FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/36UD/HNA/2020/0062**
Property	**:**	**Flat 1, 67 High Street Harrogate, HG2 7LQ**
Applicant	**:**	**Jamshid Jalali Ghazaani**
Respondent	**:**	**Harrogate Borough Council**
Representative	**:**	**Counsel Ms Vodanovic**
Type of application	**:**	**Appeal against a financial penalty – Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal member(s)	**:**	**Judge J White** **Mr Hossain Valuer**
Venue	**:**	**(Video)** **Northern Residential Property First-tier Tribunal, 1 floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester M1 4AH**
Date of decision	**:**	**8 September 2021**

Date of Determination : 28 September 2021

DECISION

The Order

The Tribunal orders as follows:

(1) In accordance with paragraph 10(4) of Schedule 13A to the Housing Act 2004, ("the 2004 Act"), the final notice dated 16 September 2020 is confirmed so as to impose a financial penalty of £25,000 on the Applicant.
(2) The financial penalty is payable by the Applicant within 28 days of the date of this Order.

The Application

1. The application was made on 13 October 2020. Following Directions issued by the Tribunal the parties each submitted a bundle of documents as set out below. The original hearing listed for 14 June 2021 was adjourned due to the Applicant suffering a bereavement. The Tribunal took the opportunity to allow a further inspection, photographs, and other evidence from both parties. An Inspection took place on 12 August 2021 and Mr Ghazaani was present. Following the inspection, the Respondent sent a supplementary bundle. Prior to the reconvened hearing the Applicant requested an adjournment.

2. This Tribunal convened on 8 September 2021 to determine the matter by video hearing. The Applicant, Mr Ghazaani represented himself. He withdrew his request for an adjournment and the Tribunal was satisfied that he had the opportunity to consider the further document. The Respondent was represented by Counsel Ms Vodanovic of Trinity Chambers. Laura Holden, a Respondent EHO was in attendance.

3. At the end of the hearing the Applicant requested that the Tribunal carry out an inspection. The Tribunal did not consider that it was necessary or proportionate to reach a fair decision. The Respondent had supplied a plan, internal and external photographs showing the aeras where we needed to reach a determination. The commission of the offence was admitted by the Applicant, and he was appealing the level of penalty on the grounds of proportionality.

Law and Guidance

Power to impose financial penalties

4. New provisions were inserted into the 2004 Act by Section 126 and Schedule 9 of the Housing and Planning Act 2016. One of those provisions was section 249A, which came into force on 6 April 2017. It enables a local housing authority to 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.

5. Relevant housing offences are listed in section 249A(2). They include the offence, under section 30 of the Act of failure to comply with an Improvement Notice.
6. Only one financial penalty under section 249A may be imposed on a person in respect of the same conduct. The amount of that penalty is determined by the local housing authority (but it may not exceed £30,000), and its imposition is an alternative to instituting criminal proceedings for the offence in question.

Procedural requirements

7. Schedule 13A to the 2004 Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under section 249A. Before imposing such a penalty on a person, the local housing authority must give him or her a notice of intent setting out:
   (i) the amount of the proposed financial penalty;
   (ii) the reasons for proposing to impose it; and
   (iii) information about the right to make representations.

8. Unless the conduct to which the financial penalty relates is continuing, that notice
must be given before the end of the period of six months beginning on the first day on which the local housing authority has sufficient evidence of that conduct.

9. A person who is given a Notice of Intent has the right to make written representations to the local housing authority about the proposal to impose a financial penalty. Any such representations must be made within the period of 28 days beginning with the day after that on which the notice of intent was given. After the end of that period, the local housing authority must decide whether to impose a financial penalty and, if a penalty is to be imposed, its amount.

10. If the local housing authority decides to impose a financial penalty on a person, it must give that person a final notice setting out

    (i) the amount of the financial penalty;
    (ii) the reasons for imposing it;
    (iii) information about how to pay the penalty;
    (iv) the period for payment of the penalty;
    (v) information about rights of appeal; and
    (vi) the consequences of failure to comply with the notice.

Relevant guidance

11. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance ("the HCLG Guidance") was issued by the Ministry of Housing, Communities and Local Government in April 2018: Civil penalties under the Housing

and Planning Act 2016 – Guidance for Local Housing Authorities. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty should decide which option to pursue on a case-by-case basis. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state: "Generally, we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending."

12. The HCLG Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:

(a) Severity of the offence.
(b) Culpability and track record of the offender.
(c) The harm caused to the tenant.
(d) Punishment of the offender.
(e) Deterrence of the offender from repeating the offence.
(f) Deterrence of others from committing similar offences.
(g) Removal of any financial benefit the offender may have obtained as a result of committing the offence.

13. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, the Respondent's cabinet approved a Civil Penalties Policy on 20 June 2018, ("the Policy").

14. The Policy adapted by the Respondent consists of a step-by-step approach assessing the amount of penalty against a matrix. It then adds or subtracts 5% against aggravating and mitigating factors. Finally, there is an overall assessment as set out below.

15. The Tribunal can set aside a penalty which is inconsistent with the decision maker's own policy, but it must do so without departing from the policy, excepting any part of that Policy that does not comply with the Guidance. The burden is on the Applicant to persuade the Tribunal to depart from any policy. (London Borough of Waltham Forest v Marshall and Ustek [2020] UKUT 0035 (LC) followed in Sheffield City Council v Hussain [2020] UKUT 292 (LC)).

Appeals

16. A final notice given under Schedule 13A to the 2004 Act 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. However, this is subject to the right of the person to whom a Final Notice is given to appeal to the Tribunal (under paragraph 10 of Schedule 13A). Such an appeal may be made against the decision to impose the penalty, or the amount of the

penalty. It must be made within 28 days after the date on which the final notice was sent to the appellant. The final notice is then suspended until the appeal is finally determined or withdrawn.

17. In accordance with paragraph 10 of Schedule 13A the appeal is by way of a re-hearing of the local housing authority's decision as opposed to an review of their decision making. We are required to remake the decision and reach our own conclusions.

18. It may be determined by the Tribunal having regard to matters of which the authority was unaware. In Sheffield City Council v Hussain the Upper Tribunal considered the proper approach to remedial works undertaken after commission of offences and decided that in considering the amount of the penalty the Tribunal can only consider factors following the offence when it comes to considering mitigating and aggravating factors.

19. The Tribunal may confirm, vary, or cancel the final notice. However, the Tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Background

20. The Applicant is the owner and landlord of 67 High Street Harrogate, HG2 7LQ ("the Building"). The application relates to Flat 1 ("the Property"). It is a ground floor single storey flat to the rear of a commercial shop premises.

21. The Building is a 3-storey brick-built end-terrace with a slate roof. On the ground floor is a shop containing his business called PC City, a small communal area containing a kitchenette and the gas and electric meters. There is a flat on the second floor and another on the first floor. In order to enter the Property, there is a door to the gable wall leading to a communal hallway and staircase from which the shop and all flats can be accessed. The door to the Property opens into a lounge/kitchen area. Off this is a "through room" that leads a bedroom to the rear. Also, off the lounge/kitchen is a shower room and an external door that leads to the rear yard which is now covered and used for storage.

22. The applicant purchased the building in 2002. The living areas were initially used to house the workers in the shop. In around 2013 he converted the Building into three self-contained flats; retaining the shop. Mr Ghazaani has since rented the flats as residential lettings. They were heated by simple wall hung electric radiators operated by an on/off switch plugged into the wall. The bathroom was heated solely by a wall mounted blow air electric heater operated by a pull cord. He has not been able to establish that he has obtained planning permission or building regulation approval for the conversion. He disputes that the

Building is defined as a House in Multiple Occupation. He lets the Property for £450 per month excluding gas and electricity and other bills. It has been vacant since around December 2020. The other Flats rent for around £550 per month.

23. In 2014 the Fire and Rescue Service served a Prohibition Order on the Building due to problems with an electric socket and the absence of an electricity safety certificate. Mr Ghazaani obtained a certificate, and the Order was lifted.

24. On 27 January 2015, an Improvement Notice was served on the Property for the category 1 hazard of Excess cold. The date due for compliance was 24 June 2015 and Mr Ghazaani complied with the notice by 23 June 2015.

25. On 20 February 2019, the tenant of the Property made a complaint to the Respondents Housing Options team concerning the condition of the Property (the "First Tenant"). On 25 February 2019, the Environmental Health Officer ("EHO"), Claire Riley, inspected the Property. The first Tenant showed the EHO her electricity bills written on post it notes. The EHO inspected the metres that were sub metered to the commercial premises and sub metered to the three flats. The Applicant reads the meter and issues an informal bill to each tenant comprising of an amount to be paid written on a Post-it note.

26. On 5 March 2019, the Respondent sent an Initial Informal Notice to Mr Ghazaani to carry out the following works within the next two months:

(a) Remedy excess cold by supplying and fitting an efficient thermostatically controlled central heating system to the whole Property,
(b) Remedy falls on the level by replacing two cracked floor tiles ,
(c) Replace water damaged kitchen cupboard doors to improve food hygiene,
(d) Investigate and remedy damp and mould to above rear external door,
(e) replace the electrical consumer unit in the communal hallway labelled "landlords supply"

27. On 18 March 2019 the Respondent sent an email to the Applicant querying the electrical supply and nature of billing. The same day the Applicant replied that the First tenant had not paid her fair share of the electricity bill and threatening to cut off her electricity supply [Witness Statement CR 11 +12]. There followed further email correspondence and a reinspection on 15 March 2019.

28. The Property was empty between 30 April and 9 July 2019 when it was occupied by a second tenant.

29. On 13 September 2019, the EHO reinspected following a Notice of Entry sent on 23 August 2019. Readings with a damp meter showed

high levels of dampness to the bedroom wall and floor and mould growth on the floor.

30. On 25 October 2019, an Improvement Notice was sent to the Applicant for works to remedy a Category One and Two Hazard in accordance with the section 11 and 12 of the 2014 Act and the Housing Health and Safety Rating System (England)Regulations 2005 ("HHSRS"). The compliance date was 13 March 2020. This was sent by email, to the registered property of the Applicant and to his business address of PC City at the Building. The hazards identified were

(a) Hazard 1: Category 1 Excess Cold by inadequate heating to the whole of the property, damp to the side and above the kitchen door, floor, and wall in the bedroom. Mr Ghazaani was required to fit thermostatically controlled gas heating to the whole of the property so that the tenant had control over the supply. He was required to obtain a damp specialist survey, send this to the Respondent and carry out works advised in the survey.

(b) Hazard 2: Category 2 Food Safety by three damaged kitchen cupboard doors that required replacing with three matching doors.

(c) Hazard 3 Structural collapse by insecurely fitted cupboard doors at high level above the entrance door

31. On 13 March 2020, the EHO reinspected the Property and found that no works had been undertaken though were unable to determine if the hinges had been fitted.

32. On 2 July 2020, the Respondent sent a Notice of Intention to impose a financial penalty of £25,000 as the Applicant had failed to comply with an Improvement Notice. They assessed the level of harm and culpability as high, set out their reasons and listed aggravating and mitigating factors. The penalty was to be paid within 28 days and would be reduced if the Improvement Notice was complied with.

33. On 25 July 2020, the Applicant sent an email stating that he had not received the Notice and had now fitted the central heating, repaired the leak to the roof and fitted the kitchen doors.

34. On 12 August 2020, the EHO Lauren Holden inspected the Property. A third tenant was in occupation. They found that the central heating had been fitted but hot water from the new central heating was also feeding the sink in the commercial premises and flat 2. There were no thermostats and no radiator in the bathroom. Damp staining was still present in the bedroom. Only two of the required kitchen cabinet doors had been changed.

35. On 16 September 2020, the Respondent issued a final Financial Penalty Notice. As not fully complied and not admitted guilt. On 22 September, the Applicant stated that he had not yet made representations and would do so. He would disconnect the hot water

supply to the communal sink. On 13 October 2020, the Applicant made the application to the Tribunal. On 11 October 2020 he obtained a damp report.

36. On 3 December 2020, the EHO carried out a further inspection and found no works had been undertaken by the Applicant since 12 August 2020. At that time, no notice to inspect had been sent, though the EHO was invited into the Property by the then tenant, though this was denied by the Applicant.

37. Following further complaints of disrepair by a tenant, including in the common parts, two EHOs inspected all three flats on 7 April 2021. Formal notification of the visit was sent as well as a phone call and email to the Applicant. The email stated that the purpose of the inspection was to update the tribunal prior to the hearing. The Applicant did not respond to questions regarding any further works though said they had no right of entry without an order from the tribunal. Flat 1 is vacant, Flat 2 was occupied and should allow access. Flat 3 tenants were due to move out on 2 April 2021.

38. On 28 April 2021, the EHO requested a copy of the Gas safety and Electrical Installation Condition Report (EICR) as the building was classed as a House in Multiple occupation (HMO) in accordance with s257 of the 2004 Act. It is treated as an HMO as there are no records that following the Applicant's purchase of the building on 26 March 2002, there are no records that the Applicant complied with Building regulations or applied for planning permission when he converted the building into flats in 2013. The Applicant has refused to provide the certificates as he denies it is an HMO. This followed a report by a tenant that they had suffered from carbon monoxide poising as a result of a gas leak under the sink in the common area. They had also complained that the door to the shared electric meter cupboard was locked with no access to top up the meter.

39. On 25 May 2021, the EHO with an electrician and fire watch manager were denied access to the building. A formal notice had been sent and the Applicant confirmed by telephone call that he was denying access until after the hearing. He said this was due to there being a conflict of interest with this ongoing application. On 28 May 2021 three improvement notices and two hazard notices were served on the Applicant in respect of the common areas.

40. A final inspection was conducted on 12 August 2021 just prior to this hearing and found that no further work had been undertaken, though the property painted. There were high damp readings in the bedroom and mould under the floor covering. At the inspection, the Applicant confirms that the arrangement for billing tenants for electricity usage has not changed and the hot water supplies the common area kitchenette. During the inspection additional defects were noticed and

a new HHSRS was to be arranged. The Applicant has provided the EHO with a copy of valid PCRIS, gas and electricity certificates.

The Applicant's case

41. The Applicant made written submissions prior to the hearing. The Applicant relies on his witness statement supported by evidence set out elsewhere. Mr. Ghazaani made oral submissions

42. The Applicant's oral and written submissions reflected the grounds of the appeal set out in the Application as follows:

(a) The Applicant admits that he has committed the offence, though disputes that all of the works were necessary.

(b) The appeal is a challenge to the amount of the financial penalty which the Applicant believes is punitive, unmerited, and disproportionate;

(c) His evidence on whether he received the Notice of Intention and Improvement Notice was not consistent as set out below. He received the Notice of Intention of a financial penalty dated 2 July 2020. On receipt he contends that he carried out the works necessary as set out below.

(d) Despite not receiving the Notice of Intension he attempted to fit the gas central heating on 20 February 2020 but was unable to gain entry to the property due to the Tenant not allowing access and then COVID. He had received verbal notification at the inspections.

(e) The gas central heating was fitted on 21 July 2020. It was not clear that it should only supply the property. As soon as he was informed on 16 September he capped the water supply to the communal sink. It is still capped today.

(f) The leak to the roof had been repaired prior to 22 July 2020. At that stage he was advised by the roofer that there were no other areas of damp. He obtained a damp specialist survey on 11 October 2020 who advised that there was no damp in the property.

(g) He replaced two of the kitchen cupboard doors, but due to the age of the units he could not find a third door to match. In his view there is no longer a breach as there is no requirement for matching doors.

(h) He has not let the Property since December 2020 due to this ongoing application.

(i) In terms of the financial penalty calculation, he denied some of the facts relied on as set out below. He did not specifically reference the Policy

The Respondent's case

43. The Respondent relies on two bundles containing a response, witness statement by EHOs Claire Riley and Laura Holden together with all documents served, photographs and notes of inspections that took place as well as email correspondence with the Applicant. Oral submissions were made at the hearing by Ms Vodanovic of Counsel on behalf of the Respondent. Laura Holden gave oral evidence. Claire Riley was no longer employed by the Respondent.

44. The Respondent's oral and written submissions are summarised as follows:

(a) The chronology of events which preceded the issue of the Final Notice was outlined;

(b) They referred to the offences, dates of inspection and evidence of completed works. No works had been undertaken by the due date of 13 March 2020. The Applicant had received the Improvement Notice and was aware of the Initial Notice dated 5 March 2019. Whilst some work had been undertaken before the Final Notice on 16 September 2020, the Improvement Notice had still not been complied with.

(c) The witness statements, pocketbook entries and photographs as well as the oral evidence of Ms Holden confirmed the findings at the inspections and the findings and reasons set out in the Final Notice for the financial penalty of £25,000.

(d) The written and oral evidence of the Applicant was contradictory, inconsistent, and not supported by reliable documentary evidence, if at all.

(e) The actions of the Applicant following the Final Notice warranted an increased financial penalty of £27,500 as he had stopped cooperating with the investigation, and this had been allowed for in mitigating factors.

Our Determination

The Decision

45. The Tribunal was satisfied beyond reasonable doubt that the Applicant's conduct amounted to an offence under s234(3) of the 2004 Act, entitling the Respondent to impose a financial penalty under s249A of the 2004 Act.

46. The Tribunal was also satisfied that, in respect of the Notice of Intent and the Final Notice, the Respondent had complied with the following procedural requirements as required under Schedule 13A to the Act:

(a) the offence under s234(3) of the 2004 Act was continuing as at the date of the Notice of Intent, namely, 2 July 2020

(b) the Notice of Intent and the Final Notice contained the information as required under paragraphs 3 and 8 of Schedule 13A to the Act; and,

(c) the Notice of Intent contained information about the right to make representations.

47. The Tribunal determined the amount of the financial penalty to be imposed, is £25,000.

Reasons

48. The findings of fact above are uncontested between the parties. The Tribunal found that Mr Ghazaani's evidence was often inconsistent, contradictory, and evasive as set out below. The Respondent's case was largely cogent, credible, and substantiated by other evidence.

The Offence

49. The Tribunal finds beyond reasonable doubt that Mr Ghazaani has committed the offence for the following reasons:-

(a) Though Mr Ghazaani does not accept that the works required were necessary or reasonable he did not appeal the Improvement Notice and has admitted that he has committed the offence both in his written submissions and oral evidence. He states that he believes that he has now complied with the notice.

(b) The documents sent to the Applicant have been properly served. The proper service of documents, the fact that Mr Ghazaani stated that he attempted to start works and that he initially admitted to receiving the documents leads the Tribunal to a clear conclusion that Mr Ghazaani had full knowledge of the contents of the IN served on 25 October 2019 based on the following findings:

(i) Though he admits the offence his evidence on whether he received either the initial informal notice or the Improvement Notice sent on 25 October 2019 was contradictory. The Applicant claims that he did not receive any correspondence before 2 July 2020. The Tribunal does not accept this assertion. In contradiction to this and the claim he did not realise that the electric heaters were deficient he stated that he attempted to fit the gas central heating in February 2020, prior to any notification.

(ii) The Respondent was able to demonstrate effective service of documents in accordance with Service of Notices – section 246 of the 2004 Act, section 233 Local Government Act 1972 and section 7 of Interpretation Act 1978. Also, service by email is permissible as held by Sutton v Norwich City Council [2020] UKUT 90(LC). This was the address specified in the application and at the Land registry.

(iii) The Applicant has subsequently replied to emails and letters sent to the same address.

(iv) In oral evidence Mr Ghazaani said that the addresses and email were correct. He had had no other difficulty with receiving post. He admitted to receiving the email dated 25 October 2019 and the attached notice and that he had read the contents. In answer to a question why he had previously stated in written evidence why he had denied receiving the notice he answered that he had not received them by post though had by email.

(v) He later submitted that his earlier evidence was incorrect and that he had not in fact received the email. When asked why he had changed his mind he said that he was mistaken and during that period that particular email address was not working, and he was relying on his other email address. He provided no other explanation. We are not impressed by this change.

The nature of the offence and seriousness

50. In considering the penalty the Tribunal has to have regard to the seriousness of the offence. There are four hazards identified in the IN. the first two are category 1 hazards and the most serious in the HHSRS and the last two the least serious. The nature of the hazards and remedial action are set out above. In accordance with Hussain v Sheffield at:-

"46…An assessment of the seriousness of the offence should therefore focus on the circumstances of the offence itself and should take into account matters as they were at the date of the offence. 47. That is not to say that matters which occur after the offence has been committed are necessarily irrelevant to its seriousness. The longer an offence continues the more serious it may become,

and the decision maker, whether the authority or the FTT, may take into account what has happened between the time the offence was first committed and the date of the decision. But an offence of long duration does not become less serious by being remedied; it does not get any more serious, but nor does it become less serious."

51. **Excess cold:** Fit central heating fed from own gas supply: We found that this element of the offence was serious for the following reasons.

(a) The flat was unduly cold due to the inadequate electric heaters as set out above and that the supply of electricity was unreliable due to the tenant's lack of control over the meter as set out above. We did not accept that this method of payment or billing is acceptable. It is not a usual method of submetering as the submeter was a prepayment meter that was liable to run out if not topped up. The tenants were often not able to top up the meters as evidence from the EHO showed that the meter cupboard was locked during inspections. If they did top up the meter it could be used by other tenants. This was confirmed with conversations with tenants. It is open to abuse, there is no paper trail or control over supplier. Mr Ghazaani's oral evidence that anyone who did not pay their electricity could have their supply cut off and this was no different was not accepted. Unlike this arrangement the supply of electricity and gas by fuel companies is highly regulated due as the regular supply is an essential service.

(b) Mr Ghazaani gave evidence that he did attempt to fit gas central heating on 20 February 2020, though this was prevented by lack of access by the tenant and then by Covid. Given Mr Ghazaani's lack of credibility and failure to provide any evidence to support, this contention is not accepted. In any event he had been given informal notification on 18 March 2019, the Improvement Notice on 25 October 2019 gave a compliance date of 5 March 2020. He fitted gas central heating on 21 July 2020 as evidenced by a safety certificate and the inspection of 12 August 2020. He failed to comply with the Improvement Notice at that time on three counts. Firstly, he did not fit thermostats, secondly he did not fit central heating to the bathroom, thirdly he did not fit an supply for the exclusive use of the Property. This is admitted by Mr Ghazaani. He said it was because he was advised by the fitter that it was not necessary and was not aware that he was required to fit an exclusive supply. The supply fed hot water to the communal sink. Mr Ghazaani did not express any awareness as to why it was not acceptable for the tenant to pay for hot water to the sink of his commercial premises.

52. **Dampness**: Obtain specialist damp report, submit to council, and carry out work: We found that this element of the offence was serious particularly when taken together with the inadequate heating for the following reasons:

(a) The areas of dampness were in the bedroom, above the door, low level to the walls and to the floor. Damp readings, when taken by the EHOs were around 20-21, and clearly damp, though not all pervasive or the most serious. The photographic evidence shows damp staining, as well as black mould under the floor.

(b) Instead of obtaining a specialist report Mr Ghazaani gave evidence that he obtained a roofer to fix the flashings on the roof. He has not supplied a copy of the invoice or written details of the work. He gave oral evidence that the water was entering the cavity walls under the defective flashing and so the walls and floor appear damp, though he provided no expert or other evidence to support this assertion at that time. Once the roof was repaired, sometime in the summer of 2020 he should not be obliged to do further works. He did not address the continued evidence of dampness, instead accusing the Respondent of lack of independence.

53. **Food safety:** Remove three kitchen cupboard doors and replace with matching. We found that this element of the offence was minor though it was a concern that Mr Ghazaani had only replaced two of the doors saying he could not find three matching doors, despite the low cost of new standard cabinet doors.

54. **Structural collapse:** Provide and fit additional screws to hinges holding doors on cupboard above the flat entrance: We found that this element of the offence was minor though there was no evidence that the hinges had ever been replaced.

Local Housing Authority Policy on Civil Penalties

55. The Applicant did not address the Policy specifically or the approach to it at all, merely stating that the overall amount was disproportionate. He has given the Tribunal no reason to depart from the policy. The Policy sets out a number of steps. Each steps lists a number of factors to consider.

56. **Step 1.** The penalty will be based on the culpability and track record of the offender and the level of harm and then applying an amount for each based on either High, Medium, Low levels with amounts against each in a matrix.

57. **Culpability:** A person will be deemed to be highly culpable when they intentionally or recklessly breach or wilfully disregard the law. The Tribunal determines the Level of culpability is high taking in account the factors listed in the policy:

(a) History of noncompliance:

(a) There has been one previous occasion when an Improvement Notice was served and another where the fire service had to serve a prohibition notice, though both were then complied with.

(b) Failure to comply:

(a) The Applicant states that he did not receive the Notice is not credible as set out above. The notices were sent to the home and business address of the Mr Ghazaani as listed in the land registry and his own application to the Tribunal. He was also sent a copy by email and has responded to various emails at that address, such as the email of 18 March 2019. He admits that he did not comply by the date of the offence.

(b) The landlord set out in his evidence that he did fix the roof of the Property and provided a report. He has not claimed that he remedied the rising dampness in the bedroom. He claims he does not need to do so despite the high damp readings at low level and evidence of mould on the underside of the floor covering during inspections. The Tribunal found that this failure to take seriously the findings of the EHO or engage a properly qualified damp specialist in good time or at all demonstrates a wilful failure to comply.

(c) The Landlord did fit new central heating, though this was not until July 2020 though it did not solely serve the Property as required by the Notice. The Applicant's assertion that the Notice was not clear is disingenuous as using The Property's hot water system to supply the communal sink is underhand at best and fraudulent at worst. The evidence of the EHOs of 12 August 2020 as set out in their Witness Statement and oral evidence was clear cogent and credible. It is supported by evidence supplied by the gas company that only one gas metre was fitted to the building, and this was the case at the time of the notice.

(d) The Applicant only fitted two of the three cupboard doors. His reason that he could not find a matching door is not accepted as refitting three new matching doors would not have been an expensive remedy and was required to satisfy the notice.

(e) The Tribunal discounted the medium or low levels of culpability as, though it is a first offence, the failure is a significant risk to individuals as set out above and the Landlord did not provide evidence that he had systems in place to manage risk. He appeared reactive to the complaints of the Tenants or Local Authorities. He had been given a warning in March 2019 and so had over 12 months to comply.

(c) Failure to comply leading to significant risk-severity of the offence.

(a) Severity of the offence: The severity of the offence causes a significant risk as set out elsewhere.

(b) Experience of the landlord: The Applicant is an experienced Landlord owning and managing mainly

commercial properties and this building since 2001, with conversion into flats in 2013. The Respondent has provided a 2015 High Court judgement in a case involving the Applicant in a property ownership dispute with an individual. The judgement sets out that the Applicant is involved in international and domestic property businesses. At paragraph 12 it finds that "He runs a computer company PC City alongside a property company. He owns a number of Properties both in Iran and in the UK." [473-4]". In oral evidence the Applicant states that this Building is the only residential property he owns or manages. He has done so since 2013. He admits to having owned four properties in Iran, though he says he has now sold them. He admits to having a property company in the UK owning and managing commercial property.

(c) Financial gain: The Applicant states that the value of the Property and income return is so low it is now worth investing much money into the property. Whilst it is accepted that the rental income and value of the property is a factor in rent and level of fixtures and fittings, it is never a reason to breach a valid Improvement Notice. It is not a valid reason to not comply with landlord duties.

58. **Level of harm to the tenant:** The Tribunal has determined that the level of harm is high having regard to the actual, potential and likelihood of the harm.

(a) Though we do not have any direct evidence from tenants there is a pocketbook entry on 13 March 2020 stating the tenant "was in bed to keep warm and unable to make food as all cooking is electricity"

(b) It is well established that damp housing, particularly where this is the presence of mould and ineffective heating has a high risk of a serious effect on the health of a tenant particularly in respiratory illnesses.

(c) This is particularly so in accommodation where the rent is within the Local Housing Allowance. The ability of a tenant to control the heating and the effect of paying for other people's fuel usage, as in hot water to the communal sink, has a greater effect on tenants with low incomes.

59. Step 1 conclusions: Using the Respondent's matrix the high level of culpability and high level of harm provides a penalty of £25,000.

60. **Step 2 adjustments**: Each adjustment either increases or decreases the level by 5%. The Tribunal may take account of factors up to the date of the hearing. The Respondent asks the Tribunal to consider adding two aggravating factors and deducting only one as since the final penalty the Applicant has failed to cooperate with the Respondent in refusing access for inspections. This would provide a final penalty of £26,500.

61. **Aggravating factors**: The Tribunal has found the following aggravating factors.

(a) Continued failure to comply with the Improvement Notices: Subsequent to the civil penalty notice further inspections and evidence showed that no further works were undertaken.

(i) Mr Ghazaani did say that he capped the supply of hot water to the communal areas on 28 September 2020 and supplied an invoice. However, on each subsequent inspection the supply had not been capped. It is unclear whether it has ever been capped or whether the cap was removed. What is clear is that during the inspection of 3 December 2020 the pocketbook entry noted that the EHO *"switched tap on boiler fired up and out water came out"*. This is supported by evidence that there was still only one gas meter fitted on 27 November 2020.

(ii) There were high damp readings at low level and mould on the floor covering suggesting rising dampness. This was the same during inspections on 7 April 2021, 3 December 2020 and 12 August 2021 as evidenced by photographs, pocketbook entries and witness statements.

(iii) The Applicant provided a brief letter by Property Preservations Specialists dated 11 October 2020 stating that "all walls were tested with the aid of a probe and scan moisture meter and no rising damp was found…so as there is no ongoing problem (roof leak) I do not recommend any more work" . The Tribunal prefers the evidence of the EHO who provided photographic evidence of the damp tests carried out on three occasions. For example, a photo with a reading of 20.6 on 10 September 2019 and 21.5 [278] on 13 March 2020. The photograph of the damp meter reading on 12 August 2021 only shows a medium level reading. The EHO provided evidence that anything above a low level is evidence of dampness in the Property. The photographs clearly show evidence of black mould and damp patches that are clearly evident.

(b) Obstruction of the investigation: On balance the Tribunal finds that this has not been an aggravating factor following the final notice. Though the Tribunal is not impressed by the Applicant's accusations in relation to the Respondent and his refusal to allow access on 25 May 2021, his reason was that he was advised by his solicitor to wait until the Tribunal requested an inspection. He did subsequently allow an inspection on 12 August 2021. Significantly the Property has remained unlet during this period. With factors on both sides this element is neither aggravating nor mitigating.

62. **Mitigating factors:** The Respondent submits that there should be one mitigating factor as the Applicant does not have any convictions. The Tribunal considered all of the relevant factors listed in the policy and determined;

(a) The Applicant does not have any convictions and consequently it is a mitigating factor.

(b) The acceptance of responsibility is not a mitigating factor: Though the Applicant has accepted guilt for the offence in paragraph 10 of his Statement of Case and again in the oral hearing he proceeded to justify why no further works have been carried out and maintains his position that further works are not necessary, despite the findings at the inspections. He admitted to the EHO during the inspection of 12 August 2021 that the hot water still supplied the communal sink then at the hearing denied the same asking why the EHO did not check for herself. The acceptance of guilt is weighed against the denial of responsibility and so is not a mitigating factor.

(c) Voluntary steps is not a mitigating factor: The Applicant did not specifically put forward evidence of any voluntary steps and instead asserted that he required an independent body to adjudicate.

63. **The totality principle:** If issuing a financial penalty for more than one offence the Tribunal must consider whether the total penalties are just and proportionate to the offending behaviour. As only one offence has been committed it is not relevant to this application.

64. As there is one aggravating and one mitigating factor the financial penalty remains at £25,000.

65. **Is the civil penalty fair and proportionate but act as a deterrent and remove any gain as a result of the offence?:** The Applicant submits that the penalty is not fair or proportionate. In considering financial gain the Applicant submitted that the value of the Property is only around £35,000 and the rent is low at £450 per month and so he should not be asked to undertake works at great cost. The Tribunal determines that the penalty is fair and proportionate and high enough to be a deterrent for the following reasons.

(a) The Applicant has not supplied any documentary evidence of the cost of installing the heating or remedying the damp. He did say in oral evidence that the cost to the roof repair was £1800. The Respondent did not provide an estimate of cost. The Tribunal, using its own expertise has determined that the cost of remedying the defect will be relatively modest taking into account the size of the property and extent of repairs. It will not be more than the penalty.

(b) It is unclear the exact financial gain of the Applicant. On the one hand he has not carried out all the works, admits to choosing the cheapest specialist, used the tenants' supply of hot water for his commercial business and it was unclear if the Property was also paying the electricity bill for the shop. On the other hand, he did stop letting the property for substantial periods and said this was a result of the investigation. The Property has been empty since December 2020.

(c) The penalty must be a deterrent. Mr Ghazaani is a landlord of residential and commercial premises, both of which have to comply with a number of regulations. The Tribunal was not impressed by Mr Ghazaani's attitude to the issues as set out in this decision.

66. **Step 3: Final determination** considering the impact of the penalty on either, his ability to comply, on a third party, or on the offender and whether the penalty is proportionate to means. The Tribunal determines that there is no such impact for the following reasons;

(a) No submissions were received as to the impact of the penalty including his ability to pay or comply with the law or the extent of his means.

(b) Mr Ghazaani owns PC City and a property company. He owns property in the UK and until recently in Iran. There is no suggestion that his means have changed substantially since that time.

Conclusion

67. The offence has been committed beyond reasonable doubt.

68. The procedural requirements have been followed.

69. Taking into account guidance and following the Respondent's own policy the Tribunal determines the level of the penalty as £25,000.

70. The Applicant must pay the penalty within 28 days of service of this determination.

Judge J White
23 September 2021

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 Tribunal 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 for 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.