



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

**Case Reference:** CHI/45UH/HNA/2021/0011

**Property:** 65 South Farm Road, Worthing BN14 7AF

**Applicant:** Aeffit Hussain

**Representative:** Miss Yazmin Hussain

**Respondent:** Adur & Worthing Borough Council

**Representative:** Mrs Shelley-Ann Flanagan, lawyer

**Type of Application:** Appeal under s.249A and schedule 13A of the Housing Act 2004  
Appeal against a financial penalty notice

**Tribunal Members:** Judge A Cresswell (Chairman)  
Mr J Reichel MRICS  
Mr P Gammon MBE BA

**Date and venue of Hearing:** 22 September 2021

**Date of Decision:** 27 September 2021

---

**DECISION**

---

## **The Appeal**

1. This is an Appeal against the Respondent's decision to issue a Financial Penalty Notice pursuant to Section 249(2)A of the Housing Act 2004 for failure to have a licence for a House in Multiple Occupation (Section 72 of the Act) and Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of The Act)
2. The Respondent was given a total financial penalty of £9,000 for the offences.

## **Summary Decision**

3. The Tribunal confirms the order against the Applicant. The amount of the Financial Penalty is therefore confirmed at £6,000 for the offence of Failure to comply with management regulations in respect of Houses in Multiple Occupation and £3,000 for the offence of managing an HMO without a licence, so a total of £9,000 is payable by the Applicant. She is advised to approach the Respondent to discuss a payment plan.

## **Preliminary Issues**

4. The Applicant contacted the Tribunal by email on 7 September 2021 to inform that she was “stuck” in Pakistan and not well and requesting that someone could represent her at the hearing. She was informed by reply that she could appear via a representative provided she gave authority to the representative to represent her at the hearing and speak on her behalf.
5. She gave that authority in her subsequent email of 7 September 2021, nominating Miss Yazmin Hussein as her representative.

## **Directions**

6. Directions were issued on various dates. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
7. The directions provided for the matter to be heard on the basis of an oral hearing, and for any statements and documents upon which the parties intended to rely to be provided to the Tribunal.
8. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the

hearing. Evidence was given to the hearing by Mr Bruce Sean Reynolds, Private Sector Housing Manager at Worthing Borough Council, and by Miss Yazmin Hussain, the Applicant's daughter. At the end of the hearing, Miss Hussain and Mrs Flanagan told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add.

### **The Law**

9. The statutory provisions relating to Financial Penalties are detailed in the below Schedule.

10. s. 249A of the Housing Act 2004 states the following:

*(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).*

11. Section 234 of the 2004 Act states the following:

*(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.*

12. Section 263 defines a “person having control” and “person managing” a property as follows:

*(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; and*

*(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other*

*payments are received through another person as agent or trustee, that other person.*

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

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

13. Schedule 13A Paragraph 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.

14. **Mohamed and Lahrie v London Borough of Waltham Forest** (2020) EWHC 1083 (Admin): 39. *“In practical terms it was common ground that in*

*order to prove the offence under section 72(1) of the 2004 Act the prosecution will need to make the relevant tribunal sure that: (1) the relevant defendant had control of or managed, as defined in section 263 of the 2004 Act; (2) a HMO which was required to be licensed, pursuant to sections 55 and 61 of the 2004 Act; and (3) it was not so licensed.”*

*48. “For all these reasons we find that the prosecution is not required to prove that the relevant defendant knew that he had control of or managed a property which was a HMO, which therefore was required to be licensed. As noted above the absence of such knowledge may be relevant to the defence of reasonable excuse.”*

15. **Thurrock Council v Daoudi [2020] UKUT 209 (LC), I R Management Services Limited v Salford Council [2020] UKUT 81(LC) and Nicholas Sutton (1) Faiths’ Lane Apartments Limited (in administration) (2) v Norwich City Council [2020] UKUT 90(LC)** which dealt with the question of reasonable excuse as a defence to the imposition of financial penalties under section 249A of the Housing Act 2004. The decisions have equal application to the corresponding situation under RROs when the defence of reasonable excuse is pleaded. The principles applied by the above authorities:

- a) The proper construction of section 72(1) of the 2004 Act is clear. There is no justification for ignoring the separation of the elements of the Offence and the defence of reasonable excuse under section 95(4).
- b) The offence of failing to comply with section 72(1) is one of strict liability subject only to the statutory defence of reasonable excuse.
- c) The elements of the offence are set out comprehensively in section 72(1). Those elements do not refer to the absence of reasonable excuse which therefore does not form an ingredient of the offence, and is not one of the matters which must be established by the Tenant.
- d) The burden of proving a reasonable excuse falls on the Landlord, and that it need only be established on the balance of probabilities.

- e) The burden does not place excessive difficulties on the Landlord to establish a reasonable excuse. In this case the Landlord relied on the fact that he did not know the property required to be licensed. Only the Landlord can give evidence of his state of knowledge at the time. The Tenant, on the other hand, has no means of knowing the state of knowledge of the Landlord. It is very difficult for the Tenant to disprove a negative.
- f) Whether an excuse is reasonable or not is an objective question for the Tribunal to decide. Lack of knowledge or belief could be a relevant factor for a Tribunal to consider whether the Landlord had a reasonable excuse for the offence of no licence. If lack of knowledge is relied on it must be an honest belief (subjective test). Additionally there have to be reasonable grounds for the holding of that belief (objective).
- g) In order for lack of knowledge to constitute a reasonable excuse as a defence to the offence of having no licence it must refer to the facts which caused the property to be licensed under section 72(1) of the Act. Ignorance of the law does not constitute a reasonable excuse.
- h) Where the Landlord is unrepresented the Tribunal should consider the defence of reasonable excuse even if it is not specifically raised.

## **Guidance**

- 16. The Ministry of Housing, Communities and Local Government published non-statutory guidance in April 2018: *Civil penalties under the Housing and Planning Act 2016 - Guidance to Local Authorities*, (“the Guidance”). Local authorities must have regard to the guidance in respect of their functions in respect of civil penalties.
- 17. The Guidance notes the Government’s intention to crack down on a “*small number of rogue or criminal landlords [who] knowingly rent out unsafe and substandard accommodation*” and to disrupt their business model.
- 18. Paragraph 1.9 of the Guidance states that civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 and Housing and Planning Act 2016 listed in the Guidance.

19. The maximum penalty is £30,000.
20. Paragraph 3.5 addresses the factors that a local housing authority should consider when deciding on the level of a civil penalty:
  - a) Severity of the offence. The more serious the offence, the higher the penalty should be.
  - b) Culpability and track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
  - c) The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
  - d) Punishment of the offender. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
  - e) Deter the offender from repeating the offence. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
  - f) Deter others from committing similar offences. While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil



penalties where the need to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

g) Remove any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

21. The Guidance also states that local housing authorities are expected to develop and document their own policy on when to impose a civil penalty and should decide which option to pursue on a case by case basis, in line with that policy.

### **Agreed History**

22. The Tribunal first records the relevant history specifically agreed by the parties or where there is no challenge made to the case stated by the Applicant.
23. The Applicant is the freeholder of 65 South Farm Road, Worthing BN14 7AF ('the Property'). The Property is a mid-terrace two-storey house.
24. The Respondent inspected the property on 27 May 2020 following concerns about an elderly sibling couple sharing facilities there with other unrelated persons.
25. The inspection revealed numerous deficiencies, leading to an assessment of a Category 1 fire hazard and numerous Category 2 hazards.
26. The property was occupied by a woman and her 15-year old daughter, the elderly siblings and another woman, with evidence of recent occupation of a further room too. It was a House in Multiple Occupation ("an HMO").
27. On 8 July 2020, the Respondent served an Improvement Notice, with works to be completed by 7 September 2020 and 7 November 2020.
28. On 18 September 2020, the Respondent received an application from the Applicant for an HMO licence, but without the required fee.
29. On 14 October 2020, the Applicant attended an interview which was carried out under the provisions of the Police and Criminal Evidence Act 1984. During the interview, she stated that the woman and her daughter had occupied the

ground floor room for about 6 months and paid £600 per calendar month by bank transfer. The elderly couple had lived in the first-floor front bedroom for about 8 months and paid £135 per week by bank transfer and the other woman had rented the first floor rear bedroom for 4 months and paid £120 per week cash. The Applicant confirmed that the three households were not related to each other. She also stated that no fire risk assessment had been completed for the Property, that the gas appliances were checked on an annual basis. She also stated that the electrical installation was checked annually, but could not provide certification or reports for this.

30. The Respondent Authority issued 2 Notices of Intention to issue financial penalties of £4,000 for the management of an HMO without the required licence (Section 72 Housing Act 2004) and £6,000 for offences under Section 234 of the 2004 Act and the Management of Houses in Multiple Occupation (England) Regulations 2006.
31. The Applicant made written representations on 27 November 2020 seeking to reduce the proposed penalty charges. The Authority responded by reducing the total financial penalty from £10,000 to £9,000. This was confirmed to the Applicant in the Respondent's Notice of 6 January 2021.

### **The Issues Before the Tribunal**

32. The issues that the tribunal must determine are:

Is the Tribunal satisfied beyond reasonable doubt that the Applicant committed the alleged offences?

Does the Applicant have a defence of a reasonable excuse?

Whether the local housing authority has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act);

Whether the financial penalty is set at an appropriate level, having regard to any relevant factors, which may include, for example:

the offender's means;

the severity of the offence;

the culpability and track record of the offender;

the harm (if any) caused to a tenant of the premises;

the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or

the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

### **The Applicant**

33. The Applicant says that she was not in breach of the licence requirement as at 1 October 2018 as she only had 3 tenants at that time.
34. She was sectioned due to her health in January 2019 for 28 days.
35. Although she was discharged after this time, she was not fully better nor had her full cognitive function returned. There is no time frame in terms of recovery, it is a gradual process. She has only just this year started to get back on her feet. You cannot simply say that it has been nearly 19 months since her being sectioned and therefore she had time to shore matters up. To be fair to her, it is necessary to take her health issues into full consideration when assessing her culpability.
36. Whilst she was sectioned and as she had always been the main breadwinner, her family members had put two more tenants in, mother and daughter who shared one room, this was from around February 2019. She was not part of the decision-making process in this; she accepts, however, that upon discharge and during her recovery she did not initially ask them to leave as she was not alerted to the fact that she required a HMO licence at that point in time as she had never needed one in the past.
37. Upon her road to recovery, she tried to regularise matters, and she did ask the tenants to leave, but with the Covid Pandemic all possessions were stopped and all notices were no longer valid. She could not in all conscience ask them to leave during this time.

38. Upon the council's visit, she was candid and honest about her representations and, therefore, she would submit that there is no reason why her submissions above should not be fully accepted.
39. The financial penalty imposed on her is reflective of the sums the Respondent says she would have benefited from being in or around the sum of £19,000. However, she was unable to work at this point of time and any money received literally helped her to survive. This was not in any way disposable income, far from it. She asks that the financial penalty be reviewed and a lesser one imposed.
40. She has applied for a licence, and had necessary works done, and does not propose to have more than 5 tenants moving forward.
41. With her current financial issues, she is unable to pay any sums in one lump sum, and asks for a payment schedule so she can pay off the financial penalty after any possible re-assessment of the principal financial penalty.
42. A doctor's letter of 28 February 2019 details the Applicant's health at that time and a 26-day stay in hospital. As both parties have access to that letter, it is not necessary for the Tribunal to detail its contents. Her health, with medication, was much improved when she was discharged with an intention that she see another doctor for further assessment.
43. She was due to leave her employment on 7 August 2021 when her income would cease, save for rental income per month of £2,330 and child benefit of £140.60. She had monthly outgoings as at 25 July 2021 of about £4,600.
44. Miss Hussain indicated that her mother's health had suddenly deteriorated about Christmas 2018 after she had previously been "*on top of everything*". After leaving hospital, she was on medication for 3 to 4 months. She is now able to make decisions for herself and is again looking for work. A short period of employment meant she was paid for only July and August 2021.

## **The Respondent**

45. The Respondent accepts that the Applicant may not have been aware of the impact of The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 as she was sectioned in January 2019. She was not contacted directly to advertise the change, unlike her father, who was.
46. Her family was aware of the changes.

47. The property had been a licensable HMO for at least 6 months. When the last tenant moved in in February 2019, the Applicant should have been aware of the requirements.
48. Even were the house not licensable, it was still subject to The Management of Houses in Multiple Occupation (England) Regulations 2006. The numerous deficiencies and management failings, which had to be addressed through the service of an Improvement Notice, should and could have been addressed bearing in mind that the Applicant lived in the adjoining house.
49. The Respondent's inspection identified Category 1 Hazards under the headings of 24 – Fire, and Category 2 hazards were identified under the headings of 1 - Damp and mould growth, 2 - Excess cold, 11 Crowding and space, 16 – Food safety, 17 – Personal hygiene, sanitation and drainage, 20 – Falling on level surfaces, etc., 21 – Falling on stairs, etc., 22 – Falling between levels and 23- Electrical hazards, which led to the service of the Improvement Notice.
50. The Respondent considered its own Private Sector Housing Policy and the 'Guidance for Local Housing Authorities' - Civil penalties under the Housing and Planning Act 2016 in concluding that a Financial Penalty was the appropriate sanction. It was considered important to punish the Applicant offender and to remove any financial benefit she may have obtained as a result of committing the offences.
51. After considering her submissions and her cooperation and her application for a HMO licence, the Respondent reduced its proposed penalty by 10% from a total of £10,000 to £9,000. There are facilities to pay over a period.
52. As a result of works completed at the property, the Improvement Notice was revoked and a draft HMO licence issued on 10 May 2021.

### **The Tribunal's Findings and Decision**

53. The Tribunal is satisfied beyond a reasonable doubt that the Applicant was committing an offence under section 72(1) of the Act from December 2019, up to 27 May 2020 when the property was inspected.
54. The Tribunal is satisfied that the Applicant had no reasonable excuse. Ignorance on the part of the Applicant was no excuse (see above). There was a requirement to have a licence as soon as 5 people were in residence, which occurred in or about February 2019. The Applicant had left hospital on 29

January 2019 after suffering a breakdown. Miss Hussain told the Tribunal that her mother ceased taking medication some 3 to 4 months after leaving hospital. There was no medical evidence before the Tribunal such as to show that medical issues were relevant to her not applying for a licence prior to December 2019 or in the one-year period (see later) before the Respondent's inspection of the property in May 2020.

55. The Tribunal is satisfied beyond a reasonable doubt that the Respondent was committing an offence under section 234 of The Act of failure to comply with management regulations in respect of Houses in Multiple Occupation.
56. Miss Hussain submitted that there was a reasonable excuse in that her mother was not in a right state of mind to put people at risk. She was not going to intentionally overcrowd the property and make it unsafe for the tenants. She was working 18 hours a day, looking after people.
57. The Applicant had left hospital on 29 January 2019 after suffering a breakdown. Miss Hussain told the Tribunal that her mother ceased taking medication some 3 to 4 months after leaving hospital. There was no medical evidence before the Tribunal such as to show that medical issues were relevant to her not managing the property in a safe manner either prior to her breakdown or in the period following, say, end of May 2019 when her medication had ceased. It was open to the Applicant to provide medical evidence, but she provided only a letter dated 28 February 2019 written following her discharge from hospital.
58. The Applicant said that her relatives had allowed extra people to occupy the premises whilst she was in hospital. Miss Hussain told the Tribunal that her mother had been keen to reduce the number of tenants by removing the extra people, but was thwarted by the COVID situation which prevented possession cases. However, the Tribunal finds that the restriction on possession cases did not arise until 27 March 2020, by which time there is no evidence of any attempt by the Applicant to remove tenants. Miss Hussain had told the Tribunal that by July 2019 her mother was more able to make decisions, albeit not fully recovered.
59. The property was an HMO throughout and required to be licensed from February 2019. It was occupied by the Applicant's 5 tenants throughout the period from December 2019 to the date of inspection. The Applicant did not have a licence for the property throughout that period.

60. The property was an HMO throughout and the Applicant, as landlord, was required to manage it in accordance with The Management of Houses in Multiple Occupation (England) Regulations 2006, but clearly failed to do so given the large number of relevant defects.
61. Some of those defects are serious in nature; of particular note was the Category 1 risk of fire, which was a long-standing issue posing a serious risk to residents.
62. Based on the evidence described above, the Tribunal is satisfied that the Local Authority has complied with the procedural requirements in section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act.
63. The Tribunal agrees with the Respondent's assessment of the relevant issues against its own guidance, which led to an initial assessment of a penalty of £6,000 for each offence based upon levels of the seriousness of the offences and the culpability of the Applicant. Following that guidance, the Tribunal also finds that the Respondent was correct to reduce the penalty for the Section 72(1) offence to £4,000 when applying the totality principle so as to arrive at a total penalty of £10,000 and then to reduce it by a further £1,000 to take account of the Applicant's submissions about her health, the fact that she had cooperated with the investigation and had subsequently applied for a licence.
64. The Tribunal wishes to make clear that it is not simply reviewing the process undertaken by the Respondent, but detailing also its own views of the correct approach to be taken by itself.
65. Failure to have an HMO licence is not a technical issue. The very application reduces the risk that tenants will face as it involves an inspection of the property and an assessment and the addressing of safety issues.
66. This Applicant has profited from tenants living in unsafe premises. The civil penalty process is meant to deny her that profit and to act as a deterrent to others.
67. The mitigation offered by the Applicant was properly taken into account by the Respondent during the penalty process.
68. Miss Hussain pointed to the fact that the Applicant had got the necessary work done and was now an HMO licence holder, but the Tribunal can apply very little credit to this as it post-dated the inspection and the tenants had

suffered the risks involved for a considerable time and the Applicant needed to do the works else sit on a worthless asset.

69. The Tribunal has found that it was not the Applicant's ill health which led to her failure to apply for a licence and not her ill health which led her to rent out her property to 3 people (later 5) in circumstances where they were not living in a safe home.
70. The Tribunal was not satisfied that the Applicant would be unable to pay the total of £9,000, particularly as the Respondent has indicated a willingness to discuss payment terms. The evidence as to her current financial circumstances was not entirely clear. She told Mr Reynolds that the rental income was some £20,460 as at 14 October 2020 and this had increased to £27,960 by 25 July 2021 according to her list of income and outgoings. On top of this, she receives £1,687.20 per annum in child benefit and has 2 children of school age. Her list of outgoings could not be examined in detail because it was just a list and Miss Hussain was not familiar with some of the details. Whilst the Tribunal accepts that some of the outgoings will be taken up by contracts and mortgage payments, there appeared to the Tribunal to be opportunities within the list to trim expenditure and Miss Hussain told the Tribunal that the Applicant was looking for work; the Tribunal is aware that there are many employment opportunities available at present. The Tribunal also notes that the Applicant received far more by way of rent whilst committing the offences relating to management of the property than she is being ordered to pay by way of financial penalty.
71. The Tribunal confirms the order against the Applicant. The amount of the Financial Penalty is therefore confirmed at £6,000 for the offence of Failure to comply with management regulations in respect of Houses in Multiple Occupation and £3,000 for the offence of managing an HMO without a licence, so a total of £9,000 is payable by the Applicant. She is advised to approach the Respondent to discuss a payment plan.



## **APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your application for permission to appeal by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) as this will enable the First-tier Tribunal Regional Office to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

## **Schedule**

### **Housing and Planning Act 2016**

#### **"SCHEDULE 13A Section 249A**

#### **FINANCIAL PENALTIES UNDER SECTION 249A**

##### Notice of intent

1 Before imposing a financial penalty a 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 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."

### **Section 72 of the 2004 Act Offences in relation to licensing of HMOs**

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

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

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

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

(c) for failing to comply with the condition,

as the case may be.

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

(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.]

#### Section 234 of the 2004 Act

##### Management regulations in respect of HMOs

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

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

(b) satisfactory standards of management are observed.

(2) The regulations may, in particular—

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

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

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

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

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

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

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

## The Management of Houses in Multiple Occupation (England) Regulations 2006

**1.**—(1) These Regulations may be cited as The Management of Houses in Multiple Occupation (England) Regulations 2006 and shall come into force on 6th April 2006.

(2) These Regulations apply to any HMO(1) in England other than a converted block of flats to which section 257 of the Act applies.

### **Duty of manager to take safety measures**

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

(a) kept free from obstruction; and

(b) maintained in good order and repair.

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

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

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

(a) the design of the HMO;

(b) the structural conditions in the HMO; and

(c) the number of occupiers in the HMO.

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

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

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

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

### Duty of manager to maintain water supply and drainage

5.—(1) The manager must ensure that the water supply and drainage system serving the HMO is maintained in good, clean and working condition and in particular he must ensure that—

(a) any tank, cistern or similar receptacle used for the storage of water for drinking or other domestic purposes is kept in a good, clean and working condition, with a cover kept over it to keep the water in a clean and proper condition; and

(b) any water fitting which is liable to damage by frost is protected from frost damage.

(2) The manager must not unreasonably cause or permit the water or drainage supply that is used by any occupier at the HMO to be interrupted.



(3) In this regulation “water fitting” means a pipe, tap, cock, valve, ferrule, meter, cistern, bath, water closet or soil pan used in connection with the supply or use of water, but the reference in this definition to a pipe does not include an overflow pipe or the mains supply pipe.

#### **Duty of manager to supply and maintain gas and electricity**

6.—(1) The manager must supply to the local housing authority within 7 days of receiving a request in writing from that authority the latest gas appliance test certificate it has received in relation to the testing of any gas appliance at the HMO by a recognised engineer.

(2) In paragraph (1), “recognised engineer” means an engineer recognised by the Council of Registered Gas Installers as being competent to undertake such testing.

(3) The manager must—

(a) ensure that every fixed electrical installation is inspected and tested at intervals not exceeding five years by a person qualified to undertake such inspection and testing;

(b) obtain a certificate from the person conducting that test, specifying the results of the test; and

(c) supply that certificate to the local housing authority within 7 days of receiving a request in writing for it from that authority.

(4) The manager must not unreasonably cause the gas or electricity supply that is used by any occupier within the HMO to be interrupted.

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

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

(a) maintained in good and clean decorative repair;

(b) maintained in a safe and working condition; and

(c) kept reasonably clear from obstruction.

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

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

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

(4) The manager must ensure that—

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

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

(6) In this regulation—

(a) “common parts” means—

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

units of living accommodation within the HMO to gain access to the entrance doors of their respective unit of living accommodation; and

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

#### **Duty of manager to maintain living accommodation**

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

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

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

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

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

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

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

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

#### **Duty to provide waste disposal facilities**

**9.** The manager must—

(a)ensure that sufficient bins or other suitable receptacles are provided that are adequate for the requirements of each household occupying the HMO for the storage of refuse and litter pending their disposal; and

(b)make such further arrangements for the disposal of refuse and litter from the HMO as may be necessary, having regard to any service for such disposal provided by the local authority.