FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**AB/LON/00AE/HNA/2022/0003**
HMCTS code	**:**	**V:VIDEO** **P:PAPER**
Property	**:**	**14 Bassingham Road Wembley HA0 4RL**
Appellant	**:**	**Mr A Mehta**
Representative	**:**	**Mr B Parmar**
Respondent	**:**	**London Borough of Brent**
Representative	**:**	**Ms T Robson, chief lawyer for L B Brent (ref: HMOL/04228/21)**
Type of application	**:**	**Appeal against a financial penalty - Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal	**:**	**Judge Pittaway** **Mr T Sennett FCIEH**
Date of hearing	**:**	**11 August 2022**
Date Tribunal reconvened	**:**	**14 October 2022**
Date of decision	**:**	**19 October 2022**

Covid-19 pandemic: description of hearing

A remote video hearing was held on 11 August 2022 which was not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. Before the hearing the tribunal had been provided with two bundles by the respondent (of 351 and 114 pages respectively) and a bundle from the applicant (93 pages).

The hearing was attended by Mr Mehta and Mr Parmar, for the applicant. The applicant's bundle contained a witness statement by Mr Mehta and one by Mr Gajjar, who did not attend the hearing. The hearing was attended by Ms Robson, chief lawyer for the respondent, and the respondent's witnesses, Mr Jemmott, PHS Manager Licensing Brent, Mr Graham, Housing Enforcement Officer Brent and Mr Parkar, Private Sector Housing HMO Licensing Officer Brent. Mr Graham and Mr Parkar had made witness statements which were contained in the bundles before the tribunal.

Ms Lodhiya attended the tribunal as a tribunal-appointed interpreter for the applicant and translated to and for Mr Mehta.

Mr Mehta suffered ill-health during the hearing, which was therefore adjourned. Mr Parmar then advised the Tribunal that he considered that Mr Mehta was not well enough to continue the hearing and the Tribunal considered it appropriate to bring the hearing to a close.The parties agreed that, in the circumstances that Mr Mehta was unlikely to be able to attend a future hearing, the matter could be determined on paper rather than at a hearing.

The Tribunal issued Further Directions dated 11 August 2022 directing that each party should provide to the other and to the Tribunal written submissions.

The Tribunal determined that it would determine the application on the basis on the bundles before it on the date of the Hearing and such written submissions as the parties provided in accordance with the Further Directions.

The applicant provided written submissions (2 pages) dated 5 September 2022. The respondent provided undated written submissions (36 pages)

In reaching its decision the Tribunal has had regard to the evidence in the bundles provided before the Hearing and the written submissions provided in accordance with its Further Directions.

Decision

1. The tribunal finds that the appellant was the correct person on whom to impose a Financial Penalty.

2. The tribunal find that the appellant committed an offence under s72(3) of the 2004 Act (the '**2004 Act**') and that the appellant did not have a reasonable excuse under s72(5).

3. The tribunal finds that the appellant committed an offence under section 234 of the 2004 Act in failing to comply with the management regulations made in respect of HMOs and that the appellant did not have a reasonable excuse under s234(4) of the 2004 Act.

4. The tribunal finds, having regard to the Council's policy and the evidence before it, that the appropriate financial penalty to impose on the appellant in respect of the property is £10,000.

Application

5. By an application dated 28 December 2021 the appellant seeks to challenge the imposition by the Council of a financial penalty of £15,000 in respect of the property.

Background

6. The property is described in the application as a four bedroom, two storey semidetached house with a bathroom and toilet, and a shower room and toilet, and a large living room.

Issues

7. The issues for the tribunal to determine were
    - Was Mr Mehta the correct person on whom to impose the Financial Penalty?
    - If so, had Mr Mehta committed the offence under section 72(1) of the 2004 Act (controlling or managing an unlicensed HMO) and/or under section 234 of the 2004 Act (non-compliance with management regulations in respect of an HMO)?
    - If Mr Mehta had committed an offence did he have a reasonable excuse?
    - If Mr Mehta had committed an offence and did not have a reasonable excuse what was the appropriate level of penalty?

Reasons for the tribunal's decision

8. The tribunal makes the determinations in this decision on the basis of the documents in the bundles before it at the hearing, the limited evidence heard

at the hearing before it was adjourned and the submissions by Mr Parmar on behalf of Mr Mehta and by Ms Robson on behalf of the respondent. As appropriate these are referred to below. The relevant sections of the 2004 Act to which the tribunal has had regard are also set out below.

Was Mr Mehta the correct person on whom to serve the Financial Penalty?

9. In his Grounds of Appeal dated 28 December 2021 Mr Mehta stated that the landlord of the tenants at 14 Bassingham Road was Shirdi Sai Limited and not himself and that this invalidated the notice/penalty notice served on him by the respondent. He referred the tribunal to an AST in his bundle dated 1 September 2019 made between Shirdi Sai Ltd as landlord and A Vales and L Fernandes.

10. The respondent included in its bundle a subsequent tenancy agreement of 1 September 2020 which named Mr Mehta as the landlord.

11. The Tribunal heard evidence from Mr Mehta that he attended at the property monthly to collect the rent.

12. Section 72(1) of the 2004 Act provides,

    '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'.

    Section 263 of the 2004 Act provides

    '(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 two-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;'

13. The Tribunal finds that Mr Mehta is the occupants' landlord. He is the owner of the property and receives the rack rent for the property from the occupants, collecting it personally. Mr Mehta is both a person 'having control' and also 'managing' an HMO for the purposes of the 2004. He is therefore the appropriate personon whom to serve the Financial Penalty.

Was an offence committed by the appellant?

14. The Final Notice of Intent to Issue a Financial Penalty dated 1 December 2021 states that the appellant is committing offences under section 72 and section 234 of the 2004 Act and that the effective date of the alleged offences is '9th September 2021 and ongoing'.

Offence under s72 of the 2004 Act?

15. There was no dispute between the parties that the property required an Additional HMO licence.

16. The respondent's bundle included a copy of an Additional HMO Licence for the property granted to Mr Jamil Ahmed on 2 July 2015 for a term to 31 December 2019 and an e mail from Mr Ahmed dated 4 March 2019 stating that he had ceased to manage the property in January 2016, which resulted in the respondent revoking the licence for the property on 30 May 2019, by a notice sent to Mr Ahmed.

17. The respondent's bundle contained the application by Mr Mehta for an Additional HMO licence dated 2 July 2019 which was granted on 1 February 2020 for a period to 31 January 2021, for not more than four persons. It also contained the application by Mr Mehta for an Additional HMO licence dated 4 May 2021, which was granted on 1 June 2021 for a period to 1 June 2022. The conditions attached to the licence restricted the overall occupancy of the property to a maximum of five persons.

18. On the date that the respondent alleges that the appellant committed an offence under s72 of the 2004 Act the property had an Additional HMO Licence so that the appellant was not committing an offence under s72(1).

19. However s72(3) of the 2004 Act provides that,

'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'.

20. The Tribunal accept the evidence provided by the respondent that there were more than five occupants at the property and that the respondent had therefore failed to comply with the condition attached to the licence that there should be no more than five occupants in the property.

21. S73(5) of the 2004 Act provides that

'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.'

22. The tribunal finds, on the evidence before it, that Mr Mehta does not have a reasonable excuse. He has offered no evidence as to refute the number of occupants the respondent states are at the property or any reason for the number being in excess of five. He has confirmed that he visits the property to collect the rent but that he does not enter the property. The Tribunal finds that a prudent landlord would take steps to ascertain that the conditions attached to the licence were complied with, either by entering the property or, if that were not sensible by reason of Mr Mehta's poor health, arranging for his agent, HAGC Consultancy Limited, or Mr Parmar, who has assisted him with the property, to do so.

Non-compliance with management regulations in respect of an HMO?

23. Section 234 of the 2004 Act provides that

(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.

24. The respondent states that with each Additional HMO Licence the appellant was sent the HMO licensing booklet which sets out the conditions that must be complied with where a property is an HMO.

25. It is the respondent's case that the appellant failed to comply with a number of these conditions. The respondent states that the property was inspected by a senior enforcement officer and a licensing officer on 2 June 2021, the property had previously been inspected in April 2021 and the appellant's attention drawn to its poor condition. As a result of that June inspection the respondent served a Compliance Inspection Schedule on the appellant on 23 June 2021. The same officers again inspected the property on 9 September 2021 and noted that the appellant had still not complied with various of the conditions and requirements (listing 23 actions that had not been complied with in its evidence). They state that they noted further breaches of the licensing conditions not covered by the June Compliance Inspection Schedule which resulted in a further Compliance Inspection Schedule being served on the appellant on 10 September 2021. It is the respondent's submission that the licensing officer, Mr Graham, spoke to Mr Parmar on 15 October 2021 and to HACG and advised them that the two schedules were separate. There are two witness statements from Mr Graham in the bundles before the Tribunal.

26. The appellant submits that he instructed a builder, Mr Mehul, to undertake the works identified in the June Compliance Inspection Schedule and that the fact that the September Compliance Inspection Schedule does not refer to the June Complaince Inspection Schedule is evidence that the totality of the June Compliance Schedule had been complied with. The appellant further submits that the work identified as required by the September Complaince Schedule has been completed by a second builder, Mr Gajjar. The appellant challenges the accuracy of the officers' observations in his written submission, based on a possible misdescription of the property.

27. The appellant submits that the inclusion of the tenancy agreement dated 1 September 2019, and evidence of registration with the Tenancy Deposit Scheme and passport details of Mr Fernades and his wife, and Mr Vales and his wife in his bundle are evidence of compliance with the statutory tenancy obligations. The appellant's bundle also includes a Gas Safety Record dated 17 August 2021 and an Electrical Installation Certificate dated 13 June 2021.

28. The Tribunal accept the respondent's submission that the two schedules are separate from each other and finds that the fact that the September Schedule does not refer to the June Schedule is not evidence that all the items listed in the June Schedule have been complied with.

29. The Tribunal accept that Mr Mehat instructed builders and that certain works were carried out to the property. However, in the absence of a detailed refutation of the items set out in Mr Graham's witness statement of 25 May 2022 as being outstanding when he visited the property on 9 September, the Tribunal accept his statement that the following were still outstanding on that date;

- Overcrowding – 11 occupants were still at the property, comprising 2 or more households;
- Rear and front garden having accumulation of waste;

- Rear left garden fence in disrepair;
- No evidence of fire routine notice in place;
- No fire blanket in the kitchen;
- The kitchen main door had no handle, no self-closer and painted intumescent strips;
- The kitchen rear door lock was defective;
- No carbon monoxide alarm installed;
- Missing self-closers, intumescent strips and thumb-turn locks on ground and first floor bedrooms;
- No evidence of written terms of occupancy;
- No evidence of electrical installation certificate displayed in the property;
- No evidence of gas safety certificate displayed in the property;

30. The Tribunal accept the respondent's evidence of the outstanding matters. It notes the inclusion in the appellant's bundle of an e mail from Shirdi Sai Ltd to Mr Vales and Mr Fernades of 15 May 2021 nortifying them that subletting is in breach of their tenancy and asking them to ensure that the subtenants vacate the property as soon as possible. However there is no evidence before the Tribunal that the number of occupants has reduced below the number ascertained by the respondent. Mr Graham's witness statement of 25 May 2022 refers to eleven occupants being at the property when it was inspected on 9 September 2021 and this has not been challenged by the appellant.

31. The tribunal find, on the evidence before it, that the appellant was committing an offence under s234 of the 2004 Act.

32. S234(4) provides that

'(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.'

33. The appellant has not provided any excuse for not complying with the regulations.

34. The tribunal finds, on the evidence before it, that Mr Mehta does not have a reasonable excuse for not complying with s234 and that he has committed an offence under s234.

Financial penalties for certain housing offences in England

35. Section 249A Housing Act 2004 provides as follows,

'(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.'

36. In ascertainining the level of penalty to be charged the tribunal should have regard to the council's policy. While not referred to in the submissions before the Tribunal this approach is consistent with the Upper Tribunal decision in *Waltham Forest LBC v Marshall* [2020] 1 WLR 3187 ('***Marshall***').

37. The financial penalty was calculated by the respondent with reference to its Civil Penalty Notice Matrix which lists four factors to be taken into account when determining the level of a civil penalty and the score to be attributed to each, which assesses offences across four criteria, applying a scoring regime which is then converted to a financial penalty. The criteria being,

- Deterrence and prevention
- Removal of financial incentive
- Offence and history
- Harm to tenants

The Tribunal has considered each of these in turn.

38. Deterrence and Prevention

The council awarded a score of 10 under this factor. This is the score that its matrix states is appropriate where the council have medium confidence that a financial penalty will deter repeat offending. The respondent stated that service of the Notice of Intention to issue a financial penalty gave the appellant a chance to comply and that the level of fine should act as a deterrent. On the evidence before it the tribunal agree with the score awarded by the council. While the appellant had undertaken some repair work he had not addressed all the issues identified as being non-compliant.

39. Removal of financial incentive

The council awarded a score of 10 under this factor. Under its matrix a score between 8 and 14 is appropriate to a small landlord managing up to 5 properties and retaining some/all of the rental income. The respondent had regard to the fact that Mr Mehta was the freeholder and the recipient of the whole of the rental income, of £2400 per month. The respondent acknowledged that Mr Mehta did not own any other rental properties. The

tribunal agree with the respondent's approach and find it appropriate to award a score of 10 under this factor.

40. Offence and history

The council awarded a score of 14 to this factor. If Mr Mehta had no previous history and there was a single low offence it would have awarded between 1 and 7 points. If there was more than one offence and/or moderate level offence(s) it would have award a score of between 8 and 14. The council had no knowledge of Mr Mehta having any previous housing offence. The score awarded was based on the fact that when the property was visited on 9 September there were breaches of both s72 of the 2004 Act and s234 of the 2004 Act, and reflects that there was more than one offence. The respondent considered the offences to be of moderate level.

The breach of s72 of the 2004 Act is a breach of the condition attached to the Additional HMO Licence that not more than 5 persons should occupy the property.This is also cited by the respondent as a breach of s234 of the 2004 Act.

S249A (3) provides that only one financial penalty under that section may be imposed on a person in respect of the same conduct. The tribunal finds that the conduct which resulted in a breach of s72 of the 2004 Act is part of the conduct which also resulted in a breach of s234. Accordingly the tribunal find that the appellant should only be regarded as having committed one recent offence for the purposes of this element of the respondent's Civil Penalty Notice Matrix.

One recent moderate level offence is not specifically contemplated or clearly covered by the respondent's Civil Penalty Notice Matrix. It falls between its criteria which results in a score of up to 7 and that which starts at 8. The Tribunal, in considering a moderate level offence, award a score of 8 to this factor.

41. Harm to tenants

The council awarded a score of 15 doubled, in line with statutory guidance, to 30. A score between 15 and 20 reflects that the council considers that there is a high level of potential harm to the occupants, continuous impact and/or a large HMO with more than five occupants.

The Tribunal find, on the basis of the respondent's evidence, there were more significantly more than five occupants in the property, of whom three were children. The Tribunal accepts the respondent's submission that there was a high level of potential harm to the tenants by reason of the failure to comply with fire safety measures at the property, breaches of room size requirements, insufficient amenities, issues of gas and electricical appliance

safety and tenancy management in general. The Tribunal therefore accept the score of 30 awarded to this criteria.

42. Total score

The Tribunal find a total score of 58 attributable to the property.

43. Mitigating factors

The tribunal is concerned that the council has not provided a complete copy of its civil penalty policy, so that the tribunal could not consider the account the council would take of any mitigating factors. The tribunal is mindful of the the decision in *Thurrock Council v Khalid Daoudi* [2020] UKUT 209 (LC) ('***Daoudi***') where the Upper Tribunal contemplated the possibility of factors mitigating the level of the Financial Penalty, such as the willingness of Mr Daoudi to comply with his application obligations. On the evidence before it the Tribunal find that the work that Mr Mehta had done to the property might be a mitigating factor that the council should have taken into account in fixing the level of penalty. The Tribunal, however, also find that Mr Mehta appears to have ignored certain of his other obligations. It is not sufficient that he instructed builkders to undertake works of repair. There were other breaches of conditions that he should also have addressed.

Neither party made any submissions as to mitigating factors. In the absence of any such submissions the Tribunal does not adjust the total score attributable to the property.

44. The penalty

Using the penalty charges provided by the council as being the charge attributable to a score in the range 51-60 the tribunal determines that the appropriate financial penalty to impose on the appellant in relation to the offence is £10,000.

Name: Judge Pittaway **Date:** 19 October 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).