FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	**:**	CAM/00KG/HNA/2021/0030
Property	**:**	12 Southend Road, Grays, Essex RM17 5NH
Applicant	**:**	(1) Babatunde Ekine-Okunlana (2) Olubukola Ekine-Ogunlana
Applicant's Representative	**:**	In person
Respondent	**:**	Thurrock Council
Respondent's Representative	**:**	Nick Ham of counsel
Type of application	**:**	Appeal against financial penalty- s. 249A & schedule 13A to Housing Act 2004
Tribunal members	**:**	Mr Max Thorowgood, Roland Thomas & Adarsh Kapur
Venue	**:**	CVP on 26th October 2021
Date of Decision	**:**	1st March 2022

DECISION

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1. The application

1.1. By their application dated 16th June 2021 the Applicants appeal against the final civil penalty notices served upon them by Thurrock Council on 21st May 2021 in relation to their management of the premises known as 12 Southend Road, Grays ("the Premises").

1.2. The penalties imposed were as follows:

1.2.1. £5,645.00 in respect of the failure by the Applicants to comply with the Management Regulations contrary to s. 234 Housing Act 2004 in the period between 1st May 2018 and the date of the notice; and

1.2.2. £1,787.50 in respect of the failure by the Applicants to comply with the requirement to licence the premises for use as an HMO contrary to s. 72 Housing Act 2004 in the period between 1st June 2019 and the date of the notice.

2. The background

2.1. The following facts were not in dispute.

2.2. The Applicants purchased the Premises on 14th July 2017 in their joint names. Prior to their purchase they checked with the Council whether the Premises, which they intended to rent as an HMO, required to be licensed. They were told that provided they did not let to 5 or more people, there was no need for a licence.

2.3. The premises consist of 4 units of living accommodation none of which is a self-contained flat, although one is described as a studio it does not apparently have its own bathroom or kitchen. The living accommodation was occupied first by two and then, as from 1st May 2018, by three persons who did not form a single household. The premises were occupied by those persons as their only or main residences and that was the only purpose of the accommodation. They each paid rent to the Applicants in respect of their occupation and two of them, at least, shared

the kitchen and bathroom amenities. Therefore, as from 1st May 2018, at least, the Premises fell within the standard test prescribed by s. 254(2) for the purpose of determining whether a property constitutes an HMO for the purposes of Housing Act 2004.

2.4. We were told that, having consulted with the landlords on its database and at public forums, on 21st February 2019 Thurrock Council published a public notice in the Thurrock Gazette giving notice that it had exercised its powers pursuant to ss. 56-58 Housing Act 2004 to designate that, as from 1st June 2019, HMO's let to 3 or 4 persons in 2 or more households were required to be licensed by the Council. The fact of the designation was also published on the Council's website.

2.5. On 4th November 2020 the Council received a complaint from a Marcel Zacharias regarding a dispute between him and the Applicants concerning a charge being made for cleaning at the Premises in addition to the rent. That complaint prompted a referral to the Housing Enforcement team for investigations to be carried out to determine whether the Premises were being operated as a licensable HMO.

2.6. On 15th December 2020 Ms Isabelle Miller and Mr Neil Haycock visited the Premises where they met Mr Zacharias and a Mr Michal Katona both of whom were renting rooms in the premises. They were told by Mr Zacharias and Mr Katona that the studio room on the ground floor was occupied but they were not able to inspect it. The fourth room was not occupied, having recently been vacated.

2.7. Mr Zacharias agreed to make a witness statement confirming the information he had given but Mr Katona declined to do so.

2.8. Their inspection revealed the following breaches of the LACORS guidance for the management of HMO's concerning fire safety:

2.8.1. An absence of an inter-linked, mains powered smoke detection system and/or a heat detection system in the kitchen;

2.8.2. A lack of keyless egress from each accommodation unit and from the main entrance door to the Premises;

2.8.3. An absence of fire doors with self-closers to the accommodation units; and

2.8.4. No fire blanket in the kitchen.

2.9. Having completed their inspection, on 17th December 2020, Ms Miller wrote to the Applicants asking that they complete a questionnaire concerning their management of the Premises. They cautioned the Applicants that they were investigating a possible offence under Housing Act 2004 and gave the PACE caution.

2.10. The Applicants' managing agent gave a non-committal response but Mr Ekine-Ogunlana gave a full response which included admissions that the Premises were occupied by three tenants and that he was not aware of the additional HMO licensing requirement applicable to the Premises. He said that he had been told when he purchased the Premises that there was no need for the Premises to be licensed, that he received approximately £450-550 per room per calendar month and that he spent approximately £1,500.00-£2,250.00 per calendar month.

2.11. In due course notices of intent to impose financial penalties in respect of offences pursuant to ss. 234 and 72 of the Housing Act 2004 were issued. The penalties intimated following an application of the Council's 'matrix' were £5,654.00 and £19,431.00 respectively.

2.12. These notices provoked a predictably horrified, disbelieving, reaction from the Applicants who were at pains to stress in their response the devastating impact which such a penalty would have upon them. As part of that response they submitted an account of their net loss on the Premises which they supported with documentary evidence. They did not, however, submit any information concerning their financial position more generally at that stage.

2.13. The Council then reviewed its calculation of the penalties and reduced the penalty in respect of the s. 72 offence to £1,787.50 on the basis that the level of the Applicant's culpability in respect of this offence was low, although the potential adverse impacts it still assessed as being medium, that it accepted the Applicants' account that they had made no profit from the lettings and giving the Applicants maximum credit for their cooperation. However, having reviewed the penalty imposed in respect of the breaches of the management regulations, the Council maintained the penalty at the level previously intimated. That calculation included an assessment that the cost of carrying out the works required would be £3,500.00 and that the Applicants had accordingly profited to that extent by their non-compliance. The Council also took no account of the Applicants' alleged impecuniosity in respect of this offence on the basis that it was not its practice to do so.

3. The legal framework

3.1. Section 72 of the Housing Act 2004 provides that it is an offence for a person to control an HMO which is required to be licensed under Part II of the Act.

3.2. There was no dispute between the parties that the Property was an HMO between 1st May 2018 and the date of the imposition of the notice because the standard test prescribed by s. 254(2) Housing Act 2004 was met at all material times.

3.3. The more pertinent question is whether the Premises were required to be licensed by reason of Part II. Ordinarily, that question would be determined by reference to The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006/371 which provides, amongst other things, that the requirement applies only to HMO's occupied by 5 or more persons. However, as intimated above, in 2019 the Council took steps to extend the requirement for HMO's occupied by 3 or 4 persons within various wards within the borough,

including Grays Thurrock in which the Premises are situated, to be licensed pursuant to its powers under ss. 56-58 Housing Act 2004.

3.4. Sections 56-58 Housing Act 2004 are in the following terms, so far as material, with our emphasis added:

> **"56 Designation of areas subject to additional licensing**
>
> (1) *A local housing authority may designate* either—
>
> (a) the area of their district, or
>
> (b) *an area in their district*,
>
> *as subject to additional licensing in relation to a description of HMOs specified in the designation*, if the requirements of this section are met.
>
> (2) The authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
>
> (3) Before making a designation the authority must—
>
> (a) take reasonable steps to consult persons who are likely to be affected by the designation; and
>
> (b) consider any representations made in accordance with the consultation and not withdrawn.
>
> (4) The power to make a designation under this section may be exercised in such a way that this Part applies to all HMOs in the area in question.
>
> (5) In forming an opinion as to the matter mentioned in subsection (2), the authority must have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question.
>
> (6) Section 57 applies for the purposes of this section."

Section 57 concerns the considerations which are relevant to the exercise of the Council's discretion which are not relevant for these purposes.

> **"58 Designation needs confirmation or general approval to be effective**

(1) A designation of an area as subject to additional licensing cannot come into force unless—

(a) it has been confirmed by the appropriate national authority; or

(b) *it falls within a description of designations in relation to which that authority has given a general approval in accordance with subsection (6).*

(2) The appropriate national authority may either confirm, or refuse to confirm, a designation as it considers appropriate.

(3) If the appropriate national authority confirms a designation, the designation comes into force on the date specified for this purpose by that authority.

(4) That date must be no earlier than three months after the date on which the designation is confirmed.

(5) A general approval may be given in relation to a description of designations framed by reference to any matters or circumstances.

(6) *Accordingly a general approval may (in particular) be given in relation to—*

(a) designations made by a specified local housing authority;

(b) designations made by a local housing authority falling within a specified description of such authorities;

(c) designations relating to HMOs of a specified description.

"Specified" means specified by the appropriate national authority in the approval.

(7) If, by virtue of a general approval, a designation does not need to be confirmed before it comes into force, the designation comes into force on the date specified for this purpose in the designation.

(8) That date must be no earlier than three months after the date on which the designation is made.

3.5. No evidence was advanced at the hearing as to the confirmation of the Council's designation by the appropriate National Authority.

3.6. Section 59 makes the following provisions with regard to the requirement upon Councils to give notice of their designations once they have been made an approved:

> **"59 Notification requirements relating to designations**
>
> (1) This section applies to a designation—
>
> (a) when it is confirmed under section 58, or
>
> (b) (if it is not required to be so confirmed) when it is made by the local housing authority.
>
> (2) *As soon as the designation is confirmed or made, the authority must publish in the prescribed manner a notice* stating—
>
> *(a) that the designation has been made,*
>
> *(b) whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under section 58 applied to it (giving details of the approval in question),*
>
> *(c) the date on which the designation is to come into force*, and
>
> (d) any other information which may be prescribed.
>
> (3) After publication of a notice under subsection (2), and for as long as the designation is in force, the local housing authority must make available to the public in accordance with any prescribed requirements—
>
> (a) copies of the designation, and
>
> (b) such information relating to the designation as is prescribed.
>
> *(4) In this section "prescribed" means prescribed by regulations made by the appropriate national authority.*

3.7. The regulation specifically in question is regulation 9 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006/373 which provides as follows:

> **9 Publication requirements relating to designations under Part 2 or 3 of the Act**

(1) A local housing authority that is required under section 59(2) or 83(2) of the Act to publish a notice of a designation of an area for the purpose of Part 2 or 3 of the Act must do so in the manner prescribed by paragraph (2).

(2) Within 7 days after the date on which the designation was confirmed or made the local housing authority must—

(a) place the notice on a public notice board at one or more municipal buildings within the designated area, or if there are no such buildings within the designated area, at the closest of such buildings situated outside the designated area;

(b) publish the notice on the authority's internet site; and

(c) arrange for its publication in at least two local newspapers circulating in or around the designated area—

(i) in the next edition of those newspapers; and

(ii) five times in the editions of those newspapers following the edition in which it is first published, with the interval between each publication being no less than two weeks and no more than three weeks.

(3) Within 2 weeks after the designation was confirmed or made the local housing authority must send a copy of the notice to—

(a) any person who responded to the consultation conducted by it under section 56(3) or 80(9) of the Act;

(b) any organisation which, to the reasonable knowledge of the authority—

(i) represents the interests of landlords or tenants within the designated area; or

(ii) represents managing agents, estate agents or letting agents within the designated area; and

(c) every organisation within the local housing authority area that the local housing authority knows or believes provides advice on landlord and tenant matters, including—

(i) law centres;

(ii) citizens' advice bureaux;

(iii) housing advice centres; and

(iv) homeless persons' units.

(4) In addition to the information referred to in section 59(2)(a), (b) and(c) or 83(2)(a), (b) and(c), the notice must contain the following information—

(a) a brief description of the designated area;

(b) the name, address, telephone number and e-mail address of—

(i) the local housing authority that made the designation;

(ii) the premises where the designation may be inspected; and

(iii) the premises where applications for licences and general advice may be obtained;

(c) a statement advising any landlord, person managing or tenant within the designated area to seek advice from the local housing authority on whether their property is affected by the designation; and

(d) a warning of the consequences of failing to licence a property that is required to be licensed, including the criminal sanctions."

3.8. It was not suggested by the Applicants during the course of the hearing that the Council did not have power in this case pursuant to s. 58(1) & (6) Housing Act 2004 to make a designation. It was quite clear to us that it was not a matter which they had even considered. However, for the reasons which we shall explain in greater detail below after the hearing had been concluded we did invite the Respondent to submit further evidence in relation to this and other matters.

3.9. S. 59 Housing Act 2004 provides that as soon as a designation is confirmed the local housing authority **must** publish in the prescribed manner a notice stating:

(a) that the designation has been made,

(b) whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under section 58 applied to it (giving details of the approval in question),

(c) the date on which the designation is to come into force, and

(d) any other information which may be prescribed.

Given that it is the effect of the designation to create what is in effect a local law of which local landlords could only be aware if notice was given this seems to be a perfectly logical and reasonable requirement to make of the Local Authority.

3.10. The manner in which the notice is to be given is prescribed by r. 9 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373) which provides as follows:

> "(1) A local housing authority that is required under ***section 59(2)*** or 83(2) of the Act to publish a notice of a designation of an area for the purpose of Part 2 or 3 of the Act ***must do so in the manner prescribed by paragraph (2)***.
>
> (2) Within 7 days after the date on which the designation was confirmed or made the local housing authority ***must***—
>
> (a) place the notice on a public notice board at one or more municipal buildings within the designated area, or if there are no such buildings within the designated area, at the closest of such buildings situated outside the designated area;
>
> (b) publish the notice on the authority's internet site; and
>
> (c) ***arrange for its publication in at least two local newspapers circulating in or around the designated area***—
>
> (i) in the next edition of those newspapers; and
>
> (ii) ***five times in the editions of those newspapers following the edition in which it is first published, with the interval between each publication being no less than two weeks and no more than three weeks.***
>
> (3) ***Within 2 weeks after the designation was confirmed or made the local housing authority must send a copy of the notice to***—

(a) any person who responded to the consultation conducted by it under section 56(3) or 80(9) of the Act;

(b) any organisation which, to the reasonable knowledge of the authority—

(i) represents the interests of landlords or tenants within the designated area; or

(ii) represents managing agents, estate agents or letting agents within the designated area; and

(c) every organisation within the local housing authority area that the local housing authority knows or believes provides advice on landlord and tenant matters, including—

(i) law centres;

(ii) citizens' advice bureaux;

(iii) housing advice centres; and

(iv) homeless persons' units.

(4) In addition to the information referred to in section 59(2)(a), (b) and(c) or 83(2)(a), (b) and(c), the notice must contain the following information—

(a) a brief description of the designated area;

(b) the name, address, telephone number and e-mail address of—

(i) the local housing authority that made the designation;

(ii) the premises where the designation may be inspected; and

(iii) the premises where applications for licences and general advice may be obtained;

(c) a statement advising any landlord, person managing or tenant within the designated area to seek advice from the local housing authority on whether their property is affected by the designation; and

(d) a warning of the consequences of failing to licence a property that is required to be licensed, including the criminal sanctions."

3.11. Although the Respondent local authority did lead the evidence described above at the hearing as to its publication of notice of its designation the prescribed requirements set out above were not the subject of any consideration and it was only after the hearing, as we considered our decision, that it became apparent that, on the evidence available, the prescribed requirements had clearly not been met. We therefore directed first that the Respondent should have the opportunity to file and serve such further evidence and/or submissions as it saw fit in relation to both the question whether the designation had been either approved or made pursuant to general approval and as to the notice of it which had been given.

3.12. S. 234 of the Act provides as follows:

234 Management regulations in respect of HMOs

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

(a) there are in place satisfactory management arrangements; and

(b) satisfactory standards of management are observed.

(2) The regulations may, in particular—

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

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

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

3.13. In particular for these purposes the Management of Houses in Multiple Occupation (England) Regulations 2006 (SI 2006/372) provide as follows:

4 Duty of manager to take safety measures

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

(a) kept free from obstruction; and

(b) maintained in good order and repair.

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

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

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

(a) the design of the HMO;

(b) the structural conditions in the HMO; and

(c) the number of flats or occupiers in the HMO.

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

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

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

of accidents which may be caused in connection with such windows.

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

3.14. As to r. 5(4), we were informed by Mr Neil Haycock who carried out the inspection of the Premises that the Respondent determines the reasonableness of standards of fire safety by reference to the LACORS Fire Safety Guidance and that the deficiencies identified by the inspection specified above constituted a failure to comply with the LACORS Guidance. This was not disputed by the Appellants.

3.15. Section 249A of the Act provides that the Local Housing Authority may impose a financial penalty up to a maximum of £30,000.00 in respect of offences committed under either section 72 or section 234 if it is satisfied beyond reasonable doubt that the person's conduct amounts to a relevant offence in respect of a property in England.

4. The effect of the Respondent's failure to comply with the requirements of regulation 9

4.1. In response to our directions the Respondent filed both further submissions and further documents. So far as material the documents included:

4.1.1. A copy of the Secretary of State for Communities and Local Government's general approval pursuant to s. 58(6) Housing Act 2004 that, subject to a condition as to consultation for a period of not less than 10 weeks, as from 1st April 2015 every Local Authority in England shall be entitled to designate an area of their district as being subject to additional licensing requirements in relation to HMO's described in the designation.

4.1.2. A copy of the report prepared for the Respondent's Housing Overview and Scrutiny Committee in relation to the imposition of the further licensing requirement.

4.1.3. Copies of the material already produced to evidence one advertisement in the Thurrock Gazette, a press release, some social media posts and publication on the Council's website.

4.2. Despite our invitation the Appellants did not submit any further material or make any further submissions.

4.3. The Respondent submits first that the designation has been validly made pursuant to the general authorisation. We accept that submission.

4.4. It then asserts, as a matter of fact, that Regulation 9 has been complied with, but submits that, even if it has not, that does not affect the validity of the designation and hence the Respondent's entitlement to impose a civil penalty.

4.5. The assertion that regulation 9 has been complied with is made in the Respondent's further submissions which are not signed or even attributable to any particular person within the Respondent, much less supported by a statement of truth. It follows that no weight at all can be placed upon it. It is also clear from the documentary evidence which has been produced (or rather the lack of it) that the Respondent made no more than the most cursory attempt to comply with regulation 9. It is much more likely in our view that its officers were either not aware of its existence or had made no effort to acquaint themselves with its requirements. That would explain their almost complete failure to take the required steps, most of which are not particularly onerous.

4.6. The submission that the designation is sufficient in itself to expose the Appellants to both a criminal liability and a civil penalty is a somewhat startling one in view of the mandatory terms in which both section 59 and regulation 9 are expressed. It also seems obviously to be just that Local Housing Authorities should take proper steps to bring to the

attention of affected landlords the nature and effect of their decisions to alter the general law as to the licensing of HMO's. Regulation 9 prescribes what those proper steps are.

4.7. Nevertheless, we can see the force of the Respondent's submission that its entitlement to impose a civil liability once its designation has taken effect is not expressed to be contingent upon its having given notice in accordance with reg. 9. One can also imagine situations in which there has been substantial compliance with its provisions subject only to some inconsequential failure to comply strictly with it and that cannot have been the intention of Parliament that defaulting landlords should be permitted to escape liability on that account.

4.8. In our view, the solution to this conundrum is that, whatever the merits of the Respondent's primary submission, it cannot possibly be fair or just in light of the Respondent's almost complete failure to comply with the mandatory requirements as to the giving of notice of its designation and the absence of any evidence that the Appellants knew that the Premises were required to be licensed (indeed they had been informed (correctly in 2017) that no licence was required) that the Appellants should be subject to any penalty whether or not they have committed any offence.

5. Penalty

5.1. As regards the s. 72 offence, therefore, we find that no penalty should be imposed.

5.2. As regards the s. 234 offences, we have used the Respondent's matrix in considering whether the penalty imposed by the Respondent was appropriate. In our view this is a case in which the Appellants' culpability is at the medium level, that is to say, their omissions were ones which a person exercising reasonable care would not commit. We think this is a marginal judgment on the basis that there may well have been confusion in the Appellants' mind as to their requirement to comply with the regulations in view of the fact that they believed, reasonably, the Premises were not required to be licensed.

5.3. In our , however, the likelihood of harm resulting from the breaches is low. That is to say a low risk of an adverse effect on an individual.

5.4. It follows from these conclusion that the matter falls within Band A of the Respondent's matrix, that is to say a fine between £1,500 – 3,000. We consider that the Respondent correctly applied a 35% mitigation discount to the median level fine to arrive at a figure of £1,462.50.

5.5. We do not consider it makes sense in terms of enforcing compliance with the requirements of the LASCOR Guidance to increase the fine by reference to the amount which the landlord has 'saved' by his failure to comply with the guidance. It is the effect of the application which the Appellants' have now made for a licence that the recommended works of improvement will be done and hence the costs incurred. Hence there has been no saving.

6. Conclusions

6.1. For these reasons, we consider that:

6.1.1. No fine should be imposed in respect any offence which the Appellants may have committed by reason of their failure to licence the Premises.

6.1.2. We further consider that the Appellants' failure to comply with the requirements of s. 234 only justifies a fine within Band A discounted to make allowance for the substantial mitigation which the Appellants were entitled to pray in aid.

APPENDIX 1- 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.

APPENDIX 2

RELEVANT LEGISLATION

Housing Act 2004

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.

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

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

[(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).

234 Management regulations in respect of HMOs
(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—
(a) there are in place satisfactory management arrangements; and
(b) satisfactory standards of management are observed.
(2) The regulations may, in particular—
(a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;
(b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.
(3) A person commits an offence if he fails to comply with a regulation under this section.
(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.
(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
[(6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
(7) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.]

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.]

Schedule 13A

Notice of intent

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.

Right to make representations

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").

Final notice

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.

Withdrawal or amendment of 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.

Appeals

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.

Recovery of financial penalty

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.

Guidance

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.