FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

A: BTMMREMOTE

Case Reference	**:**	**CAM/42UH/HNA/2020/0003**
Property	**:**	**28 London Road, Pakefield, Lowestoft, NR33 7AG**
Applicant	**:**	**Ying Chen**
Representative	**:**	**In person**
Respondent	**:**	**East Suffolk Council**
Representative	**:**	**Mr Martin Clarke, solicitor**
Type of Application	**:**	**Appeal against the imposition of a financial penalty, pursuant to s.249A and Schedule 13A of the Housing Act 2004**
Tribunal Members	**:**	**Tribunal Judge Evans** **Mrs M Hardman FRICS IRRV(Hons)**
Date and venue	**:**	**By telephone (BT Meet Me)**
Date of Decision	**:**	**14 July 2020**

DECISION

DECISION

The Tribunal determines that the Appeal by the Applicant is partly successful, in that the Tribunal varies the financial penalty by reducing the amount imposed to the figure of £4,000.

INTRODUCTION

1. By an application dated 14th February 2020 made under section 249A and Schedule 13A of the Housing Act 2004 ("the Act"), the Applicant appeals the imposition of a financial penalty of £10,000 imposed by the Respondent Council, the latter having been satisfied that the Applicant had committed an offence pursuant to section 72(1) of the Act, in so far as it found that on 14th May 2019 the Applicant did not have the benefit of a HMO licence in respect of 28 London Road, Pakefield, Lowestoft, NR33 7AG ("the Property"), premises of which she is alleged to have been in control at the time.

2. This decision follows a remote hearing on 22nd June 2020 which was not objected to by the parties. The form of the remote hearing was A: audio (BT Meet Me fully remote). A face-to-face hearing was not held, because it was not practicable on account of the Coronavirus pandemic and all issues could be determined in a remote hearing. At the outset, the Tribunal confirmed that the hearing be held in private but recorded on BT MeetMe.

3. The documents before the Tribunal were contained in an Applicant's bundle of 55 pages, a Respondent's bundle of approximately 339 pages, plus a supplemental response by the Respondent of 5 pages, the contents of all of which we have read, and for which we are grateful.

4. The Applicant had the benefit throughout the hearing of a Mandarin interpreter by the name of Mr Ning Yao, whose assistance the Tribunal found invaluable, and for which its gratitude is extended.

BACKGROUND

5. The brief facts are as follows:

6. The Property consists of a takeaway restaurant on the ground floor, and 4 rooms on the first and second floors, with yet another room in the attic. This case concerns the rooms from the first floor upwards.

7. In October 2016, the Applicant alleges that she left the Property and moved in with her husband and 3 children into her sister-in-law's accommodation at 18 Kimberly Rd, Lowestoft, Suffolk.

8. In or about May 2017 there had been a previous inspection of the Property by the council, which led to an Emergency Prohibition Order (EPO) being placed on it. On 7th September 2017 and letter was sent to the Applicant's husband and to her sister-in-law revoking the EPO, on the grounds that works had been undertaken to the Property. The letter also advised that should a property be used to house 5 or more persons, a licence for a HMO would need to be applied for.

9. On or about 8th May 2019, Mr Adrian Bailey-Lewis of the Respondent council was asked by the principal environmental health officer to investigate if the Property was being used as a house in multiple occupation.

10. Accordingly, on 14th May 2019 Mr Bailey-Lewis and a colleague made an unannounced visit to the Property at about 11:45 AM.

11. The Respondent's case is that on that day there were at least 5 persons resident in the Property within 5 bedrooms. In particular:

    (1) In the first floor rear bedroom there was a double bed, and a fire door which was wedged open.

    (2) In the first floor front bedroom, there was a person sleeping, who was male, and there was a lock on the door.

    (3) The kitchen fire door was propped open.

    (4) On the second floor within the rear bedroom there was a bed which appeared to be in use, also a lock on the door.

    (5) In the second floor front bedroom there was a double bed and a lock on the door. A single male was present in the room, and there were children's toys and a play mat contained within.

    (6) In the attic room there was a double mattress on the floor, and no fire door. There were also cosmetic products within the room and a phone which was being charged.

    (7) On the 2nd floor landing there was a damaged plug socket.

    (8) In the ground floor hall, various items obstructing access, and an unprotected cupboard containing the gas meter and potentially hazardous chemicals.

    (9) The WC contained no wash hand basin.

    (10) There was an extension lead running up to the attic via the stairs, causing a trip hazard.

12. It is notable that on this day photographs and detailed notes were taken by the Respondent Council, and we have had the benefit of seeing those.

13. On 17th May 2019, an improvement notice was served on the Applicant's sister-in-law and the Applicant, requiring works to be executed to the Property by 14th August 2019.

14. On 21st May 2019, a Prohibition Order was placed on the use of the attic, when another notice was served by the Respondent on the Applicant and her sister-in-law.

15. On 23rd May 2019 Mr Bailey-Lewis met again with the Applicant, and with some electricians instructed by the Applicant in relation to works. It is alleged that on this day the Applicant admitted she was in control of the Property, and also that she did not dispute that there were 5 persons in occupation on 14th May 2019.

16. On 19th June 2019, Mr Bailey-Lewis revisited again and saw that works were in progress.

17. On 5th August 2019 Mr Bailey-Lewis inspected for the final time, when he found that works requested pursuant to the improvement notice had been executed, and the attic was now being used as a store only.

18. On 6th August 2019 by notice to the Applicant, her sister-in-law and Mr Elliott (the alleged controller of the restaurant premises), the improvement notice which had been previously served was revoked.

19. On 18th October 2019 Mr Bailey-Lewis made his first statement, and 3 days later he met with his line manager to discuss the options the Respondent was going to take.

20. On 13th November 2019, the Respondent served a notice of intent on the Applicant at 18 Kimberly Rd, indicating it was minded to impose a financial penalty in the sum of £10,000. It invited representations from the Applicant.

21. On 29th November 2019, the Applicant sent a letter of representation to Mr Bailey-Lewis enclosing a medical report in relation to her mental health, which appears to have been received on or about the 2nd December 2019. In the letter of representation, she disputes someone was living in the attic room. Rather she was using it to take breaks/to change clothes. She also makes reference to her limited English and mental health issues.

22. These representations were passed to the Council's head of housing, who wrote to the Applicant's mental health advisor on 3rd January 2020, indicating that the Respondent was still minded to proceed with the action it intended.

23. On 22nd January 2020 the Respondent council sent a final notice to the Applicant alleging she was the person having control of and/or managing the Property on 14th May 2019 in the absence of a licence having been granted. The letter confirmed the council's decision to serve impose a financial penalty of £10,00 payable, within 28 days.

24. On 14th February 2020, the Applicant settled an application for a temporary extension notice pursuant to section 62 of the Act, and enclosed photographs of the attic and other rooms purportedly showing their current (non)use.

25. On the same day, the Applicant issued her application for an appeal against the financial penalty pursuant to section 249A of the Act.

26. On 18th February 2020, the Applicant (through legal representatives) sent a letter and supporting documents to Mr Bailey-Lewis, being her application for the temporary extension notice.

27. On 26th February 2020, the council refused the application for the temporary extension notice, by letter from Mr Bailey-Lewis to the Applicant's solicitors.

28. On 14th April 2020 Regional Tribunal Judge Wayte gave directions in these proceedings.

29. On 15th May 2020 Mr Bailey-Lewis made his second statement on behalf of the Respondent.

30. On about the same date the Respondent made its written response to the appeal.

31. On 21st May 2020 Miss Teresa Howarth made her witness statement on behalf of the Respondent.

32. On 4th June 2020 the parties had a meeting, as directed by the Tribunal, but no issues were resolved.

33. On 4th June 2020, the Applicant made her witness statement.

34. On the same day, a witness statement was also made by the Applicant's sister-in-law Jin Zhang.

35. On or about the 17th October 2020 the Respondent made its final written response to this application.

ISSUES

36. The issues were noted at the start of the hearing to be:

    (1) Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of the Property;

    (2) Whether the financial penalty is set at an appropriate level having regard to all relevant factors.

37. There was no dispute as to whether the local housing authority had complied with all the necessary requirements and procedures relating to the imposition of the financial penalty, including the preliminary Notice of Intent on 13th November 2019 and the Final Notice on 22nd January 2020, both of which we have considered in detail.

THE LAW

38. The law applicable to this matter is set out in the Appendix attached.

39. In summary, the Respondent's case is that an offence was committed on 14th May 2019 pursuant to section 72(1) of the Housing Act 2004, in so far as:

    (1) The Applicant was a person having control of or managing a HMO which was required to be licensed under Part 2 of the Act;

(2) Pursuant to section 61 of the Act, it is a requirement that every HMO to which Part 2 applies must be licensed, unless a temporary exemption notice is in force or an interim or final management order is in force;

(3) By section 55(3) of the Act, the appropriate national authority may by order prescribe descriptions of HMOs;

(4) Regulations provide that a HMO is prescribed if it is:

(a) occupied by 5 or more persons;

(b) occupied by persons in 2 or more households;

(c) meets one of the 3 statutory tests (and in this case it was the standard test under section 254 of the Act, namely):

(i) a building consisting of one or more units of living accommodation not consisting of self-contained flats;

(ii) living accommodation occupied by persons who do not form a single household;

(iii) the living accommodation is occupied by those persons as their only or main residence, or they are treated as so occupying it;

(iv) their occupation of the living accommodation constitutes the only use of that accommodation;

(v) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation;

and

(vi) 2 or more of the households who occupied the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

40. The Tribunal is mindful of the recent cases of *Sutton v Norwich CC* [2020] UKUT 0090 (LC) and *London Borough of Waltham Forest v Marshall* [2020] UKUT 0035 (LC), in which the Upper Tribunal emphasised that the First Tier Tribunal should give due deference to the Council's decision, and not depart from a local authority's policy in determining the amount of a financial penalty, except in certain circumstances (e.g. where the policy was applied too rigidly), albeit that the Tribunal's task is not simply a matter of reviewing whether a penalty imposed was reasonable: it must make its own determination as to the appropriate amount of the penalty, having regard to all the available evidence.

41. The Tribunal also bears in mind *Opara v Olasemo* [2020] UKUT 0096 (LC) at paragraph 46, in which the Upper Tribunal warned that, when applying the criminal standard to their fact finding, Tribunals should avoid being overcautious about

making inferences from evidence. It observed that, for a matter to be proved to the criminal standard, it must be proved beyond all reasonable doubt; it does not have to be proved beyond all doubt at all.

42. The Tribunal also bears in mind *IR Management Services v Salford City Council* [2020] UKUT 0081 (LC) a financial penalty had been imposed for breach of HMO regulations, but the director of the appellant company argued that the reasonable excuse defence applied: he claimed not to have known that the premises concerned were being operated as an HMO. On appeal, the Upper Tribunal confirmed that, whilst a Tribunal must be satisfied beyond reasonable doubt that each element of the relevant offence had been established on the facts, an appellant who pleads a statutory defence must then prove on the balance of probabilities that the defence applies.

HEARING

43. At the commencement of the hearing we reminded the Applicant that whilst she could not be prosecuted for any offences for which a financial penalty had been imposed, she could be prosecuted for other matters admitted by her or in respect of which we made findings of fact. She was reminded that she did not have to answer any question or make any statement which might tend to incriminate her, although the Tribunal might draw an adverse inference from her failure to answer. She indicated that she wished to proceed.

44. With the agreement of the parties, we heard the Respondent's evidence first, this being a rehearing of its decision to impose a financial penalty. The Respondent called:

    (1) Adrian Bailey-Lewis;
    (2) Theresa Howarth.

45. The Applicant was invited to and did ask questions of the witnesses.

46. Mr Bailey-Lewis explained in cross examination that all five rooms bore signs of occupation: beds were made up or slept in, and personal possessions on view. He said that there were signs that rooms had been occupied for some considerable time. He added that his experience as an environmental health officer with an expertise in houses in multiple occupation assisted him in his assessment that all rooms were currently being lived in.

47. When asked about the Applicant's ability to understand English, Mr Bailey-Lewis explained that he spoke with the Applicant on 14th May 2019 by telephone, met with her on the 23rd May 2019, and again on 5th August 2019; that during these conversations the Applicant asked leading questions which indicated she understood what was being said. He offered the Applicant a translator if she wanted one, but she declined.

48. Mr Bailey-Lewis confirmed his evidence at paragraph 17 of his October 2019 statement that, on the 14th May 2019, beds were in use and the Applicant did not dispute this as a fact, but merely offered up the excuse that the person that occupied the attic room was only doing so on a temporary basis. He noted that the Applicant

did not say at any time that she was living in the attic; she later alleged the possessions were her own in that room, but the evidence given to him on 23rd May 2019 suggested otherwise.

49. Mr Bailey-Lewis also amplified his evidence insofar as the 2nd floor front room was concerned. He explained that the gentleman who answered the door did not speak much English, but he did understand a question asked of him, in terms of whether he was living there. The male nodded and said yes in English. Further, the door was locked when Mr Bailey-Lewis knocked on the door, and when opened by the man, he indicated (by pointing) that it was his room when asked. Mr Bailey-Lewis also explained that there were toiletries in the room, and food, as well as personal possessions.

50. The Applicant gave evidence according to her statement of case/witness statement. Whilst the Applicant's witness statement did not indicate on its face that it had been translated to her in Mandarin, it was established that a solicitor had undertaken that task when the Applicant signed it.

51. In summary, the Applicant advanced a defence on 3 grounds:

(1) The Property was not occupied by 5 persons or more on 14th May 2019, or was otherwise not an HMO;

(2) She had made a temporary extension notice application;

(3) She had a reasonable excuse pursuant to s.72(4) of the 2004 Act, in terms that:

(a) Mr Neil Elliott was using a room on the 1st floor and paid no rent; his occupation was a matter of goodwill;

(b) She did not speak English well and not fully understand the requirements for licensing;

(c) She was never aware she had to make an application for a licence;

(d) She had complied with improvement notices before;

(e) Her father-in-law would stay from time to time but for no more than six months;

(f) Her friend (also called Ms Chen) would stay occasionally.

52. The Applicant was cross-examined by the Respondent's solicitor. It is notable that the Applicant declined to answer the question posed of her by Mr Clarke in terms of "can you name the persons in the property at the time?".

53. Further she declined to answer the suggestion put by Mr Clarke that the persons living at the property did not form a single household unit.

54. The Applicant's sister-in-law also gave evidence. She confirmed in cross-examination that the Applicant had lived with her since October 2016.

55. The following points are of additional note:

(1) In paragraph 6 of the Applicant's witness statement, she admits that Mr Elliott helps her to "look after the place";

(2) In paragraph 9 of the same statement, the Applicant says that "as far as she knows" the Property had not had 5 or more people living there, except for her own family;

(3) At paragraph 10 of the same statement, she alleges that she sometimes used the attic to rest for a while.

FINDINGS

56. We remind ourselves that we must be satisfied beyond reasonable doubt of the matters required to be proven, in particular that a relevant housing offence had been committed on 14th May 2019.

57. Firstly, we consider the Applicant was a person in control of an HMO for the purposes of s.263(3) of the 2004 Act. The Tribunal finds that the Applicant did admit this fact to the Respondent on 23rd May 2019, and we found Mr Bailey-Lewis to be an impressive and reliable witness on this point, amongst others. Further, when cross-examined on this point by Mr Clarke, the Applicant admitted that she had said to Mr Bailey-Lewis that she was in control of the Property.

58. Secondly, we find beyond reasonable doubt that there was the commission of an offence under section 72(1) of the Housing Act 2004 on 14th May 2019, for the following reasons:

(1) The Tribunal finds as a fact that the Property satisfied the standard test under section 254 of the Act:

(a) It was not an issue that the rooms were not self-contained flats;

(b) The living accommodation was occupied by persons who did not form a single household, because even on the Applicant's own case, Mr Elliott was in occupation and he alone formed one household; the other persons found on the day (2 males) were of Chinese origin and not of his household;

(c) The Tribunal does not accept the evidence of the Applicant that she was using the attic room for the purposes she claims. Such a contention was made after the event, and does not reflect the evidence of Mr Bailey-Lewis, whose written and oral recollections the Tribunal prefers;

(d) The Tribunal is satisfied beyond reasonable doubt that the living accommodation in the property was occupied by persons as their only or main residence. We were impressed by the evidence of Mr Bailey-Lewis both written and oral, underscored by the photographic evidence and notes taken on 14th May 2019. The nature and extent of the occupation of the rooms, together with such other important evidence such as the placement of locks

on the doors, leads us to conclude that the persons therein were living there as their residences;

(e) The Tribunal is further satisfied for similar reasons that the persons' occupation of the living accommodation constituted their only use of that accommodation;

(f) The Tribunal is also satisfied that at least in relation to Mr Elliot, consideration was being given for his occupation; even if his occupation was rent (money) free, it is clear that he was assisting the Applicant to look after the place, which was inextricably linked to his employment in the takeaway business below (which would appear to have been controlled by the Applicant's husband). It is significant that, notwithstanding what was expressly stated in the Applicant's statement, the Applicant sought to deny under cross-examination that Mr Elliott helped to look after the Property. We find no credible reason for the Applicant's change in evidence;

(g) The Tribunal is yet further satisfied beyond reasonable doubt that 2 or more of the households who occupied the living accommodation were sharing one or more basic amenities, or the living accommodation was lacking in one or more of the basic amenities. In this regard the Tribunal has in mind the shared kitchen and WC;

(2) As to the number of persons in occupation, as found above, the Tribunal is satisfied that on the material date the Applicant was not in occupation of the attic room, and that the 4 rooms on the first floor and 2nd floor plus the attic room were all being occupied as residences by at least 5 other persons. We take into consideration that the Applicant was not prepared to name the persons who were using the rooms in the property, nor was there evidence (whether in writing or orally) from the Applicant's father-in-law or friend Mei Chen that they were visiting or staying there on 14th May 2019. However, we do take into consideration that the Applicant on 23rd May 2019 did not dispute that there were 5 persons in occupation, and we accept Mr Bailey-Lewis's evidence in this regard.

59. The Tribunal rejects the Applicant's defence that she had applied for a temporary exemption notice, for the simple reason that she does not satisfy the requirements of section 72(4) of the Act, which provides that in proceedings against a person for an offence under subsection (1) it is a defence that <u>at the material time</u> a notification had been duly given in respect of the house under section 62(1). The Applicant did not notify the Respondent of her intention to take particular steps with a view to securing that the property was no longer required to be licensed until 14th February 2020.

60. We also reject the Applicant's defence of reasonable excuse. The Tribunal considers that none of the matters referred to in paragraph 51(3) above or other factors were capable of amounting to a reasonable excuse on balance of probabilities. In particular, the Applicant's alleged ignorance of the law was not a reasonable excuse; as for Mr Elliott's occupation, as we have found, this was for a consideration, and the other persons in occupation of the premises were not on balance of probability either the Applicant's father-in-law or her friend Miss Chen.

61. The Tribunal therefore confirms the Respondent Council's decision to impose a penalty in the final notice. An offence had been committed, and it was in the public interest to impose such a financial penalty.

62. However, we consider the financial penalty should be varied and reduced. In so doing, we have had regard to the MHCLG Guidance for Local Authorities issued under paragraph 12 of Schedule 13A to the 2004 Act. MHCLG Guidance encourages each Local Authority to develop their own policy for determining the appropriate level of penalty. The maximum amount (£30,000) should be reserved for the worse offenders. The amount should reflect the severity of the offence as well as taking into account the landlord's previous record of offending, if any. Relevant factors include:

    - Punishment of the offender
    - Deter the offender from repeating the offence
    - Deter others from committing similar offences
    - Remove any financial benefit the offender may have obtained as a result of committing the offence
    - Severity of the offence
    - Culpability and track record of the offender
    - The harm caused to the tenant

63. As to the above, the first 3 bullet points speak for themselves.

64. As to the 4th, the Tribunal have no evidence that the Applicant had been in receipt of rents from the persons in occupation, despite the Respondent's legitimate suspicions.

65. As to severity of the offence, we have had regard to the fact that the Respondent's imposition of a penalty was based on failings on one particular day, not over a period. Having said that, we cannot ignore the fact that failure to obtain necessary licensing is a serious matter.

66. The Applicant does not have a track record for offences. The Respondent Council properly conceded during the hearing that the sins of the Applicant's husband and sister-in-law in 2017 could not properly be visited on the Applicant. There was no housing offence alleged or proven against the Applicant at that time, although we accept she was spoken to by Ms Howarth on 9th May 2017 regarding fire safety responsibilities of persons in control of a HMO, and the Applicant had stated that her husband ran the takeaway business on the ground floor. Ms Howarth said that the failure to serve notices on the Applicant in 2017 had been an error on the Respondent's part. There was no evidence, however, that the Applicant had been aware of the need to licence in the letters sent to her husband or sister-in-law. An expectation that the same would be shared with the Applicant is understandable, but is not enough in our view.

67. In terms of culpability, the Tribunal reflects in its findings in paragraphs 57 to 60 above. We conclude this was a case of low culpability, albeit at the upper end of the scale.

68. No harm was actually caused to any occupant from the absence of licensing, although we have to quantify the risk of the same happening. Those in the Property were exposed to trip hazards, a lack of fire protection, and hygiene issues. We conclude that there was a medium risk of harm.

69. Cross-referencing our findings to the Respondent's financial table annexed to the May 2020 statement of Mr Bailey-Lewis, we were greatly assisted by the concessions made by the Respondent during closing submissions, as follows:

    (1) When assessing the track record of the Applicant, its score of 4 should be reduced to 2, given that EPO in 2017 was imposed on third parties and not the Applicant, albeit that there was some evidence that she appeared to be a person in control of the Property at the time;

    (2) When assessing the economic impact on the offender, the council's score of 2 should be reduced to 1, given that the council was not prepared to disclose the Applicant's alleged links with 2 other food businesses in the area, in relation to which the Tribunal had no evidence;

    (3) When assessing the effect of the financial penalty as a deterrent to the Applicant, the council's score of 5 should be reduced 2;

    (4) When assessing whether the financial penalty is a proportionate punishment compared to prosecution in the Magistrates Court, the council's score of 4 should be reduced to 2, recognising that a significant sum being apportioned to reflect the unlimited fine in the criminal courts would apply in every case before the council;

    (5) When assessing the effect of the financial penalty as a deterrent to others, the council's score of 4 should be reduced to 1, again because the council was not prepared to identify the food businesses in the area to which the property was allegedly linked.

70. This reduction in score from a total 31 points to 20 points resulted in the Applicant's case falling within the Respondent's penalty table within the range of 15 to 21 points, leading to a revised penalty of £5000.

71. The Tribunal considers it a mitigating factor that the Applicant undertook the works promptly after the visit on 14th May 2019. We also consider it a mitigating factor that the Applicant was subject to some mental health issues at the time, although it is true to say the medical evidence provided does not draw a direct causal link between the Applicant's actions and her health issues. We also accept the Applicant's submission in closing that the proceedings have been an emotional stress on her.

72. We have information in the Applicant's witness statement as to her means. The Tribunal takes that into consideration also, mindful that there was no direct evidence

of any financial gain to the Applicant which might shed a different light on her stated finances.

73. In all the circumstances the Tribunal considers the appropriate penalty should be varied to one of £4,000.

Judge: 

S J Evans

Date:
14/7/20

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the Property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

APPENDIX

Housing Act 2004

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where– (a) they are HMOs to which this Part applies (see subsection (2)), and (b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority– (a) any HMO in the authority's district which falls within any prescribed description of HMO, and (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless– (a) a temporary exemption notice is in force in relation to it under section 62, or (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

…

(5) The appropriate national authority may by regulations provide for– (a) any provision of this Part, or (b) section 263 (in its operation for the purposes of any such provision), to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations. A "section 257 HMO" is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)– (a) references to a licence are to a licence under this Part, (b) references to a licence holder are to be read accordingly, and (c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

62 Temporary exemption from licensing requirement

(1) This section applies where 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, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.

(2) The authority may, if they think fit, serve on that person a notice under this section ("a temporary exemption notice") in respect of the house.

(3) If a temporary exemption notice is served under this section, the house is (in accordance with sections 61(1) and 85(1)) not required to be licensed either under this Part or under Part 3 during the period for which the notice is in force.
...

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.

(2) A person commits an offence if– (a) he is a person having control of or managing an HMO which is licensed under this Part, (b) he knowingly permits another person to occupy the house, and (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if– (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and (b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time– (a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(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.

...

[(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.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either– (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are– (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of [the appropriate tribunal]) has not expired, or (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

S.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.

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if– (a) it meets the conditions in subsection (2) ("the standard test"); (b) it meets the conditions in subsection (3) ("the self-contained flat test"); (c) it meets the conditions in subsection (4) ("the converted building test"); (d) an HMO declaration is in force in respect of it under section 255; or (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if– (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats; (b) the living accommodation is occupied by persons who do not form a single household (see section 258); (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259); (d) their occupation of the living accommodation constitutes the only use of that accommodation; (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

...

(8) In this section– "basic amenities" means– (a) a toilet, (b) personal washing facilities, or (c) cooking facilities; "converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed; "enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30); "self-contained flat" means a separate set of premises (whether or not on the same floor)– (a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants.

S.263 Meaning of "person having control" and "person managing" etc.

(1) In this Act *"person having control"* , in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) *"rack-rent" means* a rent which is not less than 2-thirds of the full net annual value of the premises.

(3) In this Act *"person managing" means*, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Schedule 13A

1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a "notice of intent").

2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

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

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

3 The notice of intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4.

4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ("the period for representations").

5 After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and

(b) if it decides to impose a financial penalty, decide the amount of the penalty.

6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty.

7 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 given.

8 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.

9 (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 a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

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.

11 (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

(a) signed by the chief finance officer of the local housing authority which imposed the penalty, and

(b) states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5) In this paragraph *"chief finance officer"* has the same meaning as in section 5 of the Local Government and Housing Act 1989.

12 A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

Citation and Commencement

1.—(1) This Order may be cited as the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.

(2) This Order comes into force on 1st October 2018.

Application

2. This Order applies in relation to an HMO in England.

Interpretation

3. In this Order "the Act" means the Housing Act 2004.

Description of HMOs prescribed by the Secretary of State

4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a)is occupied by five or more persons;

(b)is occupied by persons living in two or more separate households; and

(c)meets—

(i)the standard test under section 254(2) of the Act;

(ii)the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii)the converted building test under section 254(4) of the Act.