



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

**Case Reference** : **MAN/00DA/HNA/2019/0034**

**Property** : **1 Cleveleys Terrace, Holbeck, Leeds,  
West Yorkshire, LS11 0AG**

**Applicant** : **Neil Lynn**

**Applicant's  
Representative** : **LR Solicitors**

**Respondent** : **Leeds City Council**

**Type of Application** : **Appeal against a financial penalty –  
Section 249A & Schedule 13A- Housing  
Act 2004**

**Tribunal Members** : **Tribunal Judge S Greenan  
Tribunal Member Mr P Mountain**

**Date of  
Determination** : **12 July 2019**

**Date of Decision** : **31 July 2019**

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**DECISION**

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1. In this case the Tribunal is dealing with an appeal by Neil Lynn (“the Appellant”) against the decision of Leeds City Council (“the Respondent”) to impose a financial penalty on him for his failure to comply with an Improvement Notice served pursuant to sections 11 and 12 of the Housing Act 2004.

## **Background**

2. On 23 December 2004 the Appellant purchased a property at 1 Cleveleys Terrace, Holbeck, Leeds (“the property”). In 2016 the property was let to a tenant. On 5 December 2016 the property was inspected by Anita Chester, a principal housing officer working for Leeds City Council, for the purposes of assessing the condition of the property, as part of the Leeds Neighbourhood Approach. That inspection identified a number of hazards as defined by the Housing Health and Safety Rating System. The Appellant was provided with a copy of Ms Chester’s inspection report following which there were discussions between the Appellant and the Respondent over a lengthy period about the nature of the work required to remedy the hazards and whether Ms Greenhough would continue to be the tenant of the property.
3. On 2 March 2018 a further inspection of the property was carried out by Ms Chester, following which an Improvement Notice was served. The property was re-inspected on 27 June 2018 when it was found that the majority of works required by the Improvement Notice had not been carried out. On 5 December 2018 a notice of intent to impose a financial penalty was served on the Appellant, and he made representations in relation to that notice through his solicitors. On 15<sup>th</sup> February 2019 the Appellant was sent a final notice of the imposition of a financial penalty in the sum of £22,500.
4. It is against that notice that the Appellant appeals. His appeal was sent to the Tribunal Office on 14 March 2019. It was supported by detailed reasons and a witness statement. The Appellant challenged both the decision to impose a financial penalty and the amount of that penalty. In response the Respondent

filed a detailed statement of case and supporting documents, including a witness statement from Ms Chester. The case was then listed for hearing on 12<sup>th</sup> July 2019.

5. On 10 July 2019 the solicitors for the Appellant emailed the Tribunal indicating that the Appellant did not intend to pursue the grounds of appeal relating to the decision to impose a financial penalty. The Respondent was also informed of this.

### **Inspection**

6. The Tribunal inspected the property on the morning of 12<sup>th</sup> July. Present at the inspection were: the Appellant; his solicitor Ms Steer; his counsel Mr Holsgrove; the Respondent's legal officer Mr Comer; its counsel Mr Adams; and Ms Chester, the housing officer.
7. The Tribunal found the property to be an inner back to back terraced house situated in an area of similar housing in the inner city close to the M621 motorway. It is of traditional brick construction with a slate roof. The property has only one external wall. Externally the property appeared to be in reasonable condition and new guttering had recently been fitted.
8. The house has UPVC windows throughout. It has recently been fitted with a hard wired smoke alarm system with detectors mounted on the ceiling in each room.
9. The property has a cellar which contains the gas and electricity meters. Access to the cellar is via a steep staircase from the kitchen, with recently fitted hand rails. The cellar floor was observed to be wet, although there was no standing water. The Appellant reported that he had mopped the floor shortly before the Tribunal arrived. On the ground floor is a small kitchen with a stainless steel sink unit and fitted units and work surfaces. The gas central heating boiler is in the kitchen. On display in the kitchen for the Tribunal to see was an up-to-date gas safety certificate certificate and an electrical inspection certificate. The ground floor also contains a living room.

10. A steep staircase leads from the living room to the first floor. This had a recently fitted handrail. On the first floor is a bathroom with a fitted white suite, and a bedroom with a new UPVC window. The Tribunal was informed that the room had recently been re-plastered. A further steep flight of stairs with recently fitted handrail led to the second floor, on which were situated two bedrooms, one single and one small double.
11. There was an aroma of cat urine in the first floor bedroom. The Tribunal was informed that the previous tenant had kept cats.

### **The hearing**

12. A hearing took place at the Tribunal Hearing Centre, York House, York Place, Leeds following the inspection. As the Appellant was no longer pursuing his appeal against the decision to impose a financial penalty, it was agreed by both parties that the hearing could proceed on the basis of submissions only. The Tribunal therefore heard submissions from Mr Holsgrove, on behalf of the Appellant, and from Mr Adams, on behalf of the respondent. The Tribunal then indicated that it would send out a written decision.

### **The law**

13. The regime of financial penalties as an alternative to prosecution for certain housing offences came into force on 6 April 2017. Section 249A of the 2004 Act, inserted by section 126 of, and paragraphs 1 and 7 of Schedule 9 to, the Housing and Planning Act 2016 ('the 2016 Act') provides –

*(1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.*

*(2) In this section 'relevant housing offence' means an offence under—*

- (a) section 30 (failure to comply with improvement notice),*
- (b) section 72 (licensing of HMOs),*
- (c) section 95 (licensing of houses under Part 3),*
- (d) section 139(7) (failure to comply with overcrowding notice), or*
- (e) section 234 (management regulations in respect of HMOs).*
- (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.*
- (4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.*
- (5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—*
  - (a) the person has been convicted of the offence in respect of that conduct, or*
  - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.*
- (6) Schedule 13A deals with—*
  - (a) the procedure for imposing financial penalties,*
  - (b) appeals against financial penalties,*
  - (c) enforcement of financial penalties, and*
  - (d) guidance in respect of financial penalties.*
- (7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.*
- (8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.*
- (9) For the purposes of this section a person's conduct includes a failure to act.*

Paragraphs 1 to 10 of Schedule 13A to the 2004 Act, inserted by section 126 of, and paragraphs 1 and 8 of Schedule 9 to, the 2016

Act provide –

*Notice of intent*

*1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a 'notice of intent').*

*2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.*

*(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—*

*(a) at any time when the conduct is continuing, or*

*(b) within the period of 6 months beginning with the last day on which the conduct occurs.*

*(3) For the purposes of this paragraph a person's conduct includes a failure to act.*

*3 The notice of intent must set out—*

*(a) the amount of the proposed financial penalty,*

*(b) the reasons for proposing to impose the financial penalty, and*

*(c) information about the right to make representations under paragraph 4.*

*Right to make representations*

*4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.*

*(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ('the period for representations').*

*Final notice*

*5 After the end of the period for representations the local housing authority must—*

*(a) decide whether to impose a financial penalty on the person, and*

*(b) if it decides to impose a financial penalty, decide the amount of the penalty.*

*6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a ‘final notice’) imposing that penalty.*

*7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.*

*8 The final notice must set out—*

*(a) the amount of the financial penalty,*

*(b) the reasons for imposing the penalty,*

*(c) information about how to pay the penalty,*

*(d) the period for payment of the penalty,*

*(e) information about rights of appeal, and*

*(f) the consequences of failure to comply with the notice.*

*Withdrawal or amendment of notice*

*9 (1) A local housing authority may at any time—*

*(a) withdraw a notice of intent or final notice, or*

*(b) reduce the amount specified in a notice of intent or final notice.*

*(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.*

*Appeals*

*10 (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—*

*(a) the decision to impose the penalty, or*

*(b) the amount of the penalty.*

*(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.*

*(3) An appeal under this paragraph—*

*(a) is to be a re-hearing of the local housing authority's decision, but*

*(b) may be determined having regard to matters of which the authority was unaware.*

*(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.*

*(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.*

## **Findings**

### **History and the conduct of the Respondent**

14. The Appellant has owned 1 Cleveleys Terrace since 2004. He owns at least one other rental property, 28 Grange Avenue, Chapeltown, Leeds.
15. In 2016 he let the property to a tenant (“the tenant”) on an assured shorthold tenancy at a rent of £450 per month. The Tribunal was not provided with a copy of the tenancy agreement.
16. Leeds City Council operates a scheme known as Leeds Neighbourhood Approach which works in neighbourhoods where there are high numbers of private rental properties. The team wrote to the Appellant on 13.6.16 and 1.7.16 indicating that they wished to inspect the property. On 21 July 2016 the Appellant spoke to Ms Chester and discussed with her, amongst other matters, the fact that there was water in the cellar of the property. She advised him to contact Yorkshire water.
17. Ms Chester did not contact the Appellant again until 5 October 2016, when she rang and emailed him to arrange an inspection of the property. The Appellant did not respond and Ms Chester visited the property on 14 October 2016. She met the tenant who said that she was just going out. A return visit for an inspection was arranged for 19 October 2016. When Ms Chester attended, the



- tenant again said that she was going out. Ms Chester made a further attempt at inspecting the property on 21<sup>st</sup> November, when the tenant would not let her in.
18. On 29 November 2016 Ms Chester served a notice on the Appellant and on the tenant indicating that the local authority was considering exercise of a power of entry.
  19. Ms Chester was able to gain access on 5 December 2016. That inspection revealed in summary the following issues:
    - a. the gas supply had been so the central heating system could not be used;
    - b. the electricity meter had been bypassed and portable electric heaters were being used;
    - c. the property had no fire detection system, save for a single battery operated smoke detector in the kitchen, which had been painted over;
    - d. the first floor bedroom had a window which would not permit the occupant to escape in the event of a fire;
    - e. the cellar door was not attached to its hinges;
    - f. front door was in a poor state of repair, draughty, and vulnerable to intruders;
    - g. there was no door to the kitchen;
    - h. none of the staircases had handrails.
  20. Ms Chester concluded that the property had category one hazards (as defined by the Housing Health and Safety Rating System) arising from fire safety, excess cold, and falls on stairs; and a category two hazards relating to entry by intruders, falling between levels, damp and mould growth, and electrical hazards.
  21. A copy of Ms Chester's report outlining the works required at the property, together with a covering letter, was sent to the Appellant on 8 December 2016. The Appellant responded the same day by email. In his email he indicated that both his wife and he were suffering from mental health problems which had required recent hospitalisation. He said that "we are going to get the tenant an eviction notice on Monday" and that they were not happy with the way she had looked after the property.
  22. On 7 February 2017 Ms Chester, who had heard nothing further from the Appellant emailed him asking for an update and indicating that she wished to re-inspect the property. The Appellant responded on the same day indicating

that he intended to evict the set the tenant, then sell the property. On 7 April 2017 Ms Chester sent a further email requesting an update. The Appellant responded on 10<sup>th</sup> April stating:

“I have only just been in touch with Stacey and we have sorted out were we go from here in the next 2/3 weeks we are going to start on the house with the top floors as she doesn't have any children any more we have decided to start their work down looking at six months to complete the gas centreline heating is working but she will not put credit on the meter she doesn't want to use it.”

23. On 20<sup>th</sup> April Ms Chester contacted the Appellant to arrange a reinspection. The Appellant responded on 21<sup>st</sup> April saying that the works would be started the following week. On 24<sup>th</sup> April Ms Chester informed him that the property would not be reinspected until the middle of May, giving him time to complete the works. On 5<sup>th</sup> May the Appellant was given notice that a further inspection would take place on 16<sup>th</sup> May. On 7<sup>th</sup> May the Appellant contacted her asking if any financial assistance is available with the works and explaining that he was in a difficult financial situation. Ms Chester responded that she was not aware of any such assistance. On ninth May the Appellant email Ms Chester to inform her that the workers he had engaged to not willing to do the work because of the tenants to large dogs.

24. The property was reinspected on 16 May 2017. Ms Chester was accompanied by the police because of concerns about suspected drug dealing activity at the property. Ms Chester found that none of the works set out in her earlier report had been carried out. The gas supply was still capped off. Two dogs, two cats and three kittens were seen in the property and there was an accumulation of animal excrement in the main bedroom. Ms Chester was particularly concerned about the limited fire detection equipment, and on 18<sup>th</sup> May she emailed the Appellant informing him that he could collect free smoke detectors from her office and install them at the property himself. She also invited him to visit her to discuss the case. In the same email she told him about a new scheme whereby the local authority had obtained funding to buy properties in the area and offered to pass his details onto the person dealing with this. On 24<sup>th</sup> May Ms Chester emailed him again repeating the offer of free smoke detectors. On 26 May Ms Chester emailed to the Appellant a remedial notice requiring the installation a battery smoke detection. In the accompanying email she said:

“It is my understanding that the smoke detectors have not been installed at the above property. Please therefore find attached a copy of a notice that requires their installation. If this notice is not complied with you will be fined and we will arrange to carry out the works and recover costs from you.”

25. The Appellant did not respond to those emails. She emailed him again on 9<sup>th</sup> June asking him if the smoke detectors had been fitted and to invite him again to come into her office to discuss the case. The Appellant responded: “work is been carried out this week thanjyou”.
26. On 22<sup>nd</sup> June there was a meeting between Ms Chester and the Appellant at the Respondent’s office at Knowsthorpe Gate. Ms Chester discussed the local authority’s concerns about drug dealing at the property. The Appellant said that he was going to see his solicitor that day with a view to serving a section 21 notice on the tenant, and completing the works after she had left. On 29<sup>th</sup> June the Appellant contacted Ms Chester said that he was seeing his solicitor on 3<sup>rd</sup> July. Ms Chester contacted the Appellant on 19<sup>th</sup> July for an update: he said that he was seeing his solicitor the following day. On 15<sup>th</sup> August Ms Chester again contacted the Appellant for an update and he provided the telephone number of his solicitor. Ms Chester phoned the solicitor on 4<sup>th</sup> September: he told her that the tenant had been served with a section 21 notice the week before. On 22<sup>nd</sup> September she emailed the Appellant for an update, but got no response.
27. On 10 October 2017 the police raided the property and recovered a quantity of drugs and stolen goods. The tenant was subsequently prosecuted for offences relating to this raid. During the raid the soil pipe to the property was damaged. The Appellant was notified of this by Ms Chester, and he had it repaired straightaway. On 11<sup>th</sup> October Ms Chester met with the Appellant at her office. He had been asked to bring a copy of the section 21 notice to that meeting, but he did not: he said he had been unable to get a copy from his solicitor. He asked Ms Chester to get in touch with his solicitor to see if she could get hold of a copy of the section 21 notice. Ms Chester tried on several occasions to speak to the solicitor, and left messages asking for a copy of the notice: she did not receive any response.
28. On 17<sup>th</sup> November Ms Chester again emailed the Appellant for an update. He did not respond. On 8<sup>th</sup> December she wrote to him indicating that a further formal inspection of the property would be carried out. On 9 February 2018 she

served notices on the Appellant and the tenant advising that a formal inspection would be carried out on 2<sup>nd</sup> March. An inspection took place on that date. Ms Chester was unable to go into the cellar as there was about 10 cm of standing water in it. The tenant said that she had reported the water to the Appellant but nothing had been done. She also said that she had not been served with a notice to quit. On 16<sup>th</sup> March Ms Chester emailed the Appellant and asked what he was doing to deal with the problem of water in the cellar. He replied: “nothing as she is been evitedited [sic]”. Later the same day the Appellant emailed Ms Chester again, and said: “as previously explained to you on many occasions and tried of this do what u want.” On 19<sup>th</sup> March Ms Chester sent the Appellant a further email explaining that the tenant said she had not been served with any paperwork.

29. On 21 March 2018 the Respondent served the Appellant with an Improvement Notice pursuant to sections 11 and 12 of the Housing Act 2004. That notice required the Appellant to take action in relation to the following hazards: inadequate fire precautions and lack of a 30 minute protected escape route; lack of handrails to the 3 staircases in the property; draughty and defective windows into bedrooms; defective external door; defective bathroom door; various electrical hazards; defective balustrades; dampness and mould growth; broken external leaves to the living room and kitchen windows. In relation to each defect the notice required remedial action to be started by 18 April 2018 and completed by 30 May 2018.
30. The Appellant does not dispute service of these notices. He responded to an email to which the notices were attached by asking Ms Chester to contact his solicitor. Ms Chester did speak to his solicitor on 5<sup>th</sup> April. He told her that the tenant had been served with a section 21 notice in January 2018. Ms Chester pointed out that he had previously told her that such a notice had been served in the last week of August 2017. The solicitor denied having said this. At his request Ms Chester emailed the Improvement Notice to the solicitor. In the accompanying email Ms Chester set out the potential actions if the Improvement Notice was not complied with, including the imposition of a Civil Penalty.

31. In April 2018 the tenant reported that the source of water in the cellar of the property had been identified by Yorkshire Water as being in the neighbouring property and the problem would be remedied by 12<sup>th</sup> April.
32. On 19<sup>th</sup> April the Appellant attended Ms Chester's office without an appointment. She was not in the office but spoke to him on the phone. He expressed concern about the fact that his solicitor could not demonstrate that he had actually served a notice on the tenant. He said that he was intending to get some of the "more important" works done, starting with the work on the windows. Ms Chester advised him to start on the fire detection works, reminded him that all work had to be done by the dates in the notice, or he would be in breach of it. He asked if he could have an extension of time; Ms Chester told him this was unlikely in view of the time that had already passed. She suggested that he come into the office the following week to discuss things with her manager and her. Following this conversation the Appellant was sent further copies of the Improvement Notice. Arrangements were made for the Appellant to speak with Ms Chester and her manager Mr Broadhurst on 23<sup>rd</sup> April. The Appellant was reported to have been very aggressive during this meeting, which was eventually terminated because of his behaviour. He was told that the property would be reinspected after the notice had terminated, and advised to take legal advice.
33. In early May the Appellant reported that he was instructing new solicitors.
34. The property was reinspected by Ms Chester on 27 June 2018. She found that some of the works have been carried out, in particular, plastering, but that the vast majority works had not been completed. Some new issues had also arisen, including a leak under the kitchen sink, a defective tap to the kitchen sink, and a broken worktop in the kitchen. Some works had begun in the kitchen but they had not been completed. Following the inspection Ms Chester notified the Appellant that a housing offence had been committed and cautioned him by post. He was invited to provide mitigating circumstances. He did not do so. On the 21<sup>st</sup> November the Respondent, having used its civil penalty matrix, decided to impose a civil penalty of £23,750 on the Appellant this is on the basis of this was a high culpability/high harm case. Notice of intent to impose a financial penalty was served on the Appellant on 5<sup>th</sup> December. On 7<sup>th</sup> January solicitors instructed by the Appellant provided representations in relation to that penalty.

In particular they raised issues in relation to the health of the Appellant and his wife; his financial position; that he had tried to cooperate with the Respondent; and the poor behaviour of the tenant. On the basis of those representations the civil penalty was reduced to £22,500. In particular the Respondent took into account the difficulties which the Appellant had gaining access to the property. A final notice the imposition of a penalty was served on 15 February 2019.

35. An order for possession of the property was obtained by the Appellant on 13 December 2018. At the same time the court made an order that the Appellant recover £8775 in rent arrears.
36. The Appellant complains in his witness statement of the approach taken in his case by the Respondent. He suggests that: “once they had their sights on the Property, then come what may, they were not going to stop until they had someone metaphorically “against the wall””. He suggests: “LCC now wanted someone to go after and that was me”.
37. The Tribunal does not accept these criticisms of the Respondent. The Respondent has responsibilities in relation to housing within its area and its officers did no more than discharge those responsibilities. The Respondent did not go about doing so in a manner calculated to cause the Appellant undue stress or anxiety. It first sought to inspect the property in June 2016. It invited the Appellant to carry out improvement works in December 2016. It offered to assist the Appellant by providing him with smoke alarms. It invited him to put the property forward for a scheme whereby it was purchased by the Respondent, an invitation which he did not take up. When he reported on difficulty making progress with his solicitor, Ms Chester attempted to deal with that solicitor on his behalf. It did not serve a Improvement Notice until March 2018, 13 months after the Appellant had first been invited to carry out improvements. It did not indicate that it regarded an offence having been committed until a month after the time the carrying out the works had expired. The approach taken by the Respondent is documented in Ms Chester’s witness statement and in the numerous emails and letters attached to that. The material demonstrates the efforts made by the Respondent to work in a cooperative manner with the Appellant and to take into account his particular difficulties.

### **The Appellant’s health**

38. Both the Appellant and his wife have significant health problems. The Appellant has filed a letter from his GP, Dr Phillips, dated 8 July 2019, setting out a history. The Appellant was first diagnosed with depression in 2011. He took Citalopram on and off thereafter. In May 2016 he was signed off sick from work with depression. In July 2016 he presented to casualty at Leeds Gen Infirmary following some minor self-harm. On 20 July 2016 he was seen by his GP, and discussed the fact that his wife, from whom he was separated, had been in hospital for 6 weeks as a result of bipolar disorder. He said that he had taken an overdose the week before. He was seen again on 3 August 2016, when it was recorded that he was “steady” and had contacted psychological therapies. On 30 November 2016 he reported low mood and financial stress, and that his wife was in hospital because of bipolar disorder. He was changed to a different medication. On 23<sup>rd</sup> December he was reporting poor sleep and his medication was increased. In March 2017 he reported that his mood was not great; he was very anxious; his wife was out of hospital and living on her own with his support. His medication was increased again. He does not appear to have sought assistance about his mental health again until 19 April 2018 when he saw a practice nurse. He was then having monthly appointments for a talking therapy, but said that he was suffering from anxiety and depression and requested a sick note. He was reviewed on 9 May 2018 for ongoing depression, and on 22 June 2018 reported problems with panic attacks, social anxiety and poor sleep. He was provided with an additional medication. On 19 July 2018 he was found to have improved and on 16 November 2018 he was recorded as being stable. He attended his doctor again on 5 June 2019 reporting depression, anxiety and stress as a result of the forthcoming tribunal case. On 19<sup>th</sup> June he reported that his wife was in hospital again. His GP is of the view that financial and work-related stress and conflict may exacerbate the Appellants underlying stress and anxiety. However, he would not be unable to deal with day-to-day decisions.

39. It is clear to the Tribunal that the Appellant did have significant mental health difficulties during the period of his dealings with the Respondent. He made the Respondent aware of those difficulties at an early stage; they were referred to in his emails of 8 December 2016 and 7 February 2017. In the former he reported that his wife was in hospital because of mental health problems and

that he had just come out of hospital after trying to end his own life. The Respondent's awareness of this was reflected in the relatively slow pace at which it proceeded, as summarised above.

40. It appeared to the Tribunal that the Respondent's mental health difficulties at times caused him to be overwhelmed by events.

### **The behaviour of the tenant**

41. It is clear from the material before the Tribunal that this tenant was a problem tenant. Rent payments were unreliable and ceased altogether in 2017. She engaged in drug dealing at the property. She allowed her pets to soil the property to such an extent that there was still a faint smell of cat urine in one of the 2<sup>nd</sup> floor bedrooms when the Tribunal visited. She was convicted of criminal offences while a tenant of the property.

42. The picture in relation to access to the property is less clear. Ms Chester initially had some difficulty getting into the property, but on other occasions was able to obtain access without problems. The Appellant states that difficulties with access were a major factor in his inability to carry out works. He has failed to evidence this. His witness statement provides almost no detail as to when and how he tried and failed to get access to the property to do work. The only reference to a specific occasion is one incident when workmen were unwilling to go into the property because of the tenant's dogs. The Tribunal would have expected a much clearer account from the Appellant of his attempts to get into the property, supported by copies of letters or text messages seeking access. The Appellant has not provided anything of this kind. In addition it appears to the Tribunal that from mid 2017 until the Improvement Notice was served the Appellant took the position that he would not carry out the work until the tenant had been evicted. In the circumstances the Tribunal takes the view that the Appellant has not demonstrated that problems with access prevented him carrying out the improvements required either before or after the service of the Improvement Notice.

### **Financial issues**

43. The Appellant did not provide the Respondent with details of his financial position prior to the imposition of the penalty. He has not provided such details



to the Tribunal. The Appellant indicated in his discussions with the Respondent that financial difficulties were a factor in his being unable to carry out the required works, but has failed to evidence this.

44. The Tribunal notes that in considering what level of financial penalty to impose the government guidance<sup>1</sup> states that “it should not be cheaper to offend than to ensure a property is well maintained and properly managed” and that “the amount of the civil penalty imposed must never be less than what it would cost the landlord to comply with the legislation in the first place”.
45. The Tribunal does not find that in this case the Appellant was motivated by profit. It is not clear which, if any, of the defects identified by Ms Chester were present when the property was let to the tenant. The Appellant suggested that there had been some battery operated smoke detection in the property at the time it was let. It appeared to the Tribunal that the defaults on the part of the Appellant resulted from his limited understanding of his obligations, together with his mental health difficulties, rather than from a calculated attempt to profit.
46. From the Appellant’s point of view this property has, since 2017, been a financial disaster. He has received no rent, he has had to carry out repairs, and he will have to pay a fine.

### **The Appellants reliance on his solicitor**

47. The solicitor instructed by the Appellant was a person with whom the Appellant had had a working relationship for thirty years. He regarded him as a family friend. The Appellant had no reason to believe that he would not do what he was asked to do: to serve a section 21 notice and then start possession proceedings. It is clear that this is what the solicitor was asked to do: that is apparent from the conversations which Ms Chester had with him, in which he said that he had served a notice.
48. The Appellant was badly served by his solicitor. There is nothing to suggest that a section 21 notice was ever served. Certainly no copy was ever produced of such a notice, or any evidence of service. It is inexplicable that no copy was ever produced by the solicitor if a notice had actually been served.

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<sup>1</sup> Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities April 2018 (“the 2018 Guidance”).

49. The Tribunal took the view that the Appellant was entitled to use a solicitor to act on his behalf: indeed, it was a responsible approach to take, rather than trying to deal with the matter himself. He was acting reasonably in assuming that his solicitor was doing what he had been asked to do.
50. The Tribunal was of the view that a point was reached at which the Appellant should have realised that the solicitor was not doing what he had been asked to do. That should have been apparent by October 2017, by which time the Appellant had been unable to get hold of a copy of the supposed notice from his solicitor. The Appellant's continued reliance on the solicitor after that is less understandable, though the Appellant's mental health difficulties undoubtedly paid a part in his slowness in instructing alternative solicitors.

### **The position overall**

51. This matter comes before the Tribunal for a re-hearing. The Tribunal substitutes its own approach to the level of financial penalty and is not required to find that the approach taken by the Respondent was wrong.
52. The Tribunal has regard to, but is not bound by, the 2018 Guidance.
53. The Tribunal is of the view that the Respondent adopted significantly too high a starting point in assessing the financial penalty in this case. It took the view that this was a case of high harm and high culpability.
54. The Tribunal does not agree. The issue of culpability has to be seen against the background of the Appellant's mental health condition (which was exacerbated by that of his wife), and the effects of that on his ability to manage this property properly. Consideration of the issue of harm should have taken into account the limited evidence as to the impact on the tenant of conditions in the property, and her own willingness to allow parts of the property to become highly insanitary, suggestive of a degree of indifference to the conditions in which she was living.
55. The Tribunal's view is that this is a case of low to medium culpability and low to medium harm.
56. Taking into account all the matters set out above, the Tribunal is of the view that an appropriate financial penalty in this case would be £7,500. The view of the Tribunal is that such a penalty, in the case of a property with a rental value of only £450 per month, is a real deterrent to similar conduct in future on the

part of the Appellant or any other landlord. It is a penalty of over a year and a half's rent. It significantly exceeds the likely cost of the relatively modest works required to the house. It also reflects appropriately the fact that this a first offence.

57. The Appellant's appeal is therefore allowed and the Tribunal substitutes for the financial penalty imposed by the Respondent a financial penalty of £7,500. That must be paid by [28 days].
58. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal. Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013).

**Signed: Judge S Greenan**

**Dated: 31 July 2019**