



Neutral citation number: [2023] UKFTT 851 (GRC)

Case Reference: PR/2023/0025

**First-tier Tribunal  
General Regulatory Chamber  
[Professional Regulation]**

**Heard: by determination on the papers  
Heard on: 13 October 2023  
Decision given on: 16 October 2023**

**Before**

**TRIBUNAL JUDGE Alison McKenna**

**Between**

**DAVID DAWSON**

Appellant

**and**

**NOTTINGHAM CITY COUNCIL**

Respondent

**DECISION**

**This appeal is dismissed. The Financial Penalty is affirmed.**

**REASONS**

***Background***

1. This appeal concerns a financial penalty imposed on the Appellant by the Respondent in relation to 664 Woodborough Road, Nottingham NG3 5FS. It was served under regulation 38 of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('The Regulations') for breach of regulation 37(4)(a) (failure to comply with a compliance notice).
2. The original penalty was dated 1 February 2023, and was for £3,600 in total. It was reduced to £1200 on review on 29 March 2023, because the penalty for letting a sub-standard property was revoked and the penalty remaining was for failure to comply with the Compliance Notice dated 1 November 2022 and served by the Respondent. Accordingly,

this appeal proceeds as an appeal against the financial penalty for failing to comply with the Compliance Notice only. The Appellant has not mentioned the accompanying publication penalty and so it appears this is not disputed.

3. The Appellant asks for the financial penalty to be quashed or reduced.

### **The Law**

4. The Regulations provide as follows:

#### Penalty notices

38.(1) *An enforcement authority may, on or after 1st April 2018, serve a notice on L (a “penalty notice”) in any case where it is satisfied that L is, or has been at any time in the 18 months preceding the date of service of the penalty notice, in breach of one or more of the following—*

*(a) regulation 23,*

*(b) regulation 27,*

*(c) regulation 37(4)(a),*

*imposing a financial penalty, a publication penalty, or both a financial penalty and a publication penalty, in accordance with this Chapter.*

*(2) A penalty notice must—*

*(a) specify the provision of these Regulations which the enforcement authority believes L has breached,*

*(b) give such particulars as the enforcement authority considers necessary to identify the matters constituting the breach,*

*(c) specify—*

*(i) any action the enforcement authority requires L to take to remedy the breach,*

*(ii) the period within which such action must be taken,*

*(d) specify—*

*(i) the amount of any financial penalty imposed and, where applicable, how it has been calculated,*

*(ii) whether the publication penalty has been imposed,*

*(e) require L to pay any financial penalty within a period specified in the notice,*

*(f) specify the name and address of the person to whom any financial penalty must be paid and the method by which payment may be made,*

*(g) state the effect of regulations 42 to 45, and*

*(h) specify—*

*(i) the name and address of the person to whom a notice requesting a review in accordance with regulation 42 may be sent (and to whom any representations relating to the review must be addressed), and*

*(ii) the period within which such a notice may be sent.*

*(3) Each of the periods specified under paragraph (2)(c) and (e) must not be less than one month, beginning on the day on which the penalty notice is served.*

(4) Where L fails to take the action required by a penalty notice within the period specified in that penalty notice in accordance with paragraph (2)(c), the enforcement authority may issue a further penalty notice.

### **Appeals**

43. If, after a review, a penalty notice is confirmed by the enforcement authority, L may appeal to the First-tier Tribunal on the grounds that—

(a) the issue of the penalty notice was based on an error of fact,

(b) the issue of the penalty notice was based on an error of law,

(c) the penalty notice does not comply with a requirement imposed by these Regulations, or

(d) in the circumstances of the case it was inappropriate for the penalty notice to be served on L.

### **Effect and determination of Appeal**

44.—(1) The bringing of an appeal suspends the penalty notice being appealed taking effect, pending determination or withdrawal of the appeal.

(2) The First-tier Tribunal may—

(a) quash the penalty notice, or

(b) affirm the penalty notice, whether in its original form or with such modification as it sees fit.

(3) If the penalty notice is quashed, the enforcement authority must repay any amount paid as a financial penalty in pursuance of the notice.

5. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of this Chamber's Procedure Rules.
6. The Tribunal considered an agreed bundle of evidence comprising pages 1 to 67.

### **Submissions and Evidence**

7. The Notice of Appeal dated 24 April 2023 relies on grounds relating to the penalty for letting a sub-standard property. Whilst accepting that the EPC certification needed attention, the Appellant submits that the property was otherwise in good order. He has not commented at all on why he did not comply with the Compliance Notice, other than to state that he found the Respondent's letters unhelpful and its staff rude. It is submitted that the financial penalty was disproportionate in all the circumstances.
8. The Respondent's Response dated 17 July 2023 states that it took into account the Appellant's representations about the property, and this is why it revoked the financial penalty in relation to the EPC. However, the Appellant did fail to comply with the Compliance Notice and no explanation has been given for this which would justify the reduction or quashing of the penalty in relation to this. The publication penalty remained as

it was considered appropriate to make this public so as to make clear to this and other landlords that Compliance Notices are legal requirements and that there are consequences involved when failing to comply with them.

9. The Appellant did not file a Reply.
10. The Respondent filed a witness statement from Mark Thomas, its Regulatory Compliance Officer, dated 23 August 2023. His evidence is that the property was let without the relevant EPC certificate in force and without any exemption. Further, that following the Appellant's failure to address the issues raised with him in correspondence it was decided to take enforcement action by serving him with a Compliance Notice. As the Compliance Notice was not complied with, a financial penalty was imposed in accordance with the Respondent's policy. The penalty relating to the condition of the property was revoked after considering representations about the works carried out. However, the financial penalty for failing to comply with the Compliance Notice remained. This was in accordance with the Respondent's policy. It is submitted that the Appellant has not put forward any basis on which the Tribunal could reduce or quash the penalty for failing to comply with the Compliance Notice.
11. The Appellant did not file any evidence and I understand that he accepts the evidence of Mr. Thomas as he has not sought to challenge it. It is unfortunate that he has not addressed in his pleadings or in evidence the specific reasons for not complying with the Compliance Notice.

### ***Conclusion***

12. The Appellant's case relies on an argument that the penalty is disproportionate in all the circumstances. As this appeal is against the financial penalty for failing to comply with the Compliance Notice only, I have considered all the circumstances in which it was imposed. The Appellant describes the Respondent's letters as unhelpful and its staff as rude, but I cannot understand how these factors (if they are true, which is disputed by the Respondent) could be relied upon by the Appellant to justify a failure to comply with a legal notice. I note that the Appellant has not disputed the facts relied upon by the Respondent, so he seems to accept that he did fail to comply as this is nowhere denied in his grounds of appeal, but he has not put forward any explanation for his conduct.
13. The Appellant's appeal apparently relies on regulation 43 (d), that in all the circumstances it was inappropriate for the penalty to be served on the Appellant. The powers of the Tribunal under regulation 44 are therefore to quash the penalty or to affirm it with such modifications as it thinks fit. Having considered the parties' representations carefully I conclude that the Appellant has demonstrated no basis on which the penalty should be quashed or modified.
14. In all the circumstances, I now dismiss this appeal and affirm the revised penalty notice dated 29 March 2023.

Signed: Judge Alison McKenna

Date: 13 October 2023