



**First-tier Tribunal
(General Regulatory Chamber
Standards and Licensing**

**Neutral Citation number: [2025] UKFTT 259 (GRC)
Appeal Reference: FT/SL/2024/0021
Decision given on: 27 February 2025**

**Decided at a hearing held by CVP
On 22 January 2025**

Before

JUDGE ANTHONY SNELSON

Between

DALBAGH SINGH SOOR

Appellant

and

LUTON BOROUGH COUNCIL

Respondent

DECISION

On hearing Mr C Soor, lay representative, for the Appellant and Mr E Gordon-Saker, counsel, for the Respondent, the Tribunal determines that the appeal is dismissed.

REASONS

1. The Appellant, to whom I will refer by name, is and for over 30 years has been a professional landlord with a large portfolio of rental properties in and around Luton.

2. The Respondent, which I will call the Council, is the local housing authority with responsibility for Luton. Its statutory duties include, among many others, enforcement of the Energy Efficiency (Private Rented Property) (England & Wales) Regulations 2015 ('the 2015 Regulations').

3. By this appeal, Mr Soor challenges notices issued by the Council on 30 May 2023 ('the PNs') under the 2015 Regulations, reg 38 read with reg 42, requiring him to pay revised penalty charges of £333.33¹ in respect of each of 19 specified letting properties owned by him (a total of £6,336.50) on the stated grounds that (in each case) (a) he had let a substandard property in that, during the material period (8 December 2022 to 15 March 2023), he had not held a valid energy performance certificate ('EPC') in respect of it and (b) he had failed to comply with a compliance notice requiring him to produce a valid EPC.

4. The appeal came before me for final determination in the form of a video hearing by CVP, with one day allocated. Mr C Soor, the Appellant's son, attended as his lay representative. Mr E Gordon-Saker, counsel, appeared on behalf of the Council. I was grateful to both for their constructive contributions. An agreed bundle was produced.

5. Following a useful discussion my initial doubts as to whether a competent appeal had been raised were dispelled.² Turning next to the merits, we soon agreed that no 'live' evidence was required since neither advocate was minded to cross-examine the witness produced by his opponent. We were down to a dispute about mitigation. Accordingly, we proceeded straight to closing argument following which, in view of the fact that we had arrived at the lunchtime break, I reserved judgment to spare the parties returning to hear an oral decision which would need to be reduced to writing in any event.

The statutory framework

6. As their name suggests, the main objective underlying the 2015 Regulations is the improvement of energy efficiency in the private rented property sector. The principal measures to that end are regs 23 and 27, which, subject to certain exceptions, enact a general prohibition on landlords letting 'sub-standard' property. Reg 23, which is concerned with residential property, has applied with effect from 1 April 2018 in the case of the grant of a new tenancy or an extension or renewal of an existing tenancy, and with effect from 1 April 2020 in the case of the continuation of an existing tenancy. For the purpose of assessing energy efficiency, properties are classified in seven bands, A-F, in declining order of efficiency. Properties in bands F and G are 'sub-standard'. Energy ratings are recorded in 'energy performance certificates' ('EPCs'), which have a life of 10 years and are kept in a statutory register.

¹ As will be explained, the original penalties had been set at £500 per property but were reduced on review.

² In short, I was satisfied that the appeal stood as a proper and timely challenge to a penalty as varied by the Council on review, in accordance with the 2015 Regulations.

7. Under reg 37 the ‘enforcement authority’, here the local authority, has power to serve a ‘compliance notice’ on any landlord who appears to be in breach of reg 23 or 27, or who appears to have been in breach in the 12 months preceding the date of service of the compliance notice (reg 37(1)). The compliance notice may request the landlord to produce documents relevant to the energy efficiency of the property, the nature of the letting and other matters judged necessary to enable the local authority to carry out its functions under the legislation (reg 37(2)). Under reg 37(4)(a) the landlord ‘must’ comply with any compliance notice with which he or she is served.

8. By reg 38(1) an enforcement authority has power to serve on a landlord a Penalty Notice (‘PN’) where it is satisfied that he or she is, or has in the last 18 months been, in breach of (*inter alia*) reg 23 and/or reg 37(4).

9. The level of financial penalties is subject to certain maxima. In respect of residential property cases, the limit is set at £2,000 (reg 40(2)(a)).

10. Reviews are governed by reg 42. A PN may be reviewed on the application of a landlord or on the initiative of the enforcement body. In the former case, there is a time limit for applying; in the latter, there is none. On review, the enforcement body has wide powers to affirm, vary or revoke the PN.

11. Under reg 43, a landlord may appeal to the First-tier Tribunal (‘FTT’) against a PN on one or more of four specified grounds, namely that: (a) the issue of the PN was based on an error of fact; (b) the issue of the PN was based on an error of law; (c) the PN does not comply with a requirement of the Regulations; and (d) in the circumstances of the case it was inappropriate for the PN to be served on the landlord.

12. Disposal of the appeal by the FTT may involve quashing the PN or affirming it, whether in its original form or subject to modification (reg 44(2)).

13. Subject to the constraints of reg 43, the FTT treats the appeal as a rehearing. It must simply make its own decision on the evidence before it (which may well differ from that before the enforcement authority at the time of the decision under challenge). This said, the Tribunal must accord ‘great respect’ and ‘considerable weight’ to any public authority’s policy on financial penalties (see *Waltham Forest LBC v Marshall and Ustek* [2020] UKUT 0035).

The key facts

14. The material facts can be summarised as follows.

14.1 On 30 November 2022, having become aware that Mr Soor was the title holder of 19 rental properties in Luton in respect of which no EPC had been uploaded to the Government’s energy certificate portal (‘the properties’), an enforcement officer employed by the Council (‘the enforcement officer’) served on him a Compliance Notice requiring him to produce relevant documentation.

- 14.2 On 30 January 2023, having received no response to the Compliance Notice, the enforcement officer issued a warning letter to Mr Soor advising him that failure to respond to the Compliance Notice by 7 February 2023 would result in service of a Notice of Intention to issue a Financial Penalty in accordance with the 2015 Regulations, reg 38.
- 14.3 Mr Soor having failed to respond to the warning letter of 30 January 2023, on 13 February 2023 the compliance officer issued a Notice of Intention to issue a Financial Penalty.
- 14.4 On 15 March 2023, having received no response to the Notice referred to in para 14.3 above, the enforcement officer issued Financial Penalty Notices in the sum of £500 per property (a total of £9,500).
- 14.5 On or around 17 April 2023 valid EPCs in respect of all the properties were delivered.
- 14.6 Following a meeting with Mr Soor on 17 April 2023 at which Mr Soor apologised for his failure to comply with his obligations and put forward certain points in mitigation, the enforcement officer sent a notice to Mr Soor confirming the decision to impose a penalty but applying a one-third discount on account of mitigatory factors which he had raised. Accordingly, the final penalty was reduced to £6,336.50.

The Council's enforcement policy

15. The Council operates a protocol for determining financial penalties which, by means of a matrix, identifies two key criteria of equal weight: culpability and harm and, in respect of each, two measures: high and low. As a starting-point, a low culpability, low harm case suggests a penalty of 25% of the maximum available. In a high culpability, high harm case, a penalty of 100% of the maximum available is proposed. High culpability, low harm and low culpability, high harm cases are argued for penalties of 50% of the maximum. The protocol suggests a number of factors that may be relevant to the task of assessing culpability and harm. To give one example, a prior history of breaches will be likely to be seen as an aggravating factor. It is important to note that the policy gives latitude to move upwards or downwards from the starting-point to take account of all relevant considerations.

The appeal

16. The nub of the appeal was that, given the absence of any prior history of infringement of statutory obligations and the personal mitigation advanced by Mr Soor (in particular, but not limited to, his marital and financial difficulties and his apology to the enforcement officer), the penalty imposed was, even after the review, excessive. Indeed, Mr Soor (junior) submitted that the mitigation was such that the proper outcome was for the penalty to be expunged altogether.

17. For the Council, Mr Gordon-Saker submitted that no ground was shown for interfering with the final penalty imposed. Mr Soor was an experienced landlord with a substantial portfolio of properties. He must be taken to understand the need to

comply with his statutory obligations. If personal difficulties made that problematical, he must have been in a position to delegate his responsibilities as needed. All mitigating factors had been fully accounted for by the reduction in the penalty at the review stage.

Conclusions

18. In my view the Council acted properly in serving the original penalty notice and in setting the penalty at £500 per property. Mr Soor rightly does not dispute that he was in breach of the 2015 Regulations in failing to obtain valid EPCs and in failing to respond to the Compliance Notice. Nor did question the enforcement policy or the way in which it was applied to arrive at the £500 figure.

19. I further consider that the Council acted properly in reviewing and adjusting the penalty. If anything, the adjustment was on the generous side. Without minimising the personal unhappiness and anxiety which Mr Soor had experienced, I do not consider that the mitigation was weighty in the scheme of things.³

20. Nor was there substance in the argument that the *overall* penalty was excessive. I agree with Mr Gordon-Saker that there is no good reason, here at least, to discount further simply for volume. Mr Soor is in a substantial way of business as a landlord. If the penalty for one property is appropriate, I see no reason at all for imposing a lower penalty *pro rata* simply because there are more breaches. Indeed, one could see persuasive arguments for penalising an offender who commits multiple breaches *more severely pro rata* than one who commits a single breach.

21. For all these reasons, I find nothing to criticise in the Council's decision-making in this case. No ground under the 2015 Regulations, reg 43 is made out. The appeal must be dismissed.

Postscript

22. I add two points. First, the Council would do well in future cases to be clear on what basis it is revisiting any decision to impose a penalty. The Tribunal should not have been required to analyse the legislation and resort to deeming and inference in order to attach a legal label to the adjustment in question. Any review should be clear and explicitly refer to the provisions engaged. Creation of standard documents should be considered. Second, the bundle produced by the Council (over 600 pages long) was almost unusable. In future, the GRC guidance must be followed. In particular, to state the obvious, the index must identify the documents contained.

Signed Anthony Snelson
Judge of the First-tier Tribunal
Date: 13 February 2025

³ I have had regard to all points advanced, including those in Mr Soor's letter to the FTT (Property Chamber) of 8 June 2023.