FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CX/HNA/2019/0049**
Premises	**:**	**41-43 Hampden Place** **Bradford** **BD5 0JZ**
Appellant	**:**	**Mr Saleem Raza**
Representative	**:**	**N/A**
Respondent	**:**	**Bradford Metropolitan District Council**
Representative	**:**	**Ms H Greatorex, Counsel**
Type of Application	**:**	**Appeal against a financial penalty: Housing Act 2004 – Schedule 13A, paragraph 10**
Tribunal Members	**:**	**Judge J Holbrook** **Regional Surveyor N Walsh**
Date and venue of Hearing	**:**	**20 May 2021** **(Video Hearing)**
Date of Decision	**:**	**16 June 2021**

DECISION

DECISION

The Final Notice which is the subject of this appeal is confirmed: Saleem Raza must therefore pay a financial penalty of £25,000 to Bradford Metropolitan District Council.

REASONS

INTRODUCTION

The appeal

1. On 24 April 2019, Saleem Raza appealed to this Tribunal against a financial penalty imposed on him by Bradford Metropolitan District Council under section 249A(1) of the Housing Act 2004 ("the 2004 Act"). The financial penalty related to an alleged housing offence, or offences, in respect of premises known as 41-43 Hampden Place, Bradford BD5 0JZ ("the Premises").

2. To be more precise, Mr Raza appealed against a final notice dated 11 March 2019 given to him by Bradford Council under paragraph 6 of Schedule 13A to the 2004 Act ("the Final Notice"). It imposed a financial penalty of £25,000 on Mr Raza for conduct allegedly amounting to four separate counts of an offence under section 234(3) of the 2004 Act.

3. The appeal was initially determined by this Tribunal on 13 March 2020. However, by virtue of an appeal to the Upper Tribunal (Lands Chamber) against that determination, the case was remitted to this Tribunal to be determined following a re-hearing by a different panel from that which made the initial determination.[1]

The hearing

4. The re-hearing by this Tribunal took place on 20 May 2021. This was an oral hearing, conducted remotely by means of HMCTS' Video Hearings Service. Mr Raza represented himself at the hearing and Bradford Council were represented by Ms Helen Greatorex of counsel.

5. Mr Raza gave sworn oral evidence and the Tribunal also heard sworn oral evidence from two witnesses for Bradford Council: Eliza Subotovich (an Environmental Health Officer employed by the council); and Richard Walters (Fire Safety Inspector employed by West Yorkshire Fire and Rescue). Opportunity was given for each witness to be cross-examined and oral submissions were also made by both parties.

6. In addition, the Tribunal considered extensive documentary evidence provided by the parties in support of their respective cases. This

[1] See *Raza v Bradford Metropolitan District Council* [2021] UKUT 0039 (LC).

comprised, not only the material which had been before the first tribunal panel in 2020, but also additional documentation submitted by Mr Raza following the first determination and in response to supplementary directions for the re-hearing issued on 1 March 2021.

7. Those supplementary directions had permitted the parties to provide additional witness statements and/or documentary evidence by 26 March 2021. Mr Raza had complied by submitting additional documents on 24 March. However, on 19 May 2021 (ie., the day before the hearing), he had submitted further documents comprising a witness statement given by an occupier of the Premises and associated copy documentation. We considered (as a preliminary issue at the outset of the hearing) whether to admit this additional material. We refused to admit it on the grounds that it had been provided very late; that the Respondent had not had the opportunity to consider it in advance; that the witness in question was not present at the hearing in order to be cross-examined; and that his evidence did not appear to be relevant to the issues to be decided in the appeal anyway.

8. The Tribunal did not inspect the Premises prior to the hearing, but the parties had been informed that the hearing would include discussion about whether a post-hearing inspection would assist the Tribunal to determine the issues in the case. Having had that discussion, we informed the parties that we did not consider an inspection to be necessary. We say more about this at paragraph 33 below.

9. Judgment was reserved.

STATUTORY FRAMEWORK

Power to impose financial penalties

10. New provisions were inserted into the 2004 Act by section 126 and Schedule 9 of the Housing and Planning Act 2016. One of those provisions was section 249A, which came into force on 6 April 2017. It enables a local housing authority to impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a "relevant housing offence" in respect of premises in England.

11. Relevant housing offences are listed in section 249A(2). They include the offence (under section 234) of failing to comply with the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 ("the HMO Management Regulations").

12. Only one financial penalty under section 249A may be imposed on a person in respect of the same conduct. The amount of that penalty is determined by the local housing authority (but it may not exceed £30,000), and its imposition is an alternative to instituting criminal proceedings for the offence in question.

Procedural requirements

13. Schedule 13A to the 2004 Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under section 249A. Before imposing such a penalty on a person, the local housing authority must give him or her a notice of intent setting out:

- the amount of the proposed financial penalty;
- the reasons for proposing to impose it; and
- information about the right to make representations.

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

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

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

- the amount of the financial penalty;
- the reasons for imposing it;
- information about how to pay the penalty;
- the period for payment of the penalty;
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

Appeals

17. A final notice given under Schedule 13A to the 2004 Act must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given. However, this is subject to the right of the person to whom a final notice is given to appeal to this Tribunal (under paragraph 10 of Schedule 13A).

18. Such an appeal may be made against the decision to impose the penalty, or the amount of the penalty. It must be made within 28 days after the date on which the final notice was sent to the appellant. The final notice is then suspended until the appeal is finally determined or withdrawn.

19. The appeal is by way of a re-hearing of the local housing authority's decision, but may be determined by the Tribunal having regard to matters of which the authority was unaware. The Tribunal may confirm,

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

RELEVANT GUIDANCE

20. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance ("the HCLG Guidance") was issued by the Ministry of Housing, Communities and Local Government in April 2018: *Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities*. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case by case basis. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state:

> "Generally, we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending."

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

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

22. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, Bradford Council have adopted their own policy on the imposition of financial penalties. This policy ("Bradford's Policy) is set out in the Council's *Private Sector Housing Enforcement Policy*, which was issued in November 2017, and we make further reference to it later in these reasons.

BACKGROUND FACTS

The Premises

23. In addition to witness evidence describing the Premises, the parties provided extensive photographic evidence showing the exterior and

interior layout and condition of the Premises at the time of Bradford Council's inspection in June 2018 (see paragraph 26 below).

24. Located in a predominantly residential area, the Premises comprise an end-terraced four-storey building of traditional design and construction dating from the early 1900s. There are two self-contained flats on the upper storeys and a bedsit on the first floor with shared WC. The ground floor mainly comprises space designed for use as a retail convenience store, but this was being used as a separate residential unit at the time of the council's inspection. The exterior of the 'shop' windows and door are covered by metal roller-shutters. There is also a basement as well as a garden/yard to the rear.

25. Mr Raza has owned the Premises since 2003 and he has personally managed their use and occupation since then. He has received any rents paid by the tenants and he is therefore 'the manager' of the Premises for the purposes of the HMO Management Regulations.

Bradford Council's inspection

26. Following a complaint by one of the tenants about the condition of the Premises, an environmental health officer from Bradford Council (Ms Subotovich) carried out an inspection of the Premises in Mr Raza's presence on 11 June 2018. There were six people residing at the Premises at the time: Mr Raza's two adult sons in one flat; a woman and a child in the other flat; a single woman in the bedsit; and a single man in the ground floor unit.

27. There were numerous issues which caused Ms Subotovich concern upon her inspection, including:

- Communal access to the building formed one means of escape. The separate door to the 'shop' was unusable because of its roller-shutter. A lack of fire compartmentation throughout the building was such that there were inadequate safe means of escape in case of fire.

- There was a partial 'Grade D' fire detection system which did not provide sufficient coverage and was inadequate in the circumstances. Mr Raza said that he had never serviced the fire alarm system and did not know that it needed servicing or testing.

- Lights in the common parts were not working and the Premises were not fitted with an emergency lighting system.

- The residential units were in a generally poor condition and had inadequate heating or fire detection equipment. There were no fire doors and some of the internal doors were damaged and/or poorly fitted. The main door into the building was key operated, presenting a further safety risk in case of fire.

- In addition, the suspended ceiling tiles in the ground floor residential unit were damaged and floorboards could be seen beyond them, indicating a fire risk. The unit had no lights, kitchen or bathroom facilities and no fixed controllable heating. However, there was a separate WC compartment on the ground floor, which the tenant shared with the tenant of the first-floor bedsit. This was in a poor state of hygiene and had no mechanical ventilation or heating. The hand basin was unstable and there was no floor covering.

- There was a false wall to the rear of the ground floor residential unit which did not extend to the ceiling. Beyond this was a storage room used by the landlord for the storage of furniture and other flammable materials. The room had no fire detection.

- The layout of the first-floor flat was dangerous: the two bedrooms were inner rooms and the kitchen was an internal room without any ventilation or heating. There was various damage to the fabric, trailing electrical wires and overloaded sockets. The windows had no safety catches to prevent them opening too wide.

- The second-floor flat also had a dangerous layout and no alternative safe means of escape.

- The basement was full of rubbish and fire loading with no smoke detection and the ceiling was not fire-boarded. Light was visible through the basement ceiling into the ground floor common parts.

- The external common parts were in poor condition, with an overgrown garden and a lifting and uneven path.

Enforcement action

28. Ms Subotovich's concerns about the Premises were such that, on 13 June 2018, she returned to make a further inspection, this time in the company of a fire safety officer, Mr Walters. He confirmed that the condition of the Premises posed an imminent and serious risk to the safety of its occupants and, on 18 June, Bradford Council issued an Emergency Prohibition Order prohibiting the use of the Premises as a dwelling with immediate effect. The majority of the tenants subsequently found alternative accommodation and vacated the Premises. However, we understand that one tenant has remained in occupation, contrary to the Emergency Prohibition Order.

29. Following the inspection, Mr Raza indicated that he wished to bring the Premises up to the required standard and, on 3 August 2018, Bradford Council issued him with Improvement Notices relating to the residential units and common parts.

30. In September 2018, Mr Raza attended for an interview under caution with Ms Subotovich to discuss his management of the Premises and, on

26 November 2018, Bradford Council gave him a notice of intent under paragraph 1 of Schedule 13A to the 2004 Act. This stated that the council intended to impose a financial penalty of £25,000 in respect of an alleged offence under section 234 of the 2004 Act. Mr Raza submitted written representations in response to the notice of intent, and these were considered by the council.

31. On 11 March 2019, Bradford Council issued the Final Notice which is the subject of this appeal.

Subsequent events

32. Notwithstanding the fact that one of the tenants has remained in occupation of part of the Premises, we understand that following the council's inspection Mr Raza has carried out certain works with a view to converting the Premises back into a single dwelling for occupation in due course by himself and his family. He has, in particular, removed the kitchens from the flats on the upper storeys.

33. Our decision not to inspect the Premises for the purposes of this appeal was therefore based on a combination of factors: in particular, the fact that there have been significant changes to the layout/condition of the Premises in the three years since the council's inspection; that there has also been a significant change in the nature of occupation of the Premises; and the provision of the witness evidence and contemporaneous photographic evidence referred to above.

ALLEGED OFFENCE(S)

34. Bradford Council assert that Mr Raza's conduct amounts to a relevant housing offence in respect of the Premises; namely, to breach of regulations 4, 5, 8 and 9 of the HMO Management Regulations[2] and thus to the offence – or offences – under section 234(3) of the 2004 Act of failing to comply with those regulations.

35. The regulations in question apply to any HMO in England which is an HMO to which section 257 of the 2004 Act applies. Mr Raza has not challenged Bradford Council's assertion that the Premises are such an HMO, but we record here that we are satisfied that this is indeed so (and certainly was at the time of the council's inspection): the Premises are a converted block of flats as defined by section 257(1); less than two-thirds of the self-contained flats are/were owner-occupied; and evidence from the council demonstrates that the building work in connection with the conversion was carried out without planning permission or building regulations approval. It follows that such building work did not comply with the appropriate building standards and still does not comply with them.

[2] As noted above, the full title of these Regulations is: The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007.

36. Regulation 4 of the HMO Management Regulations requires the manager of the HMO to ensure that his name, address and any telephone contact number are clearly displayed in a prominent position in the common parts of the HMO so that they may be seen by all occupiers.

37. Regulation 5 requires the manager, among other things, to ensure that any fire-fighting equipment and fire alarms are maintained in good working order, and to take measures reasonably required to protect the occupiers of the HMO from injury, having regard to the design of the HMO; the structural conditions in the HMO; and the number of flats or occupiers in the HMO.

38. Regulation 8 requires the manager to ensure that all common parts of the HMO are maintained in good and clean decorative repair; maintained in a safe working condition; and kept reasonably clear from obstruction. This includes a duty to ensure that the common parts have adequate light fittings, and that fittings and appliances used by two or more households within the HMO are properly maintained. The regulation also requires the manager to maintain any outside common parts, such as gardens and yards, in a clean, safe and tidy condition.

39. Regulation 9 requires the manager, among other things, to ensure, in relation to each part of the HMO that is used as living accommodation, that the internal structure is maintained in good repair; that any fixtures, fittings or appliances within that part are maintained in good repair and in clean working order; and that every window and other means of ventilation are kept in good repair. However, this does 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.

40. As already noted, section 234(3) of the 2004 Act makes it an offence to fail to comply with any of these regulations. However, by virtue of section 234(4), a defence is available: a person does not commit the offence if he has a reasonable excuse for not complying with the regulation in question.

GROUNDS OF APPEAL

41. Mr Raza has made numerous and extensive written representations to the Tribunal in the course of these proceedings. However, at the outset of the re-hearing, he agreed that the substance of his case can be summarised in the following way.

42. First, Mr Raza does not accept that there has been any breach of the HMO Management Regulations. He disputes various aspects of Bradford Council's evidence about the condition of the Premises at the time of their inspection in June 2018 and he attributes these evidential disputes to bad faith on the part of the council and its officers who, he says, have been "out to get him" from the start. In particular, Mr Raza asserts that, contrary to the council's evidence:

- The Premises were fitted with adequate fire alarms, heat detectors and fire extinguishers;

- The Premises had adequate internal fire doors;

- Although the communal exit door was key operated, this was because the tenants had changed the lock;

- There was a means of escape from the ground floor residential unit, which was unobstructed by furniture or other items;

- All windows on the upper storeys were fitted with opening restrictors.

43. Second, Mr Raza argues that, if there was a breach of any of the regulations in question, that breach was unintentional and did not amount to a criminal offence. This is because any defects in the Premises were the result of deliberate damage by the tenants and so Mr Raza had a reasonable excuse for any failure on his part to comply with the HMO Management Regulations.

44. Third, Mr Raza asserts that Bradford Council have acted unreasonably in taking the enforcement action described above. Mr Raza is obviously unhappy about the imposition of the financial penalty, but he is also aggrieved about the Emergency Prohibition Notice: one of the tenants was a person who is vulnerable as a result of mental illness, and Mr Raza does not accept that the council were entitled to require that person to vacate the Premises. He again makes allegations of bad faith against the council's officers in this regard.

45. Fourth, as far as the financial penalty itself is concerned, Mr Raza argues that the amount of the penalty is in any event excessive. He argues that it fails to reflect the fact that repairs to the Premises have been carried out (and that these repairs had commenced before the improvement notices were served), as well as the fact that the Premises have now been converted back into a single dwelling. In addition, Mr Raza argues that the amount of the penalty fails to take proper account of his personal and financial circumstances.

DISCUSSION AND CONCLUSIONS

Focus of this appeal and findings re allegations of bad faith

46. It is a notable feature of these proceedings that Mr Raza's dissatisfaction with Bradford Council's imposition of a financial penalty upon him is intertwined with wider complaints he makes about the totality of council's enforcement action in respect of the Premises. In particular, although he made no appeal against it at the time, Mr Raza clearly feels aggrieved about the Emergency Prohibition Order and has alleged that, by making that order, the council breached various duties owed to one

of his tenants under Equality Act 2010 and other legislation. However, it is important to note that the present application is not an appeal against the Emergency Prohibition Order. Nor is it an appeal against the Improvement Notices which were served in its wake. It is an appeal against the Final Notice imposing the financial penalty only, and the Tribunal's consideration of the case must be directed accordingly. Thus, our primary focus is on the condition of the Premises when Bradford Council inspected them in June 2018. It is certainly not appropriate in these proceedings for the Tribunal to consider whether the council owes duties to third parties, or whether it has breached any such duties.

47. It is appropriate that we should also preface the specific findings we set out below with a more general comment about Mr Raza's allegations of bad faith against the council and its witnesses. He alleged that Ms Subotovich and Mr Walters lied in their evidence about the condition of the Premises and that Ms Subotovich had deliberately misled him as to the council's intentions with a view to maximising the amount of the financial penalty to be imposed. These allegations are clearly very serious, but we are entirely satisfied that they are without foundation. It appears to us that both Ms Subotovich and Mr Walters acted honestly and professionally in their dealings with Mr Raza and we find their evidence to the Tribunal to be reliable. Although the parties disagree about certain issues of fact, many questions about which there is dispute (whether the Premises were fitted with an adequate fire alarm, for example), actually concern differences in opinion, rather than genuine disagreement about what was actually seen during the inspection of the Premises. Moreover, at least some of Mr Raza's disagreement with the council's evidence (as to whether the ground floor WC compartment was in good repair, or whether floor or ceiling coverings were missing, for example) arises because he considers that the council disregarded explanations he offered for such matters – not because the witnesses' descriptions of the condition of the Premises are factually incorrect.

48. Having made these general remarks, we now turn to consider the financial penalty itself.

Procedural compliance

49. Mr Raza has not challenged Bradford Council's compliance with the procedural requirements in Schedule 13A to the 2004 Act and, based on our own consideration of the documentary evidence provided to the Tribunal in this case, we are satisfied that those requirements were indeed met.

Relevant housing offence(s)

50. Bradford Council's decision to impose a financial penalty can only be upheld if the Tribunal is itself satisfied, beyond reasonable doubt, that Mr Raza's conduct amounts to an offence under section 234(3) of the 2004 Act.

51. We have already explained why we find that the HMO Management Regulations apply to the Premises and why Mr Raza has responsibilities under them as 'the manager' of the Premises. However, it is necessary next to consider whether Bradford Council has established that Mr Raza failed to comply with all or any of the specific regulations relied on by the council and, if so, whether such failure amounts to a criminal offence.

Did Mr Raza fail to comply with regulation 4?

52. To answer this question we must resolve a straightforward conflict of evidence: Ms Subotovich said that, when she inspected the Premises in June 2018, she specifically looked in the common parts for a notice giving the landlord's details, but she could not find one. Mr Raza, on the other hand, said that such a notice was affixed to a door in the communal hallway.

53. We prefer Ms Subotovich's evidence on this issue. We accept that she had made a point of looking for the required notice during her inspection. Ms Subotovich's evidence that there was no such notice is recorded in her witness statement and her recollection at the hearing was clear and unequivocal. Mr Raza appeared to be less sure of his position, however. He had made no mention of this issue in his various written representations prior to the hearing and so the Tribunal asked him during the hearing whether the necessary notice had been displayed. Mr Raza at first answered by saying that his details appeared in every tenancy agreement – only when pressed on the point did he go on to say that a regulation 4 compliant notice was also displayed in the hallway.

54. We find that there was no such notice and that Mr Raza therefore failed to comply with regulation 4.

Did Mr Raza fail to comply with regulation 5?

55. Regulation 5 (summarised at paragraph 37 above) is of crucial importance to the regulatory regime for HMOs: it is intended to ensure that every HMO is safe to live in, and places positive duties on the manager of an HMO to make sure that it is. But it is very clear from the evidence presented to the Tribunal in this case that, when the Premises were inspected by Bradford Council in June 2018, they were not safe to live in. In particular:

    - The fire alarm was inadequate and had not been serviced or tested. This is not to say that there was no fire alarm at all, but rather that the system which Mr Raza had installed (comprising battery-operated alarms) was not suitable for a building of this type. There should have been a mains-operated alarm and smoke-detection system, and this should have been regularly serviced and tested. Mr Walters told us that he had never before seen an alarm system such the one installed by Mr Raza: it was impossible to test it as it did not conform to any known standard and it was therefore considered unsafe. It is accepted that there were fire extinguishers in the

communal areas. However, these provide little protection to individuals who are not trained on their use.

- There were dangerous layouts of the flats: occupiers would have needed to escape their property via another room in the event of fire.

- The means of escape was not protected from fire and there was a lack of compartmentation. Whilst Mr Raza asserts that the Premises were fitted with fire doors, it is clear that the specification of the doors found by Ms Subotovich and Mr Walters fell short of that required for internal fire doors (in terms of thickness, self-closing and fire resistance), and that some of them were damaged and/or ill-fitting anyway. Internal ceilings which should have been fire-boarded were not fire-boarded.

- There were fire loading materials, including stored furniture and rubbish, in the basement and in areas opening out to the common parts. Mr Raza said that he did not see Mr Walters inspect the basement, but we do not doubt Mr Walters' evidence that he did inspect it and that he found it to pose a fire risk.

- There was use of mortice locks to bedrooms and the main exit door.

56. We are satisfied that these deficiencies evidence a failure on Mr Raza's part to comply with the requirements of regulation 5: his failure to provide or maintain a suitable fire alarm system is a breach or regulation 5(2); and his failure to ensure safe layouts, adequate compartmentation etc., is a breach of regulation 5(1) and 5(4).

Did Mr Raza fail to comply with regulation 8?

57. It is clear that, in breach of regulation 8(1), Mr Raza failed to ensure that the internal common parts of the HMO were maintained in good and clean decorative repair, or in a safe and working condition. Moreover, Mr Raza failed to ensure the proper upkeep of the external common parts (in breach of regulation 8(4)). In particular:

- The shared WC compartment on the ground floor was suffering from mould growth and had no heating or ventilation. The hand basin was unstable and at risk of collapsing. The floor had no covering and it was therefore difficult to keep the room clean.

- There were electrical hazards, such as a loose light switch, as well as the lights not working in the common parts on the first floor.

- There were accumulations of rubbish and loose masonry dumped in the outside yard/garden. It also had an uneven surface, with broken and lifting slabs.

Did Mr Raza fail to comply with regulation 9?

58. Regulation 9 focuses on the state and condition of the individual units of living accommodation within an HMO and on the manager's duties to repair and maintain the same. Whilst it is clear that there were multiple wants of repair in relation to the units within the Premises, Mr Raza has consistently argued that these matters were the result of neglect and/or deliberate damage to the Premises by his tenants. We heard evidence of the many difficulties caused by the tenants, in terms of their anti-social and threatening conduct towards each other and also in terms of their mis-treatment of the Premises. This resulted in the involvement of the police on a number of occasions. We accept, as a fact, that at least some of the damage to the living accommodation which was noted upon Bradford Council's inspection was attributable to the tenants' mis-treatment of the Premises.

59. It follows, by virtue of regulation 9(3), that Mr Raza has not breached regulation 9 to the extent that the need for repairs to the living accommodation within the Premises arose in consequence of its use by the occupiers otherwise than in a tenant-like manner. The extent of the damage caused by the tenants is uncertain, but that uncertainty means that we cannot be sure that Mr Raza has failed to comply with regulation 9 at all. We therefore find that he has <u>not</u> failed to comply with it.

Did Mr Raza commit the offence under section 234(3)?

60. It does not necessarily follow from our finding that Mr Raza failed to comply with regulations 4, 5 and 8 of the HMO Management Regulations that we should also find his conduct to amount to the offence under section 234(3) of the 2004 Act: breach of any of these regulations does not amount to a criminal offence if Mr Raza had a reasonable excuse for his failure to comply. Whilst the Tribunal must be satisfied, beyond reasonable doubt, that each element of the relevant offence has been established on the facts, an appellant who pleads a statutory defence must then prove, on the balance of probabilities, that the defence applies.

61. In the present case, Mr Raza argues that the misconduct of his tenants – and the deliberate damage they caused in particular – provides a reasonable excuse for his regulatory non-compliance. We are not persuaded by this argument. To begin with, it does not explain why Mr Raza failed to comply with regulation 4. Nor is it an answer in relation to regulation 5: the conduct of the occupiers of the Premises has no bearing on the majority of the very serious deficiencies noted at paragraph 55 above. The one possible exception is the matter of door locks, which Mr Raza says were changed by the tenants. Even then, Mr Raza visited the Premises from time to time and would therefore have been aware of the situation. He should, in our view, have taken steps to address the issue in order to reduce the risk. As far as the common parts (and regulation 8) are concerned, we note that Mr Raza blames the condition of the ground floor WC compartment on his tenants: he says that they had

broken the toilet and caused a flood, and that he was in the process of carrying out repairs and replacing the floor covering. We accept that this may well be so, but the tenants cannot be blamed for the lack of heating or ventilation, or for the electrical hazards elsewhere in the common parts. Nor do we accept that Mr Raza had a reasonable excuse for the poor condition of the external common parts: even if rubbish had been dumped there by someone else (as Mr Raza claims), he should still have made greater efforts to keep the outside space in a decent condition.

62. For these reasons, we are not persuaded that Mr Raza had a reasonable excuse for failing to comply with regulations 4, 5 or 8 of the HMO Management Regulations. It follows that we are satisfied, beyond reasonable doubt, that his conduct amounts to the offence of failing to comply with those regulations.

Amount of the financial penalty

63. We are satisfied that it is appropriate for Bradford Council to impose a financial penalty on Mr Raza in respect of his failure to comply with the regulations in question. We must therefore determine the amount of that penalty.

Guiding principles

64. The Tribunal's task is not simply a matter of reviewing whether the penalty imposed by the Final Notice was reasonable: the Tribunal must make its own determination as to the appropriate amount of the financial penalty having regard to all the available evidence. In doing so, the Tribunal should have regard to the seven factors specified in the HCLG Guidance as being relevant to the level at which a financial penalty should be set (see paragraph 21 above).

65. The Tribunal should also have particular regard to Bradford's Policy (see paragraph 22 above). As the Upper Tribunal (Lands Chamber) observed in *Sutton & Another v Norwich City Council* [2020] UKUT 0090 (LC):

> "It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities, and not by courts or tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred."

66. The Upper Tribunal went on to say that the local authority is well placed to formulate its policy and endorsed the view that a tribunal's starting point in any particular case should normally be to apply that policy as though it were standing in the local authority's shoes. It offered the following guidance in this regard:

> "If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should

> give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision."

67. Upper Tribunal guidance on the weight which tribunals should attach to a local housing authority's policy (and to decisions taken by the authority thereunder) was also given in another recent decision of the Lands Chamber: *London Borough of Waltham Forest v Marshall & Another* [2020] UKUT 0035 (LC): whilst a tribunal must afford great respect (and thus special weight) to the decision reached by the local housing authority in reliance upon its own policy, it must be mindful of the fact that it is conducting a rehearing, not a review: the tribunal must use its own judgment and it can vary such a decision where it disagrees with it, despite having given it that special weight.

68. It follows that, in order to determine this appeal, it is necessary for us to consider the provisions of Bradford's Policy, together with the decision which the council made in reliance upon that Policy in Mr Raza's case.

Bradford's Policy

69. Bradford's Policy on financial penalties provides that, in order to set the level of a financial penalty, the council will first determine the 'offence category'. This is achieved by assessing the seriousness of the offending conduct in terms, firstly, of the culpability of the offender and, secondly, of the harm it caused (or its potential for harm). Both culpability and harm are given a rating of low, medium or high. The interrelationship between culpability and harm then feeds into a matrix which determines the initial level of the penalty to be imposed, subject to adjustment to take account of any additional aggravating or mitigating factors. In a case where culpability and harm are each assessed as being 'high', the initial level of the penalty to be imposed is £25,000 – the highest possible starting point provided for by the Policy.

Consideration of Bradford Council's decision on quantum

70. Bradford Council assessed the seriousness of Mr Raza's failure to comply with the HMO Management Regulations as 'high', both in terms of his culpability and also in terms of the potential for his offending conduct to cause harm. We agree with those assessments, notwithstanding our finding that Mr Raza has breached only three of the regulations in question, rather than four.

71. Bradford's Policy states that an assessment of high culpability is appropriate in a case where a landlord has intentionally or recklessly breached the law or has wilfully disregarded it. Whilst there is no indication that Mr Raza's failure to comply with the relevant requirements of the HMO Management Regulations was wilful or intentional, his offending conduct was certainly reckless in our view. He appears to have had little, if any, regard to the potential risks which the layout and condition of the Premises posed to the health or safety of its

occupiers and he took no steps (such as seeking advice from the council or from a landlords' association) to acquaint himself with his responsibilities as manager of an HMO or to find out what safety measures would be appropriate and necessary for the Premises. Instead, he was content to assume – without having any justification for doing so – that the rudimentary fire safety measures he did put in place would be sufficient. They were not.

72. Turning to the question of harm, we note that Bradford's Policy provides that a determination that there was a high level or harm is appropriate in a case where the offending conduct had (or had the potential to have) a serious effect on individuals or widespread impact; resulted in harm to a vulnerable individual; and/or posed a high risk of an adverse effect on an individual. In the present case, Mr Raza failed to ensure that the occupiers of the Premises had the minimum acceptable level of protection against the risk of fire. The Premises were being used as an HMO in a manner which posed a particularly high risk in terms of fire safety. At least two of the occupiers were vulnerable individuals (one being a child and the other a tenant who appears to have had significant mental health problems). The potential for harm arising from the matters described at paragraph 55 above is serious and substantial and the fact that, fortunately, those matters did not lead to actual harm in this case does not detract from the seriousness of the situation.

73. The above assessment focuses particularly on the question of fire safety and Mr Raza's failure to comply with regulation 5. Whilst his other breaches of the HMO Management Regulations are also serious, the circumstances giving rise to the breach of regulation 5 alone are sufficient in our view to merit an assessment of high culpability and high harm in this case, warranting the imposition of a financial penalty of £25,000 (subject to the possibility of adjustment for any aggravating or mitigating factors) in accordance with Bradford's Policy. We nevertheless agree that the council's approach of assessing the overall seriousness of the regulatory breaches as a whole (rather than imposing separate penalties for each individual breach) is appropriate in this case in order to produce an outcome which is proportionate to the circumstances.

74. Bradford Council decided not to adjust the amount of the financial penalty to take account of aggravating or mitigating factors. The Council noted the existence of some aggravating factors (that there were multiple regulatory breaches; that Mr Raza had received rent from some of his tenants in cash; and that his actions were motivated by financial gain), as well as mitigating factors (Mr Raza's co-operation during the council's investigation and the fact that he has no previous convictions for relevant housing offences), However, the council concluded that the competing factors effectively cancelled each other out so that it was unnecessary to adjust the amount of the penalty upwards or downwards. We agree.

75. Mr Raza argues that there should be a downwards adjustment to the amount of the financial penalty because of the additional matters noted

at paragraph 45 above. We do not agree. The fact that Mr Raza may have taken some remedial action since the council's intervention does not detract from the seriousness of the situation which the council discovered when the Premises were inspected in June 2018. Nor does Mr Raza deserve credit for his claim that the Premises have now been converted back into a family home: the conversion work has not yet been completed and, indeed, it appears that one of the original tenants has been permitted to remain in occupation of the Premises throughout, in contravention of the Emergency Prohibition Order.

76. We have also taken careful account of what Mr Raza told us about his own personal and financial circumstances, but we have concluded that these do not amount to a mitigating factor under Bradford's Policy. Mr Raza explained that, having previously worked as a fashion designer in Ireland, he has had to re-locate to Bradford and now works as a taxi driver. He has a wife and young children, as well as older children from a previous marriage. Mr Raza has provided no specific evidence about his income and expenditure or about his assets. It is not clear how much equity (if any) he has in the Premises, but he disputes the council's assessment that he had previously been in receipt of gross rental income from the Premises of approximately £13,250 per annum (Mr Raza says that some of the tenants were in default with their rent, although no verifiable records have been produced in this regard). Mr Raza did confirm that he owns another property in Bradford (which he now lives in) and that this is mortgaged, and that he previously owned a further investment property in the area, which he has now sold. He has an unspecified amount of credit card debt and no savings. Mr Raza says that the imposition of a substantial financial penalty will cause him financial hardship: whilst we do, of course, have sympathy for Mr Raza's position, this alone does not justify a reduction in the amount of the penalty to be imposed.

OUTCOME

77. For the reasons explained above, we uphold the decision of Bradford Council to impose a financial penalty on Mr Raza. We are satisfied that Bradford's Policy was properly applied in determining that the amount of that penalty should be £25,000. The imposition of such a financial penalty is appropriate in the circumstances of this case: not only does it reflect the seriousness of the offending conduct, but it should also have a suitable punitive and deterrent effect.

78. Accordingly, we confirm the Final Notice. Mr Raza must therefore pay a financial penalty of £25,000 to Bradford Council.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 16 June 2021