



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

**Case reference** : **MAN/30UD/HNA/2019/0042 and  
MAN/30UD/HNA/2019/0043**

**Property** : **23 St Matthews Street, Burnley BB11 4JU  
and  
103 Coal Clough Lane, Burnley BB11 4NW**

**Applicant** : **Mr Saumabha Mandal**

**Respondent** : **Burnley Borough Council**

**Type of application** : **Appeal against a financial penalty –  
Section 249A & Schedule 13A to the  
Housing Act 2004**

**Tribunal** : **Mr J A Platt FRICS, Valuer Chairman  
Mr W Reynolds MRICS**

**Date of determination** : **16 September 2019**

**Date of decision** : **24 September 2019**

---

**DECISION**

---

**DECISION: The Financial Penalties in respect of 23 St Matthews Street and 103 Coal Clough Lane are amended to one Financial Penalty of £3,870**

**Preliminary**

- 1) On 12 April 2019, the Tribunal received two applications from the Applicant relating to financial penalties issued by the Respondent, in respect of the letting of two separate houses. Both cases raise common issues relating to the concurrent letting of two properties in the same ownership, situated within the same selective licencing area. For reasons detailed below, the Tribunal decided to consolidate the two sets of proceedings, in accordance with The Tribunal Procedure Rule 6.(3)(b).

**103 Coal Clough Road, Burnley**

- 2) The Applicant is the owner of 103 Coal Clough Road, Burnley BB11 4NW. It is accepted by the Applicant that at the relevant time the property was located within an area subject to selective licensing under Part 3 of the Housing Act 2004 (“the Act”) but it was not licensed. It is accepted by the Applicant that an offence under S95(1) of the Act had been committed.
- 3) The Council emailed the Applicant on 27 September 2017 and 27 October 2017 requesting a completed licence application be submitted. Further reminder letters were sent to the Applicant on 22 November 2017, 23 March 2018 and 4 December 2018. A telephone conversation took place between the Applicant and the Council on 30 November 2018, followed up by emails from the Applicant to the Council on 13 December 2018 and 20 December 2018.

**23 St Matthews Street, Burnley**

- 4) The Applicant is also the owner of 23 St Matthews Street, Burnley BB11 4JU, situated within the same Trinity area of selective licensing. It is accepted by the Applicant that at the relevant time, the property was located within an area subject to selective licensing under Part 3 of the Housing Act 2004 (“the Act”) but it was not licensed. It is accepted by the Applicant that an offence under S95(1) of the Act had been committed.
- 5) The Council wrote to the Applicant on 6 March 2018 requesting a completed licence application be submitted by 20 March 2018. A reminder letter was sent on 23 March 2018 with a revised deadline of 3 April 2018. Further reminder letters were sent to the Applicant on 3 May 2018 and 4 December 2018 with revised deadlines of 11 May 2018 and 10 December respectively. A telephone conversation took place between the Applicant and the Council on 4 December 2018, followed up by emails from the Applicant to the Council on 13 December 2018 and 20 December 2018.

## **Consolidated determination**

- 6) Within the telephone conversations and emails, the Applicant advised of health problems affecting both himself and his wife and requested further time to comply with the Council's request to submit a completed licence application. The Tribunal has been provided with full details of the medical conditions suffered by both the Applicant and his wife. Out of respect for their privacy, it is not necessary to disclose the details within this decision.
- 7) As no completed licence applications had been received, the Council issued notices of intent to impose a financial penalty on 31 January 2019.
- 8) The notices of intent advised the Applicant of his right to make written representations against the Council's proposal to impose a financial penalty of £10,000 in respect of each property. The time for such representations to be made was said to be "*within 28 days beginning with the day on which this notice is served*".
- 9) No written representations were received during the period for representations and the Council served Final Notices on 12 March 2019 imposing a financial penalty of £10,000 in respect of each property.
- 10) The Applicant made written representations on 12 March 2019 and 19 March 2019, detailing mitigating circumstances and requesting the council look at those circumstances sympathetically, revoke the financial penalties and allow the Applicant further time to apply for the licences.
- 11) The evidence of Michelle Hall, on behalf of the Council, is that they did have regard to the Applicant's (late) representations, however, no decision was taken to revoke the financial penalties.
- 12) The Applicant, therefore, submitted two appeals to the Tribunal on 12 April 2019. Directions were issued on 14 May 2019 and both parties have fully complied with those directions. The Directions advised that determinations would be made on the basis of written submissions, as requested by both parties. Neither party has requested a hearing.

## **Initial deliberations**

- 13) These appeals are by way of re-hearings of the local housing authority's decisions to impose the penalties and / or the amount of the penalties. They may be determined having regard to matters of which the authority was previously unaware. When deciding whether to confirm, vary or cancel the final notices imposing the financial penalties, the issues for the Tribunal to consider initially include:
  - (a) Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of premises in England (under section 95(1) of the Act),

and

- (b) Whether the local housing authority, has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (under Section 249A and paragraphs 1 to 8 of Schedule 13A of the Act).
- 14) The Applicant accepts, in relation to each property that, at the relevant time, an offence under s95(1) of the Act had been committed. We, therefore, find that it is beyond reasonable doubt that the Applicant's conduct amounts to a relevant housing offence in respect of each Property.
- 15) The necessary requirements and procedures relating to the imposition of a financial penalty are laid out under Section 249A and paragraphs 1 to 8 of Schedule 13A of the Act. These sections are reproduced in full within Appendix 1 of this decision. Schedule 13A of the Housing Act 2004 provides:
- (a) *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").*
- (b) ...
- (c) *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.*
- (d) (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").*
- 16) The Respondent uses notices in a standard format of its own devising. Under the heading "Right to make representations about the proposal to impose a financial penalty" the notices of intent state:
- You may, within 28 days beginning with the day on which this notice is served, make written representations to the Council about the proposal to impose a financial penalty.*
- 17) The notices do not, therefore, accurately describe the statutory period for representations: *beginning with the day on which this notice is served* being one day less than *beginning with the day after that on which the notice was given.*

- 18) The Tribunal, therefore, invited written representations from both parties as to the validity or invalidity of the notices of intent. The Tribunal advised that it was minded to have regard to the Court of Appeal decision in *Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89 and invited representations as to the interpretation of this case or any other case the parties wished to rely upon. A copy of the Tribunal's letter is attached at Appendix 2.
- 19) Representations were received from both parties.

### **The Council's Representations**

- 20) The Council accept that the notices of intent fail to meet the requirements of the Act, however they submit that the Applicant has not been disadvantaged by these procedural errors. The correct deadline was one day longer than the notices implied, however, no decisions were taken to proceed until 11 days later and no representations were received until 11 days later. As representations were received after the correct final date, the Applicant has not been unfairly disadvantaged.
- 21) In *Elim Court*, Lewison LJ re-confirmed that the courts have moved away from classifying statutory requirements as either 'mandatory' or 'directory' and endorsed the approach in *Natt v Osman* [2014] EWCA Civ 1520; [2015] 1 WLR 1536, in drawing a distinction between two broad categories of cases:
- "(1) those cases in which the decision of a public body is challenged, often involving administrative or public law and judicial review, or which concern procedural requirements for challenging a decision whether by litigation or some other process, and (2) those cases in which the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question."*
- 22) In the first category, substantial compliance with the statutory procedure may be sufficient to render the notice as a whole valid. But in the second category he said a failure to actually comply with the strict requirements of the statute would, as a matter of statutory interpretation, render the notice to either be wholly valid or wholly invalid.
- 23) The Respondent's failure to properly reflect the actual working of paragraph 4 of Schedule 13A to the Act is clearly a procedural irregularity which falls with the first category.
- 24) The Housing Act 2004 does not identify the effect of non-compliance and the language used in paragraph 4 is vague, in that it does not prescribe wording that must be used, it only requires that 'information' about the right to make representations be set out in the notice.

- 25) Even if the Tribunal finds this case falls within the second category of cases, it does not follow that every defect in a notice or in a procedure, however trivial, invalidates the notice. The main purpose of paragraph 3 is to bring to the attention of the recipient of the notice that they have a right to make representations. That right exists independently of the notice as it is a statutory right and the Council would have to consider representations made outside of any inaccurate time frame notified within the 'information'.
- 26) It is just in all the circumstances for the validity of the notices of intent to be upheld.

### **The Applicant's Representations**

- 27) The Applicant asserts that the notices of intent do not accurately reflect the requirements of the Act and begs for them to be dismissed. He believes they were prepared in haste, drawing attention to the 'co-incident' of the final notices being served the same day his representations were received.
- 28) In response to the Council's stance that they have a flexible approach towards receipt, and consideration, of representations, he avers that they failed to have regard to his representations received on 12 March 19; the same day the final notices were served.

### **Determination on validity of notices of intent**

- 29) The Council accept that their notices of intent fail to meet the requirements of the Act.
- 30) In *Elim Court*, Lewison LJ considered the consequences of non-compliance with statutory requirements and stated:
  52. *The outcome in such cases does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by non-compliance on the particular facts of the case ... The intention of the legislature as to the consequences of non-compliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole ... Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of secondary importance or merely ancillary, the notice may be held to have been valid ... One useful pointer is whether the information required is particularised in the statute as opposed to being required by general provisions of the statute. In the latter case the information is also likely to be viewed as of secondary importance. Another is whether the information is required by the statute itself or by subordinate legislation. In*

*the latter case the information is likely to be viewed as of secondary importance. In this connection it must not be forgotten that while the substantive provisions of a bill may be debated clause by clause, a draft statutory instrument is not subject to any detailed Parliamentary scrutiny. It is either accepted or rejected as a whole. A third is whether the server of the notice may immediately serve another one if the impugned notice is invalid. If he can, that is a pointer towards invalidity.*

- 31) The three “pointers” identified by Lewison LJ are all in favour of the Applicant:
- (a) The time period is particularised in the statute as opposed to being required by general provisions of the statute.
  - (b) The time period is also in the statute itself, not in subordinate legislation.
  - (c) It was open to the Respondent to withdraw the defective notice and issue a new one when they should have become aware of the issue.
- 32) These “pointers” though are not necessarily conclusive. The statute provides an ‘indirect’ relationship between ‘the period for representations’ and the details to be included in the notice of intent. The notice of intent must set out *information about the right to make representations under paragraph 4*. That is not the same as a requirement that the notice of intent must “*state the period within which representations may be made*”.
- 33) We note and agree with the Council’s representation that a failure to correctly provide information about the length of time to make observations does not, in itself, deprive the recipient of the statutory right to make observations. We also note that there is no statutory requirement (other than within the information to be provided) for the notice of intent to explicitly state the period of time to make observations
- 34) The Applicant’s assertion that the notices were prepared in haste, appears to relate to the final notices not to the notices of intent.
- 35) We, therefore, conclude that the notices of intent were substantially compliant and valid.

### **Imposition of a Financial Penalty**

- 36) If, having had regard to any representation received, the housing authority decides to impose a financial penalty it must give a “Final Notice” imposing that penalty and requiring it to be paid within 28 days beginning with the day after that on which the final notice was given. (Paras 6 and 7)

- 37) The final notice must set out: –
- the amount of the financial penalty,
  - the reasons for imposing it,
  - information about how to pay it,
  - the period for payment,
  - information about rights to appeal; and
  - the consequences of failure to comply with the notice. (Para 8)
- 38) The local housing authority in exercising its functions under Schedule 13A or section 249A of the 2004 Act must have regard to any guidance given by the Secretary of State.(Para 12)
- 39) Such guidance (“the Guidance”) was issued by the Ministry of Housing Communities and Local Government in April 2018 and is entitled “Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities”.
- 40) Paragraphs 3.3 and 3.5 of the Guidance confirm that the local housing authority is expected to develop and document their own policies on when to prosecute and when to issue a civil penalty and the appropriate levels of such penalties and should make such decisions on a case-by-case basis in line with those policies.
- 41) The Guidance states “Generally we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord’s previous record of offending. Local housing authorities should consider the following factors to help ensure that the... penalty is set at an appropriate level:
- 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...
- 42) The Respondent has documented its own “Policy and Matrix for the use of Civil Penalties” (“the Respondent’s policy”) and included a copy of that in the papers. The Tribunal makes further reference to the Respondent’s policy later in these reasons.

### **The Tribunal’s Deliberations and Conclusions**

- 43) The Tribunal is satisfied beyond reasonable doubt that the Applicant has committed a “relevant housing offence” in respect of each property and that the authority has complied with all the necessary procedural requirements relating to the imposition of the financial penalties.



- 44) It is, therefore, necessary for the Tribunal to consider whether financial penalties are appropriate and if so, have been set at the appropriate level.

Dealing with each of these issues in turn:

- 45) The Applicant readily admits that he did not have a licence for each of the properties at the times when they should have been licensed. The Tribunal has immense sympathy with the Applicant and his wife's medical situation and can fully understand why obtaining a licence or making representations were extremely difficult from October 2018 onwards. The Tribunal agrees with the Council, however, that the Applicant has provided no good reasons for not applying for a licence when first requested to do so in September 2017 (or March 2018) nor on each of the subsequent (reminder) occasions prior to October 2018. The Tribunal does, however, note the Applicants' comments about the high cost of the licence and his financial situation having spent considerable sums of money bringing each of the properties up to a good lettable standard.
- 46) The Tribunal is satisfied that it is appropriate to impose a financial penalty. We considered whether rather than impose a financial penalty a caution would have been sufficient but decided that such a sanction would be inadequate in terms of its likely punitive and deterrent effect.
- 47) The Tribunal then went on to consider the amount of penalty. In so doing we had particular regard to the 7 factors specified in the Guidance referred to in paragraph 41 above.
- 48) Although not bound by it, the Tribunal has reviewed the Respondent's policy and found that it broadly provides a sound basis for quantifying financial penalties on a reasonable, objective and consistent basis. The Tribunal does, however, take the view that the policy fails to adequately take into account two aspects relevant to these particular cases (considered below).
- 49) The Respondent's policy is itself based on factors specified in the Guidance, and the Respondent went through a checklist before calculating the financial penalties of £10,000 referred to in the 31 January 2019 notices of intent. In assessing culpability and harm it concluded, for each property, that there was a low harm rating and a high culpability rating. This resulted in an assessment that the penalty should be in the 3<sup>rd</sup> of 6 penalty level bands which it had set as follows: –

Penalty level 1	£0-£4,999.
Penalty level 2	£5,000-£9,999
Penalty level 3	£10,000-£14,999
Penalty level 4	£15,000-£19,999
Penalty level 5	£20,000-£24,999
Penalty level 6	£25,000 - £30,000

50) In para 10 of the council's Representations on the validity of the notices of intent it states: "The Responded has considered the level of culpability after receiving the Applicant's bundle, in light of the Applicant's representations and the Respondent's approach on similar matters it concluded that the bank of culpability to be band 2 medium."

51) It is unclear to the Tribunal how the Respondent has had regard to their revised assessment which would, in accordance with its matrix, put each financial penalty within level 2 £5,000 - £9,999.

52) The Tribunal, in making its own decision has regard to the Guidance previously referred to above and the Respondent's policy matrix. The Tribunal notes the following within the 'foreword' to the Guidance:

*"The Government wants to support good landlords who provide decent well maintained homes, and avoid unnecessary regulation which increases costs and red tape for landlords and also pushes up rents for tenants."*

*"But a small number of rogue landlords knowingly rent out unsafe and substandard accommodation. We're determined to crack down on these landlords and disrupt their business model."*

*"Minsters made it very clear that they expected this power to be used robustly as a way of clamping down on rogue landlords."*

53) The Respondent does not dispute that the Applicant is a good landlord and has gone to significant personal expense to provide good quality housing. It is clear that the Applicant does not fall within the 'rogue landlord' category referred to above but falls more fairly within the category of 'good landlords who provide decent well maintained homes', whom the Government wish to support.

54) That is not to excuse the Applicant from knowingly flouting the law in not making applications for selective licences but, in the Tribunal's opinion the Respondent's matrix fails to adequately consider the situation where a landlord is providing 'decent well maintained homes'. The lowest category of harm is categorised as low:

*"Low risk of an adverse effect on individuals*

*The housing defect giving rise to the offence poses a risk of harm to the occupants and / or visitors, for example low category 2 hazards under HHSRS, localised damp and mould"*

55) There is no allegation of any housing defect and it appears to be common ground that the properties are both decent, well maintained housing. The Tribunal, therefore, considers that the properties fall below the category of low on the council's matrix and, in effect, fall off the bottom of the scale.

- 56) The Guidance (at 3.4) requires local authorities to:
- “use their existing powers to, as far as possible, make an assessment of a landlord’s assets and any income (not just rental income) they receive when determining an appropriate penalty.”*
- 57) The council’s policy and matrix does not provide any guidance for officers on how to have regard to a landlord’s assets or financial circumstances. There is no evidence in the current cases that the council had any regard to the landlords assets or income; even after receiving the Applicant’s representations about the amount of money he had invested in the properties and the cost of a licence relative to the monthly letting value of the properties.
- 58) The offences relate to the concurrent letting of two houses. The Tribunal has no information relating to any other assets owned by the Applicant or any additional income. The Tribunal has, however, received information relating to the level of income received and expenditure incurred on the two properties. In view of the Tribunal’s conclusion above that the level of harm falls below the council’s scale, it is our view that the level of profit received during the offence period is a reasonable starting point in assessing the level of any financial penalty.
- 59) Using the best information available, we have assessed each property individually. Detailed calculations are included at appendix 3. A number of explanations are necessary relating to each property:

### 23 St Matthews Street

- 60) Capital works: We have been provided with evidence of major works undertaken to the property in 2016. We consider a 20 year payback period to be appropriate and have hence depreciated the cost of these works, against the rental income at a rate of 5% per annum.
- 61) Council tax premium: the Applicant has provided evidence that the council charged a long term empty property premium in 2015 and 2016. The imposition of the premium is outside the jurisdiction of this tribunal, however, we do consider it appropriate to include the premium as additional capital expenditure incurred in bringing the property to a decent lettable standard.
- 62) Rent arrears: We have been provided with evidence of rent arrears totalling £4950 for roughly an 18-month period, including before and after the period of the offence. We have taken a broad-brush approach and included 1/3<sup>rd</sup> of these sums during the period. There is, of course, a possibility that outstanding rent may be recovered by the Applicant, but we consider the prospects to be low.
- 63) In accordance with our broad-brush assessment, the maximum profit achieved during the offence period was £514.

- 64) We have taken a similar approach to depreciating the capitalised cost of works. In accordance with our broad-brush assessment, the maximum profit achieved during the offence period was £2987.

### **Financial Penalty**

- 65) The offences were committed concurrently at both properties. The Tribunal has considered whether the offences should be considered as one offence and concluded that, in accordance with the legislation they are two offences.

- 66) Section 249A(3) of the Act states that:

*“Only one financial penalty under this section may be imposed on a person in respect of the same conduct.”*

Section 249A(9) states that:

*“For the purposes of this section a person’s conduct includes a failure to act.”*

It is the view of the Tribunal that a concurrent failure to apply for a licence at two properties, within the same selective licencing area, amounts to the same conduct and hence, only one financial penalty should be imposed. In assessing the level of financial penalty, however, the Tribunal has had regard to the maximum profit achieved during the period of the offences at each property.

- 67) It should not be the case, however, that non-compliance with the law should be cheaper than full compliance. We, therefore, determine that the appropriate level of financial penalty for each property should include a payment in lieu of licence fee. The Applicant’s evidence refers to a licence fee of £750. We have not been provided with full details of the Council’s fee structure, but we note from their *Proposal to declare a selective licensing designation* (available on their website), that the proposed fee structure includes an additional property application fee of £670. We have no certainty the Council adopted these fee levels but, in any event, consider them to be at an appropriate level to include in the financial penalty.
- 68) Finally, we have further regard to the overall factors to be taken into account when deciding the level of a civil penalty; as detailed in the guidance (para 41 above) and the specific guidance 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.”*

- 69) It appears to be common ground that the Applicant is a good landlord and the properties are well maintained. We have no evidence of any previous record of offending. The level of harm caused to the tenants is nil. Taking these factors into account, we determine that an appropriate level of financial penalty should, at most, be 75% of the maximum profit achieved during the offence periods.
- 70) We also have regard to the mitigating circumstances detailed by the Applicant. We have no doubt from the medical information supplied, that the Applicant would have encountered difficulty in complying with the Council's requests between October 2018 and March 2019. Notwithstanding that we can see no good reason why the Applicant did not comply with the requirements when first requested to do so, we determine that it is appropriate to discount the maximum profit figure by a further 5% (to 70% in total) to have regard to the Applicant's mitigating circumstances.
- 71) In the opinion of the Tribunal, the resultant financial penalty is at a high enough level to:
- (d) Punish the offender
  - (e) Deter the offender from repeating the offence
  - (f) Deter others from committing similar offences and
  - (g) Remove any financial benefit the offender may have obtained as a result of committing the offence
- 72) Applying all the above, we determine the appropriate level of financial penalty to be £3,870.

## **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.

## **Appendix 1**

### **Housing Act 2004**

#### s249A Financial penalties for certain housing offences in England

(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.

#### **Schedule 13A**

##### *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.

3The 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*

5After 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.

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

7The 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.

8The 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.



## **Appendix 2**

### **Preliminary determination**

Dear

**MAN/30UD/HNA/2019/0042**  
**23 St Matthews Street, Burnley, BB11 4JU**

**MAN/30UD/HNA/2019/0043**  
**103 Coal Clough Lane, Burnley, BB11 4NW**

A tribunal has made preliminary determinations in respect of the two cases detailed above. The tribunal is of the opinion that the Notices of Intent, in saying:

*You may, within 28 days beginning with the day on which this notice is served, make written representations to the Council about the proposal to impose a financial penalty*

do not accurately reflect the requirements of paragraphs 3.(c) and 4.(2) of Schedule 13A of the Housing Act 2004 which state:

*3. The notice of intent must set out—  
(c) information about the right to make representations under paragraph 4.*

*4.(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”).*

Both parties are invited to submit representations on the preliminary determinations and representations as to the validity or invalidity of the Notices of Intent.

Representations may include, how the tribunal should have regard to the Court of Appeal decision in *Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89. Either party seeking to rely on any alternative caselaw should provide the necessary details to the tribunal.

Representations, in writing, must be received by the tribunal on or before 21 August 2019.

Yours

## Appendix 3

### Maximum profit calculations

Maximum profit calculations and financial penalty					
<b>23 St Matthews Street</b>					
Period of offence	05-May-18	to	04-Dec-18	6 months	
Rent	650	pcm			
Max rental income during period of offence				3900	
Management Fee			390		
Rent Arrears			1650		
Works in Oct 2016	40200				
	3600				
	9280				
Council tax premium Jan - Mar 2015	119				
Council tax premium 2015-2016	632				
	53831				
Depreciation (20 year payback) i.e. 5% p.a.	2.5%		1346		
Outgoings				3386	
Maximum profit during period of offence					514
<b>103 Coal Clough Lane</b>					
Period of offence	23-Feb-18	to	04-Dec-18	8 months	10 days
Rent	430	pcm			
Max rental income during period of offence				3582	
Management Fee			358		
Works in Nov 2011	3830				
Repairs in 2017	2985				
	6815				
Depreciation (20 year payback) i.e. 5% p.a.	3.5%		237		
Outgoings				595	
Maximum profit during period of offence					2987
<b>Financial penalty</b>					
Maximum profit during period of offence					
23 St Matthews Street	514				
103 Coal Clough Lane	2987				
			3501		
Adjustment factor			70%		
				2451	
Selective licence fee				750	
Additional property licence fee				670	
				3871	
<b>Financial Penalty</b>		<b>say</b>			<b>£3,870</b>