FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/42UH/HNA/2021/0024**
HMCTS	**:**	**CVP**
Property	**:**	**1 Oaklea, Old Welwyn, Hertfordshire AL6 0PT**
Applicant	**:**	**Mr Kim Neighbour**
Representative	**:**	**Mr James Wedgwood**
Respondent	**:**	**Welwyn Hatfield Borough Council**
Type of Application	**:**	**Appeal against a Financial Penalty – Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal	**:**	**Judge JR Morris** **Mr Nat Miller BSc**
Date of Application	**:**	**21st July 2021**
Date of Directions	**:**	**9th September 2021**
Date of Hearing	**:**	**9th December 2021**
Date of Decision	**:**	**26th January 2022**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal

the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal confirms the Final Notice of the Financial Penalty of £5,000.00

Reasons

Application

2. The Application received on 21st July 2021 relates to 1 Oaklea, Old Welwyn, Hertfordshire AL6 0PT ("the Property") and is in respect of a Final Financial Penalty Notice for £5,000.00 issued on 22nd June 2021 to the Applicant by the Respondent for the offence ("the Offence") under Regulation 11(1) of the Electrical Safety Regulations in the Private Rented Sector (England) Regulations 2020 in respect of offences committed under Regulation 3 the relevant provisions of which state:
   (1) A private landlord who grants or intends to grant a specified tenancy must –
      (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person;
   (3) Following the inspection and testing required under sub-paragraphs (1)(b) and (c) a private landlord must—
      (b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test; and
      (c) supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from the authority

Description of Property

3. No inspection was made due to Government restrictions imposed under the Coronavirus Regulations but from the Lease, the Respondent's Statements of Case and the photographs provided, the Tribunal found the Property to be as follows:

4. The Property is a 1930s detached house with rendered elevations under a tile roof. It was converted into four flats over three floors. The date of the conversion is not known but is likely to be circa 2008. On the ground floor there is a large self-contained flat. On the first and second floors there are three further self-contained flats or maisonettes in that they

each have their own entrance. Outside there are gardens to the front and rear of the Property.

5. The Ground Floor flat is occupied by the Applicant. The flats on the first and second floors are identified as being numbered 1, 2 and 3.

6. Flat 1, it was agreed, had been occupied by a Ms Carly Vaughan and a Mr Ian Habbershaw. These persons were said to be evicted from Flat 1 by the Applicant. Whether or not the eviction was lawful is not an issue in these proceedings.

7. Flat 2 was agreed to be unoccupied.

8. Flat 3 was said by the Respondent to have been occupied for the last 12 years and was still occupied by that person. The identity of the person was not known. It is also not known on what basis the person occupies Flat 3.

9. Flats 1 and 2 comprise a kitchen, a living room, a bathroom and a bedroom. It is understood that Flat 3 is probably the same.

10. The Applicant is registered as the freehold proprietor at HM Land Registry Title Number HD 27567 of the Property from 11th September 1987.

Preliminary Issue

11. A disc of a video recording apparently of the Respondent's Officers attending the Building and the Property was provided. The Tribunal did not accept the disc as evidence for the following reasons:
    a) The Directions did not require the Respondent to provide such evidence nor did it request permission to adduce the evidence.
    b) It is understood that the Applicant did not have the equipment to view the disc and so could not have seen and commented on the evidence.
    c) From the references in the Respondent's case to the material on the video the Tribunal is satisfied that what it was intended to show could be proved adequately by photographs and written statements.

Evidence

As this is an Appeal against a decision of the Respondent the Respondent's case is set out first. A video hearing was held on 9th December 2021 and at which the Respondent was represented by Ms Emmilia Musk, Private Sector Housing Technician, Mr Adam Wotherspoon, Private Sector Housing Inspector, and Mr Mark Nicholson, Private Sector Housing Technician and Mr Dave King, Private Sector Housing Team Leader. Neither the Applicant nor a representative for the Applicant attended the hearing.

Respondent's Statement of Case

12. The Respondent provided a Statement of Case in the form of a Witness Statement made by Emmilia Musk who is a Private Sector Housing Technician for the Respondent. Mr Adam Wotherspoon, Private Sector Housing Inspector, and Mr Mark Nicholson, Private Sector Housing Technician, who were present with Ms Musk at the inspections referred to in her Witness Statement also provided Witness Statements. As Mr Wotherspoon's and Mr Nicholson's Statements were confirmatory of Ms Musk's Witness Statement, only Ms Musk's Statement is referred to below as the basis of the Respondent's case.

13. At the hearing Ms Musk's Witness Statement which is summarised below was confirmed and considered by the Tribunal as follows.

14. On 26th October 2020 Ms Musk said that a colleague, Ms Sandra Almond, informed Ms Musk that Ms Carly Vaughan and Ms Ian Habbershaw had been evicted from Flat 1 of the Property and that the electricity supply had been disconnected. They were provided with alternative temporary accommodation by the Respondent. Ms Musk said that she then inspected the visited Flat 1 the same day.

15. During the inspection Ms Musk noted that there was exposed wiring in the living room and kitchen (photographs were provided) and the consumer unit in the Flat lacked spacers.

16. On 28th October 2020 Ms Musk said that she decided to make a formal Housing Health and Safety Rating System Assessment. A Notice was given under section 239 of the Housing Act 2004 (the 2004 Act) authorising entry to all dwellings and common parts of the Property to carry out an inspection under section 4(1) of the 2004 Act. A covering letter was included which stated that the inspection would take place at 13.00 on Thursday 29th October 2020 (a copy of the section 239 Notice and the accompanying letter were provided).

17. In addition, the letter stated:

> "From my visual inspection I had concerns regarding the integrity and safety of the electrical system. Can you therefore please arrange for any Electrical Installation Condition Reports (EICR) or any other electrical reports to be emailed directly to me or to be made available at the time of our inspection. If there are no reports, please make arrangements for an electrician to undertake an inspection of all areas of the property that are let out and provide a report."

18. On 28th October 2020 Ms Musk said she and a colleague, Ms Christina Cooper, a Private Sector Housing Technician, visited the Applicant's Ground Floor Flat. The Applicant refused to take service himself of the Notice and so the documents were posted through the letter box. The

Applicant's daughter, Ms Kerri Neighbour, subsequently confirmed delivery in a telephone call the same day.

19. On 29th October 2020 Ms Musk said she and a colleague, Mr Adam Wotherspoon, Private Sector Housing Technician, visited the Property and carried out an inspection for a Housing Health and Safety Rating System Assessment for the Ground Floor Flat and Flats 1, 2 and 3 on the first and second floors.

20. Ms Musk said that she considered the inspection was urgent and the Housing Health and Safety Rating System Survey Assessment Report showed "there were a large number of potential hazards and [she] did not feel the property was safe for habitation" and she considered "the garage where the electrics were concentrated to be particularly hazardous". She said that there appeared to be a main consumer unit which had 3 spurs going to three separate consumer units labelled Flat 1, Flat 2 and Flat 3.

21. In response to the Tribunal's questions Ms Musk said that the main consumer unit served the Applicant's Ground Floor Flat and that the spurs went to the three subsidiary units. Ms Musk and Mr Wotherspoon considered the installation appeared hazardous. They were of the opinion that they needed sight of a current and recent EICR or that an inspection should be carried out immediately for an EICR. They said that no planning permission was available from which it could be determined when the conversion had taken place and what the status of the building including the electrical installation was at the time of the conversion.

22. On 2nd November 2020 Ms Musk said an email was sent to the Applicant requesting an EICR by Friday 6th November 2020. It was added that if the Report was not provided by 6th November 2020 Emergency Remedial Action would be taken in the form of carrying out the EICR by the Respondent's contractors. The email also set out requirements regarding smoke alarms.

23. On 5th November 2020 Ms Musk said she visited the Building with Mr Mark Nicholson, a Private Sector Housing Technician, to check whether the interim fire safety precautions had been undertaken.

24. On 6th November 2020 an EICR was provided for "Flat 1, 1 Oaklea" carried out by Mr James Wedgewood.

25. On 6th November 2020 Ms Musk said an email was sent to Mr Wedgewood and to Ms Neighbour requesting an Electrical Installation Condition Report for the whole Building.

26. In response to the Tribunal's questions, Ms Musk said that whereas the email of 2nd November 2020 did not specifically refer to an EICR for the whole Property it was made clear at the inspection on 29th October 2020 that such an EICR was required. The Tribunal said it was disappointed

not to receive a copy of the EICR for "Flat 1, 1 Oaklea" carried out by Mr James Wedgewood.

27. On 9th November 2020 Ms Musk said a further email was sent to Mr Wedgewood requesting the EICR and another to Ms Neighbour for the Applicant at 16.33 stating that an inspection to carry out an Electrical Installation Condition Report under section 239 of the 2004 Act would be undertaken between 1pm and 2pm to carry as an Emergency Remedial Action on 10th November 2020.

28. On 10th November 2020 Ms Musk said Gracelands Complete Maintenance Services ("the Respondent's Electrical Contractor") were engaged to carry out an inspection for an EICR of the whole Property.

29. On 12th November 2020 an email from Ms Musk to her line manager stated that the electricians reported that there were defects with regard to the supply (the main fuse earth reading was high) and the UKPN were contacted to carry out remedial work. It said that UKPN stated they had replaced two of the main fuses but the cables under the garden were severely corroded. They went on to state that the cables were two core and three core would be better and the main fuse was appropriate for three phase. However, the replacement of the two core cables for three phase is work for which the Applicant would have to pay.

30. On 12th November 2020 a further email from Ms Musk to her line manager stated the Respondent's Electrical Contractor was of the opinion that a 100-amp fuse was not sufficient for the four flats in the Property. He said that a two-phase supply would be possible from the two-core cable provided by UKPN. It was added that one fuse board had been tested and this had shown a number of C1 and C2 faults and a Report was provided. This fuse Board was disconnected by the Applicant's contractor by the following day. It was stated that there were a large number of live cables across the kitchen floor which was a C1 fault as they could be disconnected. In addition there were sockets in the bathroom.

31. In answer to the Tribunal's questions Ms Musk referred the Tribunal to the full text of the emails and said that the Respondent's Electrical Contractor had informed her that when they arrived at the Property to undertake an inspection for an EICR they said they could not do so because the supply to the company fuse, meter and the consumer box or boxes was unsafe and unreliable to test. Therefore, an EICR could not be provided to show the C1 and C2 faults referred to but these were apparent from a visual inspection alone.

32. On 4th December 2020 Ms Musk said that a Prohibition Order was issued in respect of Flats 1 and 2 due to lack of fire precautions.

33. In answer to the Tribunal's questions Ms Musk confirmed that a woman was occupying Flat 3. Although Ms Musk had met the occupant on the inspections undertaken, the occupant was not prepared to cooperate with

the Respondent in answering their questions as to her status as a tenant or as to the condition of Flat 3 or to allow an inspection of Flat 3.

34. The Tribunal expressed concern for the occupant and her status and thought that the Respondent might make enquiries to ensure her safety and wellbeing, taking into account the fire safety issues that were identified at the Property by the Respondent's Officers.

35. On 6th January 2021 a satisfactory EICR for the Property was provided dated 30th December 2020 which was 9 weeks after the first request on 6th November 2020.

36. The Tribunal noted the Report and was disappointed that the contractor Mr James Wedgewood was not available to answer questions about the electrical installation. The report identified a number of factors which from the Tribunal's knowledge and experience raised questions about the installation and the way it served the residential configuration of the Property.

37. On 28th January 2021 a Notice of Intent to Issue a Financial Penalty was served (copy provided) on the Applicant for the Offence in the sum of £10,000.00. "The reasons for proposing to impose the penalty are as follows: Because [the Applicant] is the manager and owner of the property and failed to provide an Electrical Installation Condition Report for the Property 1 Oaklea within 7 days of request from the Local Authority".

38. The Respondent's Officers said that the amount of the Financial Penalty assumed that the Applicant's rental income was £30,000 a year. Following submission of a financial statement by the Applicant which showed him to be in receipt of benefits and taking into account that a Prohibition Order had been made in respect of Flats 1 and 2 the Final Notice served on 23rd June 2021 (copy provided) reduced the Penalty to £5,000.00.

39. Ms Carly Vaughan Provided a witness statement in which she said that:
"I occupied the unit which I knew to be ready to rent and live in. I moved into the property on September (illegible numbers) I paid a deposit of £800.00 in cash and paid a monthly rent ~~£850.00~~ £150.00 in cash as Mr Kim Neighbour always refused to accept anything other than cash, we also signed a contract but never received a copy of it. I lived in the property with my boyfriend my rent included bills but not food. I do not have a rent book or any receipts. I was not provided with an electrical installation condition report during the time I lived there at the address. I was not provided with a written tenancy agreement. My landlord was Mr Kim Neighbour. He lived next to the property which was also 1 Oaklea."

40. Ms Musk stated in evidence at the hearing that the Applicant had advertised for tenants at a rent on the internet. The rent referred to in the advertisement informed the initial amount of the Financial Penalty.

Policy

41. The Respondent provided the following Financial Penalty Policy in tabular form which included the assessment for the Applicant.

Factors	Culpability	Assets/Profit	Previous Offences	Harm or Potential Harm
0-5	Low; Offence committed with little or no fault.	No significant assets; no or low profit.	No previous offences; single low level offence.	Very little or no harm caused. No vulnerable occupants. No tenant information on impact
5-10	Low/ Medium; awareness of legal framework and compliance systems in place but not implemented	Little asset value; little profit.	Minor previous enforcement; single offence.	Low level harm/risk to occupant. No vulnerable occupants. Poor tenant information on impact.
10-15	Medium/ High; awareness of legal responsibilities no compliance systems in place.	Small portfolio landlord (2-3 properties; Low profit.	Recent second time offender; moderate severity.	Moderate level harm/ risk to occupant. Vulnerable occupants. Some tenant information on impact.
16-24	High; awareness of law but committed offence.	Medium portfolio (4-5 properties; medium asset value and/or profit.	Multiple offender; Ongoing offences of moderate severity or single very sever offence of multiple breaches.	High level harm/risk to occupant. Vulnerable occupants. HMO. Good tenant information on impact
25	Very High; Intentional breach.	Large portfolio (over 5 properties); large asset and/or profit.	Serial offender; Multiple enforcement; continuing serious	Obvious high level risk/harm, evidence that tenants badly or continually affected. Multiple

			offence.	Vulnerable occupants. Excellent tenant information on impact.
Total 65	5	15	5	20 but score doubled 40
	Landlord unaware of requirements but renting for 12 years.	Only owns subject Building; large HMO with 4 units.	No previous enforcement but reluctant to comply with requests.	Significant risk to the occupier. ERA action to reduce risk. UKPN carried out 48 hours of remedial work before electricians could continue work

Score Range	Penalty
1-5	£250
6-10	£500
11-20	£750
21-30	£1,000
31-40	£2,500
41-55	£5,000
56-65	£10,000
66-75	£15,000
76-85	£20,000
86-95	£25,000
96-100	£30,000

42. The above assessment was amended following representations made by the Applicant to the Respondent before the Final Notice.

Factors	Culpability	Assets/Profit	Previous Offences	Harm or Potential Harm
Total 65	5	5	5	20 but score doubled 40
	Landlord unaware of requirements but renting for 12 years.	Only owns subject Building; large HMO with 4 units.	No previous enforcement but reluctant to comply with requests.	Significant risk to the occupier. ERA action to reduce risk. UKPN carried out 48 hours of remedial work before electricians could continue work

Applicant's Case

43. The Applicant was represented by Mr James Wedgewood who provided a statement of Case as follows:

44. He said that the Applicant is 67 years old, dyslexic and registered disabled. He said the Applicant relied on him to oversee all his affairs as he is incapable of doing so himself. Mr Wedgewood said that this had become increasingly difficult recently as he now resided in Menorca for most of the year. He added that Mr Neighbour neither has the resources (he does not own a computer or printer) or the 'know how' to prepare a bundle, unless Mr Wedgewood is in the UK to help him. Walker Morris Solicitor's on behalf of the Applicant's mortgage company, Foundation Loans had informed Mr Neighbour that a Bailiff of the County Court at Hertford will execute Warrant for Possession 5A319280 on 18th November 2021 at 11.30 am as his mortgage was in arrears of £6,949.83. Mr Wedgwood said this matter had put an enormous mental stress on the Applicant as he was about to lose the family home which he has had for over 30 years and that he had paid the Applicant's mortgage arrears to stop the eviction.

Grounds of Appeal

45. The Applicant gave four Grounds for Appeal. These are set out here followed by the Respondent's reply to them.

Ground 1

Regulation 3 (1) (b) - ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person.

46. It was submitted that BS7671 18th Edition IET Wiring Regulations state that an HMO property should be inspected/tested and certified every five years. The property at the time of the Respondent's Inspection was not an HMO but in the process of works to become an HMO and test certificates have been issued.

47. The email from the Respondent's electrical contractor, dated 11th November 2020 states:
"Essentially the problem is that testing is not possible to some of the installation as it is work in progress."
In the same email the Respondent states:
"Having said that I have just received another call from our Mark N and he says that the electricians have said the main fuse is crackling and needs to be reported to the energy provider as it is dangerous. Testing has now stopped."

48. Any test certificates issued before UKPN which found a fault with their part of the electrical installation would have been incorrect and have to be retested. This is due to any loose connection in the circuit which would provide a higher resistance reading.

49. It was submitted that the above offence could not be committed if electrical works are in progress.

Ground 2

Regulation 3 (3) (b) - supply a copy of that report to each existing tenant of the residential property within 28 days of being inspected/tested and certified.

50. It was said that there were no tenants in the property at the time of the Respondent's inspection of the property. The couple the Applicant asked to leave his house were acquaintances of his daughter that she had asked if he could help and were not tenants. It was added that even if they were tenants, they had only been in the Property for less than 28 days.

51. It was submitted that the offence could not have been committed when the Tenants had been resident for less than 28 days.

Ground 3

Regulation 3 (3) (c) - supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority.

52. The property was not an HMO at the time and electrical works were in progress. Each separate dwelling had a separate isolator which allowed each distribution board to be separately isolated. Any wiring that the Respondent's Officers saw as exposed had been isolated and locked off in accordance with BS7671 18th Edition IET Wiring Regulations. If the Respondent's electrical contractors had turned the isolators on, they would be responsible and liable for any harm to people or the property.

53. It was submitted that an Electrical Installation Certificate cannot be issued until the ongoing works are complete, a point which it was said was agreed by the Respondent's contractors.

Ground 4

Work carried out by UKPN

54. The Respondent's electrical contractors suggested that the corrosion of the supply was due to extra power being pulled from each unit. The supply is protected by a 100-amp fuse supplied by UKPN, the national power grid. The 100-amp fuse is designed to be the weakest point in the circuit and will blow so if a fault occurs the cable will not overheat and

burn out. If the cable is corroded as suggested by the Respondent's electrical contractor this would be due to external factors. If the cable was corroded then UKPN would be legally obliged to replace the cable as it is their property.

55. The Applicant's Representative said that the alleged eviction of the Tenants was not part of the case against the Applicant.

56. The Applicant's Representative also commented on matters that had been referred to by the Respondent's Officers which were not relevant to this case and so are not repeated here.

Decision

57. The Tribunal considered all the evidence adduced and submissions of the parties.

58. The Tribunal noted that there were references in the Applicant's and Respondent's case to the Property being a House in Multiple Occupation, most particularly with reference to the table setting out the assessment of the level of Financial Penalty. The Applicant's Representative submitted that it was not a House in Multiple Occupation and the Respondent adduced no evidence to show that it was a House in Multiple Occupation.

59. From the description of the Property comprising 4 self-contained dwellings and there being no evidence to the contrary the Tribunal found that the Property was not a House in Multiple Occupation.

60. In addition, it was stated that Ms Carly Vaughan and Ms Ian Habbershaw were allegedly illegally evicted from Flat 1 of the Property on 26th October 2020. Whereas, whether or not they were tenants is relevant to these proceedings, whether or not they were illegally evicted is not an issue which is before the Tribunal.

61. A Housing Health and Safety Rating System Survey was carried out on 29th October 2020 as a result of which the Respondent:
    1) Made a Prohibition Notice in relation in Flats 1 and 2;
    2) Took Emergency Remedial Action to carrying out an Electrical Installation Condition Report (EICR) by the Respondent's Electrical Contractors.

    Although the Emergency Remedial Action was taken due to the alleged offences nevertheless neither of these actions was appealed and are not the subject of these proceedings.

Validity of the Financial Penalty

62. Firstly, the Tribunal considered whether a Financial Penalty should be imposed, which in this case required the Tribunal to determine whether it was satisfied beyond a reasonable doubt that the Applicant had

committed the alleged offences for which the Financial Penalty Notice was issued. In doing so it considered the constituent parts of the offence.

63. Regulation 3(1) of Part 2 of the Electrical Safety Regulations in the Private Rented Sector (England) Regulations 2020 (the Electrical Safety Regulations) imposes a duty on a private landlord who grants or intends to grant a specified tenancy to:
    (a) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;
    (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person.

64. Regulation 3(3) of Part 2 of the Electrical Safety Regulations states that following the inspection and testing required under sub-paragraphs (1)(b) a private landlord must—
        (a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;
        (b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;
        (c) supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;

1) Whether Applicant "a private landlord" who had granted or intended to grant "a specified tenancy" of "residential premises".

65. The Tribunal firstly considered whether the Applicant was "a private landlord" who had granted or intended to grant "a specified tenancy" of "residential premises". The Applicant had conceded that Flat 1 of the Property had been occupied by Ms Carly Vaughan and Ms Ian Habbershaw. A witness statement was provided by Ms Carly Vaughan to say that she had occupied Flat 1 and had paid a deposit of £800.00 in cash and paid a monthly rent ~~£850.00~~ £150.00 in cash. The Applicant's Representative said that the couple the Applicant asked to leave his house were acquaintances of his daughter that she had asked if he could help and were not tenants.

66. The Tribunal found that the Applicant was "a private landlord" who had granted or intended to grant "a specified tenancy" of "residential premises" for the following reasons:

    a) Pursuant to Section 122 of the Housing and Planning Act 2016 with regard to electrical safety standards for properties let by private landlords, "tenancy" includes a licence to occupy (and "landlord" is to be read accordingly). It was conceded that Ms Carly Vaughan and Ms Ian Habbershaw were granted permission to live in Flat 1 of the Property which would amount to a licence

and under the 2016 Act a tenancy for the purposes of the Electrical Safety Regulations even if rent were not payable. In addition, there was an occupant of Flat 3 whose status was not explained to the Tribunal. Ms Musk had also given evidence that the Applicant had advertised for tenants at a rent on the internet and so intended to grant a "specified tenancy".

b) Ms Vaughan was not clear in her statement as to the amount they paid to live in Flat 1 but the Tribunal was satisfied that she had paid something which amounted to rent. Pursuant to Regulation 2 of the Electrical Safety Regulations "specified tenancy" means a tenancy of residential premises in England which—
   (a) grants one or more persons the right to occupy all or part of the premises as their only or main residence;
   (b) provides for payment of rent (whether or not a market rent).

c) Pursuant to Section 122 of the Housing and Planning Act 2016 with regard to electrical safety standards for properties let by private landlords, "residential premises" means premises all or part of which comprise a dwelling. The photographs provided by the Respondent from the inspections of Flat 1 showed it to be a dwelling. The occupation of the Property by the Applicant and his family and the occupation of Flat 3 showed the Property as a whole comprise a dwelling and as such amounted to residential premises.

2) Whether the electrical safety standards were met during the period when the residential premises were occupied under a specified tenancy.

67. The Tribunal secondly considered whether the electrical safety standards were met during the period when the residential premises were occupied under a specified tenancy.

68. It was not clear to the Tribunal precisely when Ms Vaughan and Mr Habbershaw took up residence in Flat 1 but it was during September 2020 and ended on 26th October 2020. During that time when the residential premises were occupied under a specified tenancy the Tribunal found that the electrical safety standards were not met. The Reasons for this were that:

a) The photographs that were provided showed the electrical installation in Flat 1 to have exposed wires in the living room (photograph 3) and kitchen (photograph 4) when inspected on 26th October 2020.

b) The photographs that were provided showed the electrical installation in other parts of the residential premises to have exposed wires when inspected on 29th October 2020.

c) The emails between 9th and 12th November 2020 indicated that the Respondent's Electrical Contractors had identified C1 and C2 hazards on their inspection between those dates and would have

existed when the residential premises were occupied under the specified tenancy.

3) *Whether EICR supplied to each existing tenant of the residential premises within 28 days of the inspection and test.*

69. Thirdly, the Tribunal considered whether the Applicant as a private landlord had ensured the electrical installation in the residential premises was inspected and tested at regular intervals by a qualified person and provided a copy of an EICR to each existing tenant of the residential premises within 28 days of the inspection and test.

70. Under ***Ground 1*** of the Appeal by the Applicant it was stated that Regulation 3(2) of the Electrical Safety Regulations and BS7671 18th Edition IET Wiring Regulations "at regular intervals" in Regulation 3(1)(b) means at intervals of no more than 5 years and that the last EICR was provided for Flat 1 to the Respondent on 6th November 2020.

71. The Tribunal questioned the validity of this EICR in that the Applicant's Representative said that the electrical installation was a "work in progress" and this was agreed by the Respondent's Electrical Contractors.

72. The Tribunal noted Regulation 3(4) and (5) which states that where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days or less if specified in the report.

73. The Applicant was through his Representative carrying out electrical works on the Property in the course of which, as stated above, the electrical safety standards were not being met. The Tribunal did not doubt that the EICR produced on 6th November 2020 for Flat 1 was when undertaken, satisfactory. However, the Tribunal was satisfied that it did not reflect the state of the electrical installation during the specified tenancy. The findings in the course of Ms Musk's inspections and those of the Respondent's Electrical Contractors showed that during that period the electrical safety standards were not being met.

74. If electrical works are in progress which result in electrical safety standards not being met in accordance with the legislation, then the residential premises should not be let.

75. Under ***Ground 2*** of the Appeal by the Applicant it was stated that Ms Vaughan and Mr Habbershaw had not been in occupation for 28 days and therefore the time limit had not expired before they vacated the premises.

76. The requirement under regulation 3(3)(b) of the Electrical Safety Regulations is that an EICR must be supplied to tenants within 28 days of the inspection and test, and not within 28 days of the tenants taking up occupation. Under regulation 3(1)(c) the first inspection and testing must be carried out before the tenancy commences in relation to a new specified tenancy; or by 1st April 2021 in relation to an existing specified tenancy. Therefore, in this instance the EICR should have been supplied to Ms Vaughan and Mr Habbershaw at the commencement of their occupation.

4) Whether a copy of EICR supplied to the local housing authority within 7 days of receiving a request in writing for it from that authority

77. Fourthly, the Tribunal considered whether a copy of the EICR had been supplied to the Respondent as the local housing authority within 7 days of receiving a request in writing from that authority.

78. The Respondents provided evidence that:
    a) A request was made in writing on 29th October 2020 and on 2nd November 2020 by email requesting the Applicant to provide an EICR for the Property by Friday 6th November 2020 and the Applicant provided an EICR on 6th November 2020 for Flat 1.
    b) On 6th November 2020 an email was sent to the Applicant's electrical contractor and the Applicant and his daughter requesting an Electrical Installation Condition Report for the whole Building. The request was repeated on 9th November 2020.

79. The Tribunal was of the opinion that the email of 6th November made it clear that a copy of the EICR for the whole Property was required within 7 days. The Tribunal found that the EICR requested on 6th November 2020 was not undertaken until 30th December 2020 and supplied until 6th January 2021. It was therefore not supplied within 7 days of the request.

80. Under ***Ground 3*** it was submitted that during the course of the ongoing works the wiring was safe because it was isolated even though the wires were exposed. It was further submitted that an Electrical Installation Certificate cannot be issued until the ongoing works are complete.

81. The Tribunal again referred to Regulation 3(4) and (5) where investigative or remedial work is carried out by a qualified person it must be done within 28 days. If more extensive work is being undertaken which is likely to take longer than 28 days then if the legislative provisions cannot be complied with the residential premises should not be let on a specified tenancy.

82. Under ***Ground 4*** the Applicant said that because on 12th November 2020 the electricity supply was found to be defective no EICR could be carried out until the defects were remedied by UKPN, the network provider.

83. The Tribunal found that there should already have been an EICR as the Applicant was a private landlord who had granted or intended to grant a specified tenancy. This pre-existing EICR for the Property should have been supplied to the local housing authority within 7 days of the request on 6th November 2020. Even if a new EICR was required following the remediation of the defects to the supply by the UKPN on 11th November 2020 it should have been supplied within 7 days of that work being completed. If remedial work was required to the installation at the Property itself then this should have been carried out within 28 days. A new EICR could then be supplied to the Respondent within 7 days.

Summary

84. The Tribunal was satisfied beyond a reasonable doubt that the Applicant was "a private landlord" who had granted or intended to grant "a specified tenancy" of "residential premises" and committed the following offences:
    - The residential premises were let under a specified tenancy between September 2020 and 26th October 2020 when the electrical safety standards were not met contrary to regulation 3(1) of the Electrical Safety Regulations.
    - The Applicant failed to supply a copy of an Electrical Installation Condition Report (EICR) for the residential premises to the tenants within 28 days of the Report or on commencement of the specified tenancy contrary to regulation 3(3)(b) of the Electrical Safety Regulations.
    - The Applicant failed to supply a copy of an Electrical Installation Condition Report (EICR) for the residential premises to the local housing authority within 7 days of receiving a request in writing for it from that authority contrary to regulation 3(3)(c) of the Electrical Safety Regulations.

Amount of the Financial Penalty

85. Secondly, the Tribunal considered the amount of the Financial Penalty. In doing so it had regard to the decision in *London Borough of Waltham Forest and Allan Marshall & London Borough of Waltham Forest and Huseyin Ustek* [2020] UKUT 0035

86. In this decision, Judge Elizabeth Cooke referred to the Guidance of the Secretary of State issued in 2016 and again in 2018 with regard to Financial Penalties. At paragraphs 1.2 and 6.3 of the Guidance both local authorities and tribunals are to have regard to the guidance. At paragraph 3.5 the guidance says that local authorities should develop and document their own policy on determining the appropriate level of civil penalty in a particular case; it adds that "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". The paragraph

goes on to set out the matters that a local authority "should consider" to "help ensure that the civil penalty is set at an appropriate level". These are:

- Severity of the offence,
- Culpability and track record of the offender,
- The harm caused to the Tenant,
- Punishment of the offender,
- Deter the offender from repeating the offence,
- Deter others from committing similar offences,
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

87. The learned judge went on to state that given a policy, neither the local authority nor a tribunal must fetter its discretion but "must be willing to listen to anyone with something new to say" (as per Lord Reid in *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610 at page 625) and "must not apply to the policy so rigidly as to reject an applicant without hearing what he has to say" (per Lord Denning MR in *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614 page 626).

88. In referring to the approach a tribunal should take in applying a policy, Judge Cooke referred to *R (Westminster City Council) v Middlesex Crown Court, Chorion plc and Fred Proud* [2002] EWHC 1104 (Admin) as being particularly apt. In that case a local authority sought a review of the decision of the Crown Court which allowed an appeal by rehearing of the decision of the authority to refuse an entertainment licence in accordance with policy. Scott Baker J said at paragraph 21:

"How should a Crown Court (or a Magistrates Court) [or in this case presumably a tribunal] approach an appeal where the council has a policy? In my judgement it must accept the policy and apply it as if it was standing in the shoes of the council considering the application."

89. However, it is added that the cases confirm that accepting the policy does not mean the tribunal may not depart from it provided it gives reasons taking into account the objective of the policy; the onus being on the Applicant to argue such departure.

90. Judge Cooke then considered what weight should be given to the local authority's decision under its policy. The justification for giving weight to a local authority's policy is, as expressed in *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614, because it is an elected body and therefore its decisions deserve respect.

91. It was submitted that case law supported a view that a tribunal should not depart from the decision of the local authority unless it is "wrong". Judge Cooke made it clear that this did not mean wrong in law (what might be termed "illegal"). A tribunal is not "reviewing" the local authority's decision but "rehearing" it. It is entitled to substitute its own

reasoned decision, perhaps having information not available to the local authority when it made its decision or in exercise of the tribunal's own specialist knowledge.

92. Taking into account the above the Tribunal then considered the Policy with regard to the imposition and amount of the Financial Penalty. It should be noted that the procedure carried out by the Respondent in issuing the Financial Penalty was not challenged by the Applicant and the Tribunal saw no reason to question it or suggest that it had not been carried out correctly. The Tribunal found the principles upon which the policy was based to be in line with government guidance and had been applied in this case.

93. The Tribunal considered the initial calculation of the penalty as set out in the table provided and stated in the Notice of Intent. It compared this with the reviewed calculation of the penalty for the Final Notice set out in the table. It found that the Respondent had taken account of the Applicant's Representations, including the Applicant's financial circumstances. The Tribunal found that the policy was appropriately applied and that both aggravating and mitigating circumstances had been taken into account and the penalty had been appropriately set.

Conclusion

94. The Tribunal confirms the Final Notice of the Financial Penalty of £5,000.00.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 – THE LAW

1. The Relevant Law is found in Electrical Safety Regulations in the Private Rented Sector (England) Regulations 2020.

2. Part 1
Regulation 2 – Interpretation
"specified tenancy" means a tenancy of residential premises in England which—
(a) grants one or more persons the right to occupy all or part of the premises as their only or main residence;
(b) provides for payment of rent (whether or not a market rent)

3. Part 2 Duties of Private Landlords,
Regulation 3 - Duties of private landlords in relation to electrical installations states:

(1) A private landlord who grants or intends to grant a specified tenancy must—
  (a) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;
  (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and
  (c) ensure the first inspection and testing is carried out—
    (i) before the tenancy commences in relation to a new specified tenancy; or
    (ii) by 1st April 2021 in relation to an existing specified tenancy.

(2) For the purposes of sub-paragraph (1)(b) "at regular intervals" means—
  (a) at intervals of no more than 5 years; or
  (b) where the most recent report under sub-paragraph (3)(a) requires such inspection and testing to be at intervals of less than 5 years, at the intervals specified in that report.

(3) Following the inspection and testing required under sub-paragraphs (1)(b) and (c) a private landlord must—
  (a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;
  (b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;
  (c) supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;

(d) retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and

(e) supply a copy of the most recent report to—

(i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and

(ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.

(4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within—

(a) 28 days; or

(b) the period specified in the report if less than 28 days,

starting with the date of the inspection and testing.

(5) Where paragraph (4) applies, a private landlord must—

(a) obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that—

(i) the electrical safety standards are met; or

(ii) further investigative or remedial work is required;

(b) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and

(c) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.

(6) Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5) in respect of that further investigative or remedial work.

(7) For the purposes of sub-paragraph (3)(e)(ii) a person is a prospective tenant in relation to residential premises if that person—

(a) requests any information about the premises from the prospective landlord for the purpose of deciding whether to rent those premises;

(b) makes a request to view the premises for the purpose of deciding whether to rent those premises; or
(c) makes an offer, whether oral or written, to rent those premises.

4. Part 5, Financial Penalties
Regulation 11 Financial penalties for breach of duties

(1) Where a local housing authority is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under regulation 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.
(2) A financial penalty—
(a) may be of such amount as the authority imposing it determines; but
(b) must not exceed £30,000.

5. Procedure for and appeals against financial penalties
Regulation 12.
Schedule 2 to these Regulations (procedure for and appeals against financial penalties) has effect.

6. Schedule 13A of the Housing Act 2004 which sets out the provisions relating to appeals against Financial Penalties as follows:
(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.

6. Housing and Planning Act 2016

Section 122 Electrical safety standards for properties let by private landlords, states

(1) The Secretary of State may by regulations impose duties on a private landlord of residential premises in England for the purposes of ensuring that electrical safety standards are met

during any period when the premises are occupied under a tenancy.

(2) "Electrical safety standards" means standards specified in, or determined in accordance with, the regulations in relation to—
(a) the installations in the premises for the supply of electricity, or
(b) electrical fixtures, fittings or appliances provided by the landlord.

(3) The duties imposed on the landlord may include duties to ensure that a qualified person has checked that the electrical safety standards are met.

(4) The regulations may make provision about—
(a) how and when checks are carried out;
(b) who is qualified to carry out checks.

(5) The regulations may require the landlord—
(a) to obtain a certificate from the qualified person confirming that electrical safety standards are met, and
(b) to give a copy of a certificate to the tenant, or a prospective tenant, or any other person specified in the regulations.

(6) In this section—
- "premises" includes land, buildings, moveable structures, vehicles and vessels;
- "private landlord" means a landlord who is not within section 80(1) of the Housing Act 1985 (the landlord condition for secure tenancies);
- "residential premises" means premises all or part of which comprise a dwelling;
- "tenancy" includes a licence to occupy (and "landlord" is to be read accordingly).