



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

Case Reference : **MAN/00BR/HNA/2019/0063**

Property : **29A Church Street, Eccles M30 0BJ**

Applicant : **Mr Aftab Raja**

Respondents : **Salford City Council**

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

Tribunal Members : **Tribunal Judge Professor Caroline Hunter
Tribunal Member Neil Swain**

Date and venue of Hearing : **Determined without a hearing on 25 March, 2022**

Date of Decision : **1 April 2022**

DECISION

Summary Decision and Order

1. The Final Notice is to be varied by amending the financial penalty to £8,500.

Background

2. This is an appeal by the applicant, Mr Aftab Raja, against a financial penalty of £22,500 imposed on him by Salford City Council ('the Council') under the Housing Act 2004 ('the Act'), s.249A. The penalty arose because of a failure of Mr Raja to apply for a licence under section 85 of the Act in a designated area of selective licensing.
3. The penalty was imposed on 17 June 2019. Mr Raja appealed to the Tribunal against the penalty on 3 July 2019. On 17 February 2021, this Tribunal (FTT) dismissed the appeal and confirmed the final notice.
4. On October 20, 2021 Mr Raja successfully appealed to the Upper Tribunal (Land Chamber) the decision (*Aftab Raja v Salford City Council* [2021] UKUT 261 (LC)). The basis of the decision was that (para. 23):

...it is simply not possible to discern, from the terms of the FTT's Decision, whether the FTT failed to make its own decision as to the level of the penalty. If it did make its own decision, then it failed adequately to explain the basis and reasons for the decision which it made since it did not provide any reasoning to support the amount of the penalty....
5. The Upper Tribunal set aside the FTT decision to confirm the level of the financial penalty imposed by the Council. The Upper Tribunal remitted the decision as to the appropriate level of penalty to the FTT to be determined following a re-hearing. The matter was remitted to the same panel that made the original paper determination.
6. The Tribunal considered it appropriate for the application to be determined on the papers provided by the parties without holding a hearing. The Tribunal was provided with new submissions from Mr Raja and the Council on the amount of the penalty.

The Law and Guidance

7. The relevant law was set out in our original decision and we do not repeat it all here. However, we have made this decision based on the following principles:
 - a. The appeal is by way of a re-hearing of the local housing authority's decision and 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. (Housing Act 2004, Sch. 13A, para. 10)
 - b. The Tribunal's task is not simply a matter of reviewing whether the penalty imposed by the Final Notice was reasonable: the Tribunal must make its own determination as to the appropriate amount of the financial penalty having regard to all the available evidence. In doing so, the Tribunal should have regard to the seven factors specified in the MHCLG Guidance as being relevant to the level at which a financial penalty should be set.
 - c. The Tribunal should also have particular regard to Salford's Guidance.

8. The relevant Guidance at Salford at the time when the penalty was imposed was set-out in the Association of Greater Manchester Authorities (AGMA) (of which the Council is a member) joint Policy for the use of Civil Penalties as an alternate to prosecution in the Housing and Planning Act 2016 ('the AGMA Guidance'). Echoing the MHCLG Guidance, 'in order to ensure that the civil penalty is set at an appropriate level the following factors will be considered:-
- The seriousness of the offence, determined by the harm caused and the culpability of the offender
 - The history of compliance by the offender
 - The punishment of the offender for the offence
 - The deterrent value to prevent the offender from repeating the offence
 - The deterrent value to prevent others from committing similar offences
 - Removing any financial benefit obtained from committing the offence.'
9. Harm is split into three categories: high, medium and low. In reaching its decision the council must take into account:
- The person: i.e. physical injury, damage to health, psychological distress
 - To the community; i.e. economic loss, harm to public health
 - Other types of harm; i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood
10. The following examples of harm are provided.
- High:** Housing defects giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; for example, danger of electrocution, carbon monoxide poisoning or serious fire safety risk.
- Medium:** Housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; for example, falls between levels, excess cold, asbestos exposure.
- Low:** Housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors; for example, localised damp and mould, entry by intruders.
11. There are four levels of culpability. Where the offender -
- Has the **intention** to cause harm, the highest culpability where an offence is planned.
 - Is **reckless** as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people.
 - Has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results.
 - Is **negligent** in their actions.

12. The following examples are given of these:
- Very High (Deliberate Act):** Intentional breach by landlord or property agent or flagrant disregard for the law e.g. where an unregistered gas fitter is allowed to carry out gas work and the landlord/property agent knows that he is not registered.
- High (Reckless Act):** Serious or systemic failings, actual foresight of or wilful blindness to risk of offending but risks nevertheless taken by the landlord or property agent; e.g. failure to comply with HMO Management Regulations
- Medium (Negligent Act):** Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence; e.g. part compliance with a schedule of works, but failure to fully complete all schedule items within notice timescale.
- Low (Low or no culpability):** Offence committed with little or no fault on the part of the landlord or property agent; e.g. obstruction by tenant to allow contractor access, damage caused by tenants
13. The amount is determined by the interaction of the harm and culpability based six banding levels from 1. £0 – 4999 to 6. £25,000 – 30,000. The starting point will be the mid-point of each Band.
14. In addition the penalty may be aggravated or mitigated by £1000 for each factor. When considering any relevant aggravating and mitigating factors there is reference to the Magistrates Sentencing Council Guidelines. The Policy also includes the following:
- ‘When considering aggravating and mitigating factors the civil imposed must proportionate to the offence.’
- ‘An offender will be assumed to be able to pay the penalty up to the maximum amount unless they can demonstrate otherwise.’
15. Since the penalty was imposed Salford (with the other Councils in the Greater Manchester area) has revised its Policy (in February 2020) with 8 bands rather than 6.

The original penalty

16. The original penalty was £22,500. The Council judged the harm as medium and the culpability as high. This put the penalty in Band 5. It found there are no mitigating circumstances and therefore the penalty was set at the mid-point.

Submissions

17. Mr Raja submits that the penalty imposed on him - £22,500 - is grossly excessive. He points to four elements of the MHCLG Guidance:
- a. Culpability and track record of the offender;
 - b. The harm (if any) caused to the tenant of the premises;
 - c. The need to punish the offender, the deter repetition of the offence or to other others from committing similar offences
 - d. The need to remove any financial benefit offer may have obtained as a result of committing the offence.

We deal with each in turn applying the AGMA Guidance and taking into account the submissions of the Council.

Culpability and track record of the offender

18. In their original decision the Council found that Mr Raja had a high culpability.

This was based on:

- a. Him operating a business and being aware of his legal obligations regarding licensing;
- b. Following the service of an improvement notice due to hazards due to poor property condition, the water and electricity supply were interrupted which forced the tenant to vacate the property;
- c. He accepted receiving written correspondence from the Council.

19. In his further submissions, Mr Raja points out that he not a professional landlord. 'He was an accidental landlord when he took the premises on lease on 21/08/2017.' He was not aware of the obligations to license and he sublet the premises on 1 April 2018.

20. The Council in their Final Notice dealt with the fact what Mr Raja had not received the notifications. They were satisfied he had received notification (8 written requests and reminders) on numerous occasions that he required a licence. In their submission they point to the fact Mr Raja in his representation received on 28 May 2019 that he made a decision to allow the tenant to rent the property and 'pay us rent when her housing benefit came in.' Further it disputes that the Mr Raja sublet the property on 1 April 2018. They provide an email that Mr Raja sent them dated 29 November 2018 where he discusses the outstanding rent and makes reference to how the property is rented.

The harm (if any) caused to the tenant of the premises

21. Mr Raja states that no physical injury was caused to the tenant. Further he reasserts that he sublet the property. He asserts that he did not disconnect the water or electricity to the premises. As noted, the Council disputes this.

22. Council in its final notice asserts the harm was medium as:

- a. Although the offence has not caused physical injury to occupants or neighbours there is a public concern/feeling over the impact of poor housing condition on the local neighbourhood
- b. Following the service of an improvement notice due to hazards identified due to poor property condition, the water and electricity supply were interrupted which forced the tenant to vacate the property. This caused the tenant and her children great upset and they have subsequently been re-housed
- c. Failure to apply for a licence undermines the legislation as it allows landlord to operate without the correct checks.

The need to punish the offender, the deter repetition of the offence or to other others from committing similar offences

23. The submission reiterates that fine is grossly excessive and the act that Mr Raja is an accidental landlord.

The need to remove any financial benefit offer may have obtained as a result of committing the offence.

24. It is submitted that Mr Raja has not gained any financial benefit from the offences. The only benefit to him is the failure to pay the licence fee of £600. Further the Council failed to consider his financial position.
25. He submitted for the Tribunal information on his income, that indicate a very low yearly income as a taxi driver. In addition he has produced information on the transfer of the lease of the property. This includes a payment in 2020 of £5000 for equipment and goodwill. We note that Mr Raja self-assessment tax calculation that he submitted does not seem to include this.

Decision

26. The first element of our decision-making must be the harm and culpability. We start with the offence, ie a failure to licence. This must be compared to other failures, for example to comply with improvement notices or HMO regulations where the failure by the landlord to provide fire safety requirements can endanger a number of tenants and their neighbours.
27. In terms of harm the Council assessed this as ‘medium’. We disagree. We note that all the examples of harm in the AGMA Guidance come directly from the offence. There is very little evidence that the failure to licence led to any harm to the tenant. We will deal below with alleged illegal eviction of the tenant. Of course as the Council point out in their final notice there is always some harm to the public/community from failure to licence but in our view that can only be at the low end of harm. Accordingly we assess the harm as ‘low’.
28. Turning to culpability, the Council assessed this as ‘high’. Our view is that it should be assessed as medium. Again we note all the examples of very high and high are linked to risk to the tenant. Although there is no evidence that Mr Raja is an ‘accidental’ landlord, there is evidence that he was not a ‘professional’ landlord. The property is his only property and the lease was for mixed use of business and residential. He has not challenged the fact that he was sent 8 written requests and reminders to apply for a licence, so our view the culpability cannot be seen as low.
29. On this analysis the correct band is band 2 and the starting penalty is £7500. We then turn to any aggravating factors. Although the actions that led to (i) an improvement notice, (ii) the electricity and water being cut-off and (iii) tenant leaving the property has not been tested in the Tribunal, Mr Raja does not dispute that they happened, just his role in them. Whatever his role, as the proper licensee of the property he should not have allowed it to have happened. In our view each action should lead to an increase of £1000 to the penalty.

30. In terms of mitigation, we note the AGMA Guidance that ‘an offender will be assumed to be able to pay the penalty up to the maximum amount unless they can demonstrate otherwise.’ We have been provided with information on Mr Raja’s income and personal circumstances. Whatever amount Mr Raja has to pay it will be a struggle for him, although he did receive the £5000 for the business in 2020. We have not been provided with any other information about any income he has received either as landlord of the flat at the property or at the business before he sold it.

31. In summary the penalty is £8500 -made up of the following elements:

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| Band 2 fine: | £7500 |
| Aggravating factors: | £3000 |
| Mitigating factors | minus £2000 |
| Total | £8500 |

Tribunal Judge Professor Caroline Hunter
1 April 2022