



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

**Case Reference** : **MAN/00BN/HNA/2020/0067 &  
MAN/00BN/HNA/2021/0049-50**

**Property** : **330, Great Cheetham Street East,  
Salford M7 4UJ**

**Applicants** : **Zain Property Limited  
Mr Hassan Shakoor  
Mr Hanif Phull Mohammed**

**Respondent** : **Salford City Council**

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

**Tribunal Members** : **Tribunal Judge C Wood  
Tribunal Member J Faulkner**

**Date of Decision** : **3 November 2021**

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**ORDER**

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## **Order**

1. In accordance with paragraph 10(4) of Schedule 13A to the Housing Act 2004, the Tribunal orders as follows:
  - 1.1 that the final notice dated 23 September 2020 imposing a financial penalty of £21500 on Zain Property Limited is confirmed;
  - 1.2 that the final notice dated 23 September 2020 imposing a financial penalty of £21500 on Mr Hassan Shakoor is confirmed; and
  - 1.3 that the final notice dated 23 September 2020 imposing a financial penalty of £21500 on Mr Hanif Phull Mohammed is cancelled.

## **Application**

2. By appeals dated 9 November 2020, (Zain Property Limited), and 28 April 2021, ( Mr Hassan Shakoor and Mr Hanif Phull Mohammed), (“the Appeals”), each of the Applicants appealed against the financial penalty of £21500 imposed under section 249(a) of the Housing Act 2004, (“the 2004 Act”), by final notices each dated 23 September 2020, (“the Final Notices”).
3. Directions were issued pursuant to which the parties submitted written representations.
4. A remote video hearing of the Appeal was held on Tuesday 21 September 2021 at 10:30. Mr Abdul Shakoor, Mr Hassan Shakoor and Mr Hanif Phull Mohammed attended the hearing in person. The Respondent was represented by Ms. A. Short of Counsel. The following employees of the Respondent were also in attendance: Ms L. Mann, Mr P. Scott, Ms C. Eden, Ms S. Hughes, Ms K. Daniels and Ms G. Chilton.

## **Law and Guidance - Power to impose financial penalties**

5. New provisions were inserted into the 2004 Act by section 126 and Schedule 9 of the Housing and Planning Act 2016. One of those provisions was section 249A, which came into force on 6 April 2017. It enables a local housing authority to 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.
6. Relevant housing offences are listed in section 249A(2). They include the offence, under section 234 of the 2004 Act of failing to comply with management regulations in respect of houses in multiple occupation, (“HMOs”). The relevant regulations are the Management of Houses in Multiple Occupation (England) Regulations 2006, (“the Regulations”).
7. Only one financial penalty under section 249A may be imposed on a person in respect of the same conduct. The amount of that penalty is determined by the local housing authority (but it may not exceed £30,000), and its imposition is an alternative to instituting criminal proceedings for the offence in question.

## **Procedural requirements**

8. Schedule 13A to the 2004 Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under section 249A. Before imposing such a penalty on a person, the local housing authority must give him or her a notice of intent setting out:
  - the amount of the proposed financial penalty;
  - the reasons for proposing to impose it; and
  - information about the right to make representations.
9. Unless the conduct to which the financial penalty relates is continuing, that notice must be given before the end of the period of six months beginning on the first day on which the local housing authority has sufficient evidence of that conduct.
10. A person who is given a notice of intent has the right to make written representations to the local housing authority about the proposal to impose a financial penalty. Any such representations must be made within the period of 28 days beginning with the day after that on which the notice of intent was given. After the end of that period, the local housing authority must decide whether to impose a financial penalty and, if a penalty is to be imposed, its amount.
11. If the local housing authority decides to impose a financial penalty on a person, it must give that person a final notice setting out:
  - the amount of the financial penalty;
  - the reasons for imposing it;
  - information about how to pay the penalty;
  - the period for payment of the penalty;
  - information about rights of appeal; and
  - the consequences of failure to comply with the notice.

## **Relevant guidance**

12. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance (“the HCLG Guidance”) was issued by the Ministry of Housing, Communities and Local Government in April 2018: Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case by case basis. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state: “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.”

13. The HCLG Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:
  - a. Severity of the offence.
  - b. Culpability and track record of the offender.
  - c. The harm caused to the tenant.
  - d. Punishment of the offender.
  - e. Deterrence of the offender from repeating the offence.
  - f. Deterrence of others from committing similar offences.
  - g. Removal of any financial benefit the offender may have obtained as a result of committing the offence.
14. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, Salford City Council has adopted the Association of Greater Manchester Authorities Policy on Civil (Financial) Penalties as an alternative to prosecution under the Housing and Planning Act 2016, (“the Policy”).

### **Appeals**

15. A final notice given under Schedule 13A to the 2004 Act 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. However, this is subject to the right of the person to whom a final notice is given to appeal to the Tribunal (under paragraph 10 of Schedule 13A).
16. Such an appeal may be made against the decision to impose the penalty, or the amount of the penalty. It must be made within 28 days after the date on which the final notice was sent to the appellant. The final notice is then suspended until the appeal is finally determined or withdrawn.
17. The appeal is by way of a re-hearing of the local housing authority's decision but may be determined by the Tribunal having regard to matters of which the authority was unaware. The Tribunal may confirm, vary or cancel the final notice. However, the Tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed.

## Evidence

### Applicant's submissions

18. The Applicants' submissions are summarised as follows:

#### 18.1 Zain Property Limited, ("ZPL")

- (1) Mr Abdul Shakoor is the CEO of ZPL, and controls/manages its activities;
- (2) Mr Hassan Shakoor and Mr Hanif Mohammed are "silent" directors of ZPL;
- (3) works had been started on the Property in or about November 2019 but were interrupted by Mr Shakoor's hospitalisation/severe illness in December 2019;
- (4) his recovery took several months, during which time he was bedridden and on medication which made him confused, all of which was further exacerbated by his vulnerability to covid-19. During this time he was unable to manage ZPL effectively or to delegate management to others;
- (5) this was further hampered by the lockdown restrictions in March 2020;
- (6) the Respondent's description of the defects identified at the inspection on 12 February 2020 made the condition of the Property sound much worse than it was e.g. much of the damage to doors/closers was caused by tenants; likewise, the accumulation of items in escape routes; tenants' partners staying in the Property;
- (7) it was accepted that there were some defects at the Property;
- (8) prior to Mr Shakoor's incapacity, weekly inspections of the Property were undertaken, and a cleaner also attended weekly;
- (9) the defect in the fire alarm system was caused by a leak in the roof, damaging the detector head in one bedroom which had then "tripped" the whole system. The leak had been caused by Storm Dennis on 11 February 2020, the day before the inspection;
- (10) Mr Abdul Shakoor challenged the expertise/qualifications of Ms L Mann to assess defects in the fire alarm system, and the fire doors/frames;
- (11) the financial penalty on ZPL is disproportionate to the offence;
- (11) the Respondent has failed to take into account the severity and consequences of Mr Shakoor's illness, in particular, that he had suffered a relapse after the appointment on 16 January 2020,

detailed in the letter from his consultant, Mr R. Gilbert, dated 16 January 2020, and which has been made worse by these proceedings;

- (12) the Respondent is looking to make an example of ZPL; and,
- (13) the Property has now been sold.

#### **18.2 Mr Hassan Shakoor**

- (1) Mr Hassan Shakoor had only become involved in the management of the Property after March 2020 as a result of his father's illness and then only in a very limited capacity;
- (2) he disputed that he had accompanied Ms L Mann at the inspection on 24 February 2020, claiming that this was his brother Mr Hamza Shakoor; and,
- (3) he had been forced to give up his job to undertake these responsibilities which has adversely impacted his career and also his financial position.

#### **18.3 Mr Hanif Mohammed**

- (1) Mr Mohammed lives in Coventry and had never visited the Property;
- (2) he understood the responsibilities of being a director but had always relied on Mr Abdul Shakoor to do things properly.

#### **18.4 The Applicants**

All of the Applicants confirmed in oral evidence to the Tribunal that the defects at the Property identified at the inspection on 12 February 2020 constituted breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006, ("the Regulations"), as detailed in the Final Notices.

### **Respondent's submissions**

19. The Respondent's submissions are as follows:

#### **19.1 The Property**

- (1) The Property is a large detached house, with a converted basement and accommodation on 3 further storeys, including 12 bedrooms.
- (2) The HMO licence in the name of ZPL was for occupation by 12 people but, at the time of inspection, there was evidence that this number had been exceeded.
- (3) The manner of occupation was as a "bedsit style" HMO e.g. the occupants were not known to each other and occupied on individual tenancy agreements.

## 19.2 **Mr Hanif Mohammed**

- (1) Having regard to Mr Mohammed's limited involvement in the management of the property, the Respondent conceded that the Tribunal might consider a determination based on low culpability/high harm as more appropriate in his case. This would mean a financial penalty (allowing for the mitigating factor reduction of £1000) of £15500.

## 19.3 **Zain Property Limited/ Mr Abdul Shakoor**

- (1) Ms Mann confirmed that she has experience of inspecting HMOs since 2007, had undertaken HHSRS training and had extensive knowledge of fire safety requirements/standards within HMOs, including the LACORS Guidance;
- (2) Mr Shakoor's analysis of the defect in the fire alarm system being solely attributable to the leak in the top bedroom/limited to one "zone" of the fire alarm/detection system was challenged as the photographic evidence taken at the time of the inspection showed faults across the system;
- (3) Ms Mann gave a detailed explanation (again by reference to the photographic evidence) of the defects found in the fire doors/frames, the absence of working closers on many of the doors, missing handles, unsatisfactory "patch" repairs to doors compromising their efficacy and holes in doors and walls adversely affecting compartmentation within the Property;
- (4) Ms Mann raised the practice of leaving a key to the fire alarm system with 1 of the tenants enabling it to be disabled, as acknowledged by Mr Abdul Shakoor;
- (5) the 1<sup>st</sup> 2 inspections and the offence to which the Appeals relate all pre-dated the covid-19 pandemic national lockdown on 23 March 2020. Prior to this date, there were no legally binding social distancing or other restrictions in place which would have adversely affected the ability to inspect the Property and/or undertake necessary maintenance and/or repairs;
- (6) the medical evidence produced by Mr Shakoor to the Tribunal did not support his description of the cause of his illness, the period of his recovery, or any ongoing reliance on strong medication following his discharge which might have impacted on his ability to manage the Property and/or delegate the management responsibilities to suitable alternative persons;
- (7) in particular, the letter dated 16 January 2020 from Mr Shakoor's consultant refers to Mr Shakoor's return to the gym, and completion of a course of antibiotics prior to the date of the appointment, makes no mention of any ongoing medication, and concludes with a reference to a follow-up appointment "in a few months";

- (8) there was no satisfactory explanation of why it took 2 days to arrange for a fire engineer to attend the Property to fix the fire alarm system following the water damage on 11 February 2020;
- (9) in accordance with the Policy:
- (i) it was appropriate to consider relative harm where no actual harm has occurred. In this case, in view of the design/layout of the Property, the number of occupants and the manner of their occupation, the many defects in the doors/frames/walls, the compromise of the escape routes, and the defective fire alarm system made it appropriate to categorise it as a case of high harm;
  - (ii) there was no evidence of any deliberate intention so it was not appropriate to categorise it as very high culpability, but there was evidence of serious and systemic failings on the part of the Applicants which made it appropriate to categorise the culpability as high;
  - (iii) high harm/high culpability meant that the financial penalty fell in Band 6 with a mid-point of £22500;
  - (iv) completion of the necessary works was treated as a mitigating factor, with a consequential reduction of £1000 in the financial penalty to £21500;
- (10) financial benefit and financial circumstances:
- (i) there was evidence that the monthly rental income from the Property was c£3600;
  - (ii) a sale advert for the Property stated the annual rental income to be in the region of £48000;
  - (iii) it was reasonable to assume that substantial monies had continued to be received in rent during the period of the commission of the offence;
  - (iv) the property had been bought by Mr Abdul Shakoor in September 2013 for less than £100,000 and sold in or about September 2020 for a price between £100,000 and £200,000.



#### 19.4 **Mr Hassan Shakoor**

- (1) There had been no previous suggestion that Mr Hamza Shakoor, and not Mr Hassan Shakoor, had attended the inspection on 24 February 2020, despite Ms Mann's witness statement having been available to the Applicants since February 2021;
- (2) there was evidence of Mr Hassan Shakoor's involvement in the management of ZPL e.g. he signed the authorisation of Mr Shekiebani's attendance at the PACE interview; all correspondence with Ms Mann had been with him; his written PACE responses made frequent references to "we" implying active involvement in the management of the Property with no contrary explanation;
- (3) there was no documentary evidence of Mr Shakoor having given up his job in March 2020 or of his financial circumstances generally.

#### **Reasons**

##### 20. **Section 251 of the 2004 Act**

###### 20.1 Section 251 (1) of the 2004 Act provides-

"Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of..a director...he as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly".

20.2 The Tribunal was satisfied that there was no evidence before it of any consent, connivance or neglect on the part of Mr Hanif Mohammed in the commission of the offence by ZPL.

20.3 Pursuant to paragraph 10(4) of Schedule 13A to the Act, the Tribunal determined it appropriate to cancel the Final Notice imposed on Mr Mohammed.

20.4 For the reasons set out in paragraph 22.2(3) below, the Tribunal was satisfied that there was evidence of consent, connivance and/or neglect on the part of Mr Hassan Shakoor in the commission of the offence by ZPL, and that the proceedings/punishment by way of a financial penalty was appropriate.

##### 21. **"Relevant housing offence"**

21.1 The Tribunal was satisfied, beyond reasonable doubt, that the evidence of breaches of the Regulations as identified at the 1<sup>st</sup> inspection on 12 February 2020, was conduct amounting to an offence under s234 of the Act, a "relevant housing offence" for the purposes of s249A of the Act, permitting the imposition of a financial penalty.

21.2 In this respect, the Tribunal noted the Applicants' acceptance, in their oral evidence at the hearing, that defects identified at the inspection of the Property on 12 February 2020 constituted breaches of the Regulations as set out in the Final Notices.

22. Procedural requirements

22.1 The Tribunal was satisfied that, in respect of the Notice of Intent and the Final Notice, the Respondent had complied with the procedural requirements as required under Schedule 13A to the Act, as follows:

- (1) the offence under s234 of the Act was continuing as at the date of the Notice of Intent;
- (2) the Notice of Intent and the Final Notice contained the information as required under paragraphs 3 and 8 of Schedule 13A to the Act; and,
- (3) the Notice of Intent contained information about the right to make representations.

23. Application of the Policy

23.1 Culpability and harm and severity of offence: having regard to the Policy, the Tribunal agreed with the Respondent's determinations as follows:

- (1) high harm: the Tribunal was satisfied that:
  - (i) having regard to the design/layout of the Property, the number of occupants and the manner of occupation, the defects identified at the Property at the inspection on 12 February 2020 relating to fire safety and prevention measures posed a serious and substantial risk of harm to the occupants;
  - (ii) in the absence of actual harm, it was appropriate to take into account the likelihood of harm and the gravity of the harm that could have resulted;
  - (iii) a determination of high harm was appropriate in the circumstances.
- (2) high culpability: the Tribunal noted the following:
  - (i) the medical evidence produced to the Tribunal by Mr Abdul Shakoor did not support the statements by him or his son, Mr Hassan Shakoor, regarding the cause and/or severity of the illness, post-discharge treatment or period of convalescence;
  - (ii) further, there was no evidence produced to the Tribunal of any subsequent relapse, as alleged;
  - (iii) in particular, but without limitation, there was no evidence to support the claim that Mr Abdul Shakoor was so incapacitated

by the effects of his illness that, after 16 January 2020, he was unable to visit the Property (although it was noted that he was on crutches), or, in the alternative, to make alternative arrangements to ensure that the management of the Property (including, the continuation of the repairs said to have been started in or about November, access to necessary finance etc) was properly delegated to others;

- (iv) the Tribunal concluded that the effect of Mr Abdul Shakoor's illness on his ability to manage and/or delegate the management of the Property from 16 January 2020 had been exaggerated;
- (iii) the impact of covid-19 restrictions on the ability of ZPL, Mr Abdul Shakoor and/or Mr Hassan Shakoor to effectively manage the Property had also been exaggerated as the commission of the offence, and the inspections on 12 and 24 February 2020 all pre-dated the imposition of the national lockdown on 23 March 2020;
- (iv) there was evidence of serious or systemic failings in the management of the Property including, without limitation: (a) the failure to address numerous defects in the doors/frames/closers etc, as evidenced by the photographic evidence obtained at the inspection on 12 February 2020, all of which impacted the fire safety/prevention measures at the Property and all of which should have been obvious to the Applicants at their weekly inspections; (b) the absence of any satisfactory explanation as to why it had taken over 2 days to get an engineer to repair the fire alarm; (c) the absence of any satisfactory explanation for the provision of a key to a tenant(s) enabling the fire alarm system to be disabled.

## 22.2 Other relevant issues

- (1) There was no documentary evidence to support Mr Hassan Shakoor's claims that he had been forced to give up alternative employment in or about March 2020 to assist his father in the management of the Property.
- (2) Mr Hassan Shakoor's claim at the hearing that it was his brother, Mr Hamza Shakoor, who attended the inspection on 24 February 2020 was, at its lowest, surprising and raised the obvious question why Mr Shakoor had not sought rectification of this mistake at an earlier point in the proceedings.
- (3) Having regard to, in particular, but without limitation, Mr Hassan Shakoor's responses to the written PACE "interview", and the repeated use (without explanation) of the pronoun "we", the Tribunal was satisfied that there was evidence of his active involvement in the management of the Property prior to March 2020.

- (4) Having regard to the responses of Mr Tahar Sheikibani during his PACE interview, the Tribunal was satisfied that there was evidence of day-to-day management of the Property having been undertaken by persons other than Mr Abdul Shakoor, including Mr Sheikibani, prior to March 2020, with control for major decisions e.g. undertaking of significant repairs/maintenance, being retained by Mr Abdul Shakoor.
- (5) There was no evidence before the Tribunal that the Respondent was seeking to make an example of Mr Abdul Shakoor/ZPL, as claimed by Mr Abdul Shakoor, but the Tribunal noted that the deterrent value to prevent others from committing similar offences was a factor for consideration in determining the amount of a financial penalty in accordance with the Policy.

### 22.3 Financial benefit:

- (1) The Tribunal noted that it had been open to the Applicants to provide such information to the Tribunal as considered relevant regarding ZPL/their financial circumstances but that they had not done so;
- (2) in particular, but without limitation, the Applicants had not produced any documentary evidence to refute the Respondent's evidence regarding the estimated annual rental income from the Property or the sale price of the Property;
- (3) there was no documentary evidence before the Tribunal of any financial hardship/inability to pay the financial penalty on the part of either of ZPL and/or Mr Hassan Shakoor;
- (4) in the circumstances, the Tribunal was satisfied that there was insufficient evidence regarding ZPL and/or Mr Hassan Shakoor's financial circumstances to justify any adjustment to the amount of the financial penalty.

### 22.4 Mitigating factors:

- (1) The Tribunal determined that it was appropriate to take into account as a mitigating factor in respect of both ZPL and Mr Hassan Shakoor the fact that remedial works had been undertaken at the Property and reduced the financial penalty in each case by £1000 accordingly.

Tribunal Judge C Wood  
3 November 2021