bundle, tab 24).
61. The Tribunal now considers the procedure followed by "the Respondent" in imposing this Financial Penalty.
62. The Tribunal notes that "the Respondent" adopted the use of civil penalties for housing offences on 7 November 2017.
63. The Tribunal approves of the Respondent's decision to issue a Financial Penalty, rather than prosecute this first offender for this conduct. The Tribunal considers the Respondent's Private Sector Housing Enforcement Policy (bundle, pages 251 to 287) and Specific Guidance for Bedsit Type H M O's and General Guidance for H M O's (bundle, pages 397 to 403 and 415 to 429). This establishes a policy and matrix that is not challenged by the Appellant and serves as a reasonable approach as to how to quantify a Financial Penalty, complying with the Department for Communities and Local Governments, Civil Penalties Under The Housing And Planning Act 2016 : Guidance for Local Authorities.
64. The Tribunal notes that the Respondent's employees utilised Determination of Financial Penalties record for use in calculating the level of penalty (bundle, pages 339 to 361), recording the assessment of the level that "the Respondent" set the Financial Penalties at.

65. The Tribunal notes that in this process the Respondent issued a Notice of Intent to Issue a Financial Penalty on 13 December 2018 and then took account of some of the representations made by "the Appellants". This resulted in further correspondence from an employee of "the Respondent" seeking financial disclosure from "the Appellant", but "the Appellant" did not disclose the information requested and as a result "the Respondent" was unable to assess "the Appellants" financial situation. "The Respondent" issued Final Notices of a Financial Penalty on 5 March 2019, setting the penalty at £30,000, comprising £25,000 for the offence committed under section 234 of "the Act" with a further £7,500 for the offence under section 72 of "the Act". Reducing the total penalty to £30,000 pursuant to the totality of sentence principle.
66. The Tribunal now considers the Civil Financial Penalties Determination Record (bundle, page 339 to 361) and the matrix for use in determining the level of Civil Penalty (bundle, page 278 to 283). In relation to the offence of failure to licence the HMO the Tribunal agrees with "the Respondent" that the first tenancy agreement as produced at that time to "the Respondent" is dated February 2018 and that there are then four more with various dates up to 16 August 2018. The Tribunal adds that as of the tenancy being granted to Ms Popikova on 5 June 2018, a licence would have been required. There is disregard for the law over a period of time. Further, the Tribunal accepts the clear evidence that "the Appellant" had made a prior application for an HMO licence commencing in 2008 (paragraph 39, above) and that "the Appellant" was fully aware of the responsibilities that he had in relation to obtaining a licence. The Tribunal agrees that culpability is high but that harm is low and that results in a penalty of £7,500.
67. The Tribunal moves to consider the offence under section 234 of "the Act". There are breaches of four regulations which the Tribunal agrees are both high in culpability and risk to the tenants. Amongst all the hazards "the Appellant" has permitted a three storey building to be occupied in circumstances where the necessary fire doors, smoke alarms, and thumb turn locks were not present and that the presence of mortice locks might make escape from fire very difficult. The Tribunal agrees the penalty of £25,000 in respect of the offence contrary to section 234 of "the Act". The Tribunal agrees the total penalty of £30,000.

The Decision

68. The Tribunal is satisfied beyond any reasonable doubt that on 16 August 2018 "the property" was an HMO that required a licence and that "the Appellant" let out "the property" without a licence and has therefore committed the offence as detailed on the Final Notice to Issue A Civil Penalty, pursuant to section 72 of "the Act". The Tribunal is also satisfied beyond any reasonable doubt that on 16 August 2018 "the property" was an HMO and was being managed in breach of regulation 3, 4, 7 and 8 of the Management of Houses in Multiple Occupation (England) Regulations 2006 "the Appellant" committing an offence contrary to section 234 of "the Act".

69. The Tribunal is satisfied that the Civil Financial Penalty imposed has been set at the correct level at a total of £30,000. "The Appellant" is required to pay this penalty within 28 days to "the Respondent". The Tribunal confirms the Final Notice.
70. Any party wishing to appeal against this decision has 28 days from the date that the decision is sent to the parties in which to deliver to the Tribunal an application for permission to appeal, stating the grounds for the appeal and giving particulars of such grounds.

Judge C. P. Tonge
24 September 2019