FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**BIR/OGF/HNA/2021/0011 & BIR/OGF/HNA/2021/0012**
HMCTS	**:**	**V: VIDEO HEARINGS SERVICE**
Property	**:**	**105 Burford Road, Brookside, Telford, Shropshire, TF3 1LL**
Applicants	**:**	**(1) Mrs R K Duhra** **(2) Mr S S Duhra**
Representative	**:**	**Mr A Craft**
Respondent	**:**	**The Borough of Telford & Wrekin**
Representative	**:**	**Counsel – Mrs L Buckley-Thomson of No 5 Barristers Chambers**
Type of Application	**:**	**An appeal under paragraph 10 of Schedule 13A to the Housing Act 2004 against a Financial Penalty**
Tribunal Members	**:**	**Judge M K Gandham** **Mr A Lavender CIEH, Dip Law, Dip Surv**
Date of Hearing	**:**	**12 October 2021**
Date of Decision	**:**	**22 November 2021**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing which had been consented to by the parties. The form of remote hearing was Video (V: VIDEO HEARING SERVICE). A face-to-face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing/on paper. The documents referred to were contained within the parties' bundles, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and to enable this case to be heard remotely during the COVID-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal, the Tribunal directed that the hearing be held in private. The Tribunal had directed that the proceedings were to be conducted wholly as video proceedings; it was not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who were not parties entitled to participate in the hearing; a media representative was not able to access the proceedings remotely while they were taking place; and such a direction was necessary to secure the proper administration of justice.

Decision

1. The Tribunal varies the Final Notice dated 24 May 2021 given to Ranjit Kaur Duhra as follows:

   (i) by substituting the amount of the Financial Penalty detailed in the second paragraph from £6,000 to £4,250; and

   (ii) by substituting the wording in the fifth paragraph with the following:

   "If payment is made in full within 14 days of *23rd November 2021*, an additional discount of 33% will be applied to the civil penalty. The reduced civil penalty amount will be £2,847.50"

2. The Tribunal varies the Final Notice dated 24 May 2021 given to Sahan Singh Duhra as follows:

   (i) by substituting the amount of the Financial Penalty detailed in the second paragraph from £6,000 to £4,250; and

   (ii) by substituting the wording in the fifth paragraph with the following:

   "If payment is made in full within 14 days of *23rd November 2021*, an additional discount of 33% will be applied to the civil penalty. The reduced civil penalty amount will be £2,847.50"

Reasons for Decision

Introduction

3. By two separate applications, both received on 18 June 2021, Mrs Ranjit Kaur Duhra and Mr Sahan Singh Duhra ('the Applicants') applied to the Tribunal to appeal decisions to impose financial penalties, and the amounts of those penalties, on them under paragraph 10 of Schedule 13A to the Housing Act 2004 ('the Act'). The financial penalties had been imposed on each of them individually under section 249A of the Act by the Borough of Telford & Wrekin ('the Respondent') in respect of the property known as 105 Burford, Brookside, Telford, TF3 1LL ('the Property').

4. The Respondent had, on 5 February 2021, given to each of the Applicants a notice of their intention to impose a financial penalty on them ('the Notices of Intent') in respect of the Property and, on 24 May 2021, the Respondent gave to each Applicant an individual Final Notice in respect of offences under section 234 of the Act (management regulations in respect of HMOs) ('the Final Notices').

5. The Tribunal issued Directions on 30 June 2021. The Directions confirmed that, due to the COVID-19 pandemic, an oral hearing would be held via remote video conferencing and that the Tribunal would not be inspecting the Property. The Tribunal received statements and a bundle of documents from the Respondent on 19 August 2021 and a bundle of authorities from them on 8 October 2021. A statement and bundle of documents was received from the Applicants on 5 September 2021.

The Law

6. Under section 249A of the Act, a 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*'. The imposition of the penalty is an alternative to prosecution for a relevant housing offence.

7. Section 249(A)(2) defines the relevant housing offences as offences 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).

8. Section 249A(3) of the Act confirms that only one financial penalty can be imposed on any person in respect of the same conduct and section 249A(4) confirms that the amount of any financial penalty cannot exceed £30,000.

9. Paragraphs 1 to 9 of Schedule 13A to the Act set out the procedure for imposing financial penalties and 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.

10. The person upon whom a final notice is given may appeal to the Tribunal under paragraph 10 of Schedule 13A to the Act which provides:

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.

11. Paragraph 12 of Schedule 13A to the Act states that a local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions to impose financial penalties and the Secretary of State has issued "Guidance for Local Housing Authorities: Civil penalties under the Housing and Planning Act 2016 (April 2018)" ('the Guidance'). Paragraph 3.5 of the Guidance sets out a list of factors which local housing authorities should consider when assessing the level of any penalty, these being:

- the severity of the offence;
- the culpability and track record of the offender;
- the harm caused to the tenant;
- the punishment of the offender;
- to deter the offender from repeating the offence;
- to deter others from committing similar offences; and
- to remove any financial benefit the offender may have obtained as a result of committing the offence.

Background

12. On 19 August 2020, whilst inspecting another property, Mrs Maria Harley, an Environmental Health Officer for the Respondent, spoke to one of the occupiers of the Property, who informed her that there were five people living at the Property and that the Property had no fire alarms or fire doors. In light of that

information, Mrs Harley arranged an appointment to inspect the Property, with Miss Emma Warnsby, a Rogue Landlord Intelligence Officer for the Respondent, on 3 September 2020. As it was considered that the Property was potentially being used as a licensable house in multiple occupation (HMO) with possible management offences being committed, access was obtained without prior notice, under sections 239(6) and (7) of the Act.

13. Mrs Harley stated that they were able to inspect the common parts, including the kitchen/dining room, the bathroom, the rear garden, and one of the first floor bedrooms. There were three other bedrooms, one on the ground floor and two further bedrooms on the first floor, however, access was not obtained to those bedrooms.

14. Mrs Harley stated that during the inspection it was unclear as to whether there were four or five people living at the Property, however, there were at least four occupants forming two or more households sharing amenities and paying rent, so the Property fulfilled the definition of a HMO under section 254 of the Act. In addition, the following breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 ('the management regulations') were identified:
    (i) Regulation 3 – no management details were on display;
    (ii) Regulation 4 – there were inadequate safety measures: there was only one battery-operated smoke detector on the ground floor and it did not work, there were no fire doors and one damaged bedroom door, the front and rear exit doors required the use of a key, there was inadequate fire protection between the ground floor communal kitchen/living room and the ground floor bedroom, there was no fire blanket and a fridge was plugged in on the communal route;
    (iii) Regulation 5 – there was inadequate drainage, as there was a missing downpipe to the rear of the Property; and
    (iv) Regulation 7 – there was a failure to maintain common parts: there was damp and mould in the bathroom, there was deteriorated mastic around the bath, a light dependent sheath had slipped and there was missing guarding on the rear decking in the garden.

15. Following the assessment, Mrs Harley wrote to each of the Applicants separately on 8 September 2020, pointing out the deficiencies, and enclosed within those letters PACE Questions (interview under caution letters) for each of the Applicants and a Requisition for Information Notice.

16. On 24 September 2020, the Respondent received responses to the PACE Questions from both of the Applicants, which included exactly the same replies. The Respondent also received photographs showing that the management issues had been rectified, completed replies to the Requisition for Information Notice from Mr Duhra, a Gas Safety Record, a Buildings Regulations Certificate for installation of a replacement consumer unit and four licence agreements detailing the occupants.

17. Mrs Harley checked whether the Applicants were known to the Respondent and, from their records, found that the Respondent had previously had dealings

with the Applicants in relation to 109 Hurleybrook Way, 40 Bembridge and 82 Boulton Grange. The Respondent also discovered that Mr Duhra was a director, and Mrs Duhra a secretary, of a company called M&A Properties. The nature of the business of the company was buying and selling of their own real estate, together with letting and operating of their own or leased real estate.

18. An authorisation to take further action was prepared and the Respondent considered that a financial penalty was the most appropriate and effective sanction as the offences were under the management regulations and were not considered high culpability with high harm.

19. The Respondent completed their civil penalty scoring matrix and the total scores and values for each offence were added up to give a fine amount of £20,000. The Respondent considered that both of the Applicants were equally culpable, so two separate Notices of Intent were given – one to Mrs Duhra and the other to Mr Duhra – on 5 February 2021, each for a sum of £20,000.

20. On 8 March 2021, joint written representations were sent from the Applicants to the Respondent, which the Respondent replied to on 9 April 2021. The Property was re-inspected on 26 April 2021, which confirmed that the works had been completed.

21. Based on the re-inspection, the Respondent recalculated the values using the scoring matrix. The Respondent used the lower end of the fine scale, which resulted in a reduced fine of £12,000. The Respondent considered that this should be split equally between Mr and Mrs Duhra as they appeared to be jointly culpable. An individual final notice was given to Mrs Duhra and to Mr Duhra on 24 May 2021, both detailing a fine of £6,000 payable by each of them.

Hearing

22. An oral hearing was held via the Video Hearing service on 12 October 2020. Mr Craft attended on behalf of the Applicants. Mrs Buckley-Thomson (Counsel) represented the Respondent, accompanied by Mrs Harley and Miss Warnsby.

23. As the Applicants were not in attendance, Mrs Buckley-Thomson, on behalf of the Respondent, queried as a preliminary issue whether Mr Craft had officially been appointed as the Applicants' representative, as the Respondent had not received confirmation of such. The Tribunal could not locate any written notice of representation on the Tribunal file but, taking into account the overriding objective and rule 8 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013, the Tribunal considered that the matter could be dealt with fairly and justly and by avoiding delay if the hearing were to continue with the Applicants providing written notice of representation as soon as possible thereafter. This was agreed by the Respondent at the hearing and a written notice was received from the Applicants on 14 October 2021 confirming that they had appointed Mr Craft as their representatives at the outset of the matters and had authorised him to make written submissions on their behalf and represent them at the hearing.

The Submissions

24. The Applicants submitted that there had been both procedural irregularities and an abuse of the legislation and the Respondent's own enforcement policy ('the Enforcement Policy') in the following areas:

    - Powers of Entry – that the initial inspection on 3 September 2020 was unlawful;
    - Incomplete Inspection – that there was an incomplete inspection, so the Respondent could not prove an offence beyond reasonable doubt;
    - Mrs Duhra's Liability – that Mrs Duhra did not meet the criteria under section 263 of the Act, therefore, should not have been given a penalty;
    - Final Notices – that the Final Notices were invalid; and
    - Imposition of and Level of Penalty – that the Respondent had incorrectly applied their enforcement guidance and their scoring matrix.

Powers of Entry

25. Mr Craft, on behalf of the Applicants, submitted that, as Mrs Harley had made an appointment with one of the occupiers of the Property, then entry should not have been gained under sections 239(6) and (7) of the Act, as the inspection was prearranged. As such, he submitted it could not be considered to be "*without giving any prior notice*" as required under section 239(7). He submitted that entry, instead, should have been gained under section 239(5), notice having been given to the Applicants and all the occupiers or alternatively under section 240 of the Act, whereby access could have been gained for the entire Property.

26. Mr Craft stated that the Respondent did not consider that the inspection was urgently required, two weeks having passed between the contact with the occupier and the inspection on 3 September 2020. He submitted that failure to give such notice meant that the Applicants did not have an opportunity to engage with the Respondent or carry out the works prior to the inspection. The Applicants referred to the decisions in *Evans v LB Camden* LON/00AG/HIN/2007/0009 in support of their submission. (Although the Applicants also sought to rely *Martin Thomas v Bristol CC*, no copy of that authority was made available to the Tribunal).

27. In their written submissions, the Applicants referred to the fact that the wording in section 239(6) stated that the local housing authority had to ascertain whether an offence was being committed under "*section 72, 95 or 234(3)*" of the Act. As such, they submitted that each of the three alternatives were exclusive and that the Respondent could not use this power in cases where they suspected that a property was a licensable HMO "*and*" that there were possible management regulations.

28. Accordingly, Mr Craft submitted that the power of entry was unlawfully used and, therefore, any subsequent steps following the same, including the issuing of the Final Notices, were invalidated.

29. Mrs Buckley-Thomson, on behalf of the Respondent, submitted that the use of the word "*or*" in section 239(6) did not mean that each of those sections was mutually exclusive and that such an interpretation would not make sense as there could easily be a scenario where more than one offence was being committed. She stated that the intention of the wording was that there must be a minimum of at least one of these offences was being committed and that in this matter the Respondent suspected breaches of both section 72 and section 234(3).

30. In relation to whether prior notice had been given, Mrs Harley confirmed that no written notices were sent to any of the occupiers or to the landlord. She also confirmed that the occupant to whom she had spoken on 19 August 2020, was not in attendance on the day of the inspection.

31. Mrs Buckley-Thomson stated that section 239(6) was the correct power of entry to use as the Respondent had received a report from an occupier whose statements led to a suspicion that offences under section 72 or section 234(3) were being committed at the Property and no prior notice as required by section 239(5) was given to either the occupier or the owner.

32. Mrs Buckley-Thomson distinguished the matter from the decision in *Evans v LB Camden*, as she stated that, in that case, the Tribunal referred to notices in emergency situations. In this case, she stated that it Mrs Harley had correctly used the power authorised under sections 239(6) and (7), in relation to offences under section 72 and section 234(3).

Incomplete Inspection

33. Mr Craft submitted that a full and comprehensive inspection of the whole of the Property had not been carried out by the Respondent on 3 September 2020. As such, he submitted that the Respondent had breached the Enforcement Policy as it had failed to investigate fully and that it could not be argued that an offence had occurred beyond reasonable doubt. In particular, he stated that offences, such as whether a property was a licensable HMO, could not be established without a full inspection having been carried out.

34. Mr Craft stated that the Applicants did not deny the breaches found by the Respondent but stated that the Respondent could not get a complete picture of the situation without a full inspection.

35. Mrs Buckley-Thomson stated that it was for the Tribunal to see whether it was satisfied beyond reasonable doubt that a relevant offence had been committed. In this case, she submitted that the offences were a breach of the management regulations under section 234. She stated that breaches of the management regulations were all obvious from an inspection of the common parts and that no further access was required. She further submitted that accessing of the three remaining bedrooms would only have given the potential for additional breaches to have been discovered.

Mrs Duhra's Liability

36. Mr Craft submitted that Mrs Duhra was not a person being in control or person managing the Property and, therefore, should not have been served with any notice at all. He stated that although the Guidance allows a civil penalty to be imposed on both a landlord and a letting agent in respect of the same offence, he stated that this was not the situation this case, as both of the Applicants were landlords.

37. In the written submissions, the Applicants submitted that, although Mrs Duhra was a joint owner of the property with Mr Durha, she had no involvement with the Property on a day-to-day basis including its management, dealing with the tenancies, collecting the rent or any maintenance and, as such, did not meet the criteria required under section 263 of the Act.

38. Mr Craft accepted that, as the penalty had been split equally between the Applicants, this did not affect the liability of Mr Duhra and that the Tribunal could find him liable to pay the whole of any penalty.

39. Mrs Buckley-Thomson noted that it was only in the appeal that this ground had been raised. She pointed to Mrs Duhra being a joint owner on the Office Copy Entries and that, under the provisions of the Act, she could be receiving rent directly or through an agent. In addition, she stated that Mrs Duhra had reported in her reply to the PACE Questions, that she collected the rent and that this issue had also not been raised in the written representations from the Applicants.

40. Mrs Harley stated that, although Mrs Duhra may not have been a person having control of the Property, this did not mean that she was not a person managing it. She stated that at no point prior to the tribunal proceedings, was this issue raised and that was Mrs Duhra's email address was that being used for communications between the Applicants and Respondent, although her telephone conversations were with Mr Duhra.

Final Notices

41. Mr Craft stated that each of the Final Notices referred to the Applicants as living at their previous address of 44 Eider Drive, even though the Respondent had the correct details for the Applicants' new address in their council tax records and had referred to this new address on the invoices for the penalties.

42. The Applicants' written submissions confirmed that they had sold their home at 44 Eider Drive on 26 March 2021 and had moved to their new address at Linden House. The Applicants stated that they had contacted the Respondent's council tax department to inform them of the same, however, despite this, the Respondent had issued and hand-delivered the Final Notices to the 44 Eider Drive address.

43. In addition, in their application form, the Applicants stated that the information given in the Final Notices regarding the Tribunal's telephone

number and email were incorrect, breaching paragraph 8(e) of Schedule 13A of the Act, and that it took the Respondent some 11 weeks to issue the Final Notices following the Notices of Intent.

44. Mrs Buckley-Thomson stated that there was no time limit in the Act given for the issuing of a Final Notice following the issuing of a Notice of Intent.

45. In relation to service, she stated that the Applicants had clearly received the notices as they had made their application to the Tribunal by 17 June 2021. Mrs Buckley-Thomson stated that service of documents was governed under section 233 of the Local Government Act 1972, which confirmed that service could be by hand delivery or postage. She stated that under section 233(4), the proper address of a person was their last known address and that the 44 Eider Drive was last known address that was given to Mrs Harley.

46. Mrs Harley stated that copies of the Final Notices were hand-delivered to both addresses. She stated that her department were not aware of the new address and so delivered to 44 Eider Drive first, but once made aware of the new address by their council tax department she hand-delivered the notices on the same day to the Linden House address. She stated that the invoices detailing how to pay were included with the Final Notices.

47. In relation to the wording of the notices, Mrs Buckley-Thomson stated that the provisions of paragraph 8 of Schedule 13A to the Act did not refer to an applicant's residential address as being included, so the inclusion of the previous residential address of the Applicants did not make the Final Notices defective.

48. In relation to the information regarding rights of appeal, Mrs Buckley-Thomson stated that the Final Notices did include information regarding appeals and that, despite some of the information being incorrect, the Applicants were not prejudiced by the same as they had clearly made their applications to appeal to the Tribunal.

49. She referred to the decisions in *Waltham Forest v Younis* [2020] H.L.R 17 and in *Newbold and others v Coal Authority* [2013] EWCA Civ 584 and stated that, even if a notice was defective, it did not necessarily nullify the same. She stated that in paragraph 70 of *Newbold*, the Court of Appeal referred to the fact that a statutory requirement could be satisfied by "*adequate compliance*" and that even non-compliance was *"not fatal*". In this case, she submitted that there had been adequate compliance.

Imposition of and Level of Penalty

50. Mr Craft stated that in the Notices of Intent, a £20,000 penalty had been calculated, which was imposed on each of the Applicants. He submitted that a fine of £20,000 was excessive considering that the Property was not even a licensable HMO and had the benefit of escape windows. In addition, he submitted that the decision to fine each of the Applicants £20,000 was clearly an abuse of process, as the Guidance referred to a maximum fine of £30,000

being imposed where a serious offence had been committed. In this case, the joint penalty being paid was £40,000 and, therefore, an amount above the maximum figure detailed in the Guidance had been charged in respect of the same offence.

51. Mr Craft submitted that the decision to apply a financial penalty in this matter was to receive a financial reward from the Applicants not to encourage or educate them. He referred to the fact that the Respondent had clearly considered the Applicants to be 'fit and proper' landlords, as they had been granted a HMO licence for a different property and that informal action should have been taken before a decision to impose a civil penalty was taken.

52. In relation to the application of the scoring matrix, Mr Craft stated that the Respondents had, in the Notices of Intent, calculated a penalty of £20,000 using the highest fee in each band and imposed this penalty on each of the Applicants. In the Final Notices, he stated that the Respondent had simply altered their calculation by using the lowest fee in each band, reducing the penalty down to £12,000, and then splitting this between the Applicants. He stated that this showed that there was little understanding by the Respondent of the application of the scoring matrix or the fee scales.

53. In the Applicants' application it also referred to the Respondent's Enforcement Policy as being confusing and unwieldy to consider and apply and, in the Applicants' written submissions, the Applicants stated that the Respondent had incorrectly reported their alleged portfolio and, consequently, the calculations in the scoring matrix were further flawed. The written submissions confirmed that the Applicants owned six properties which they let – four of which were single let properties and two of which had four tenants – in addition to their family home.

54. Mrs Buckley-Thomson stated that the calculation of the final penalties was not confusing. She stated that the reasons for the reduction in the penalty was due to the Applicants having no previous convictions and the works having been carried out, so the lower end of the fine scales were used and the Respondent decided to divide the final sum between each of the Applicants. She referred to the decision of the Upper Tribunal in *Marshall v Waltham Forest LBC* [2020] UKUT 0035 (LC) and stated that the Applicants had not detailed as to why they found the Enforcement Policy confusing or unwieldy, thus, the Tribunal should utilise the Enforcement Policy in any recalculation of the penalty.

55. In relation to why a civil penalty had been issued rather than informal action taken, Mrs Harley stated that the Applicants owned another property which had the benefit of a HMO licence, so should have been well aware of the regulations and safety standards required. In addition, she stated that they had been given informal advice regarding fire safety regarding a property in 2015, in relation to a further property in 2018 and, again, regarding a third property in November 2020. As such, the Respondent considered that a financial penalty was the most appropriate action to be taken based on the Applicants' track record of failing to comply with informal action.

56. In relation to the application of the fee scale, Mrs Harley stated that they were advised by the Respondent's solicitor and that their default position was that they would always start at the top of the scale and then could downgrade based on representations received.

57. In relation to the deterrence score having not changed between the two matrices despite the Applicants having carried out the work, Mrs Harley stated that, as the Applicants had a number of properties and had failed to comply with informal action previously, they only hoped that an imposition of a financial penalty would deter them from doing the same thing again.

58. Finally, in relation to the Applicants' submissions on property ownership, Mrs Harley stated that they utilised the information which they had at the time. She stated that, in retrospect, she wished that they had investigated this further as they had, since, discovered a number of other properties linked to the Applicants.

The Tribunal's Deliberations

59. The Tribunal, under paragraph 10 of Schedule 13A to the Act, may confirm, vary or cancel a final notice, determining the matter as a re-hearing of the local housing authority's decision.

60. In reaching its determination the Tribunal considered the relevant law and all of the evidence submitted, written and oral, briefly summarised above.

Powers of Entry

61. In relation to the Respondent's decision to exercise a power of entry under section 239(6) and (7) of the Act, the Tribunal did not accept the Applicants' submission in relation to the wording of section 239(6) and considered that the power of entry could be used for the purpose of ascertaining whether an offence had been committed under any or all of the three sections referred to. The Tribunal considered that this would not have been unusual in matters where it was unknown how many people were occupying a property and what deficiencies there might be in the management of the same.

62. The Tribunal also did not accept that Mrs Harley having arranged a verbal appointment to attend the Property, some two weeks after speaking to one of the occupants, meant that the entry under section 239(7) was not lawful. The wording of subsection (7) allows a local housing authority to enter the property without giving the prior notice required under subsection (5) when ascertaining whether offences have been committed under section 72, 95 or 243(3).

63. In any event, the Tribunal does not accept that the verbal appointment was "*prior notice*" as would have been required under subsection (5), as subsection (5) specifically requires the local authority to have given at least 24 hours' notice to the owner and occupiers and Mrs Harley's verbal appointment with one occupier did not satisfy the same. As such, entry was gained without "*prior notice*".

64. Accordingly, the Tribunal finds that the power of entry was correctly exercised and the subsequent inspection was valid.

Incomplete Inspection

65. The Tribunal did not accept the Applicants' submission that it was not possible for the Tribunal to be satisfied beyond reasonable doubt as to whether any offence had been committed unless a full and comprehensive inspection of the Property had been carried out.

66. The offences for which the penalty was imposed were breaches of the management regulations under section 243(3). All of the offences had been identified in Respondent's inspection of the common areas and were clearly visible. The Respondent was not required to inspect the remaining parts of the Property, as this would not have had any effect on whether the offences identified by the Respondent had been committed.

67. The offences were put to the Applicants and the Applicants had not denied, in any of their submissions to either the Respondent or to the Tribunal, that the breaches had occurred.

68. Accordingly, the Tribunal is satisfied beyond reasonable doubt that an offence had been committed under section 234 of the Act.

Mrs Duhra's Liability

69. The Tribunal noted that the title to the Property identified Mrs Duhra as a joint owner and mortgage holder. The Tribunal also noted that in the replies to the PACE Questions, Mrs Duhra confirmed that she was paid the rent and that the written representations sent on behalf of both Mr and Mrs Duhra made no reference to Mrs Duhra's lack of involvement with the Property or culpability as to the offence.

70. Section 2(c) of the management regulations confirms that "*the manager*" in relation to a HMO is a "*person managing*" the HMO, as per the definition under section 263(3) of the Act. Section 263(3) confirms that a person shall be considered a "*person managing*" a property if that person is the owner of the property and receives the rent, whether directly or through an agent or trustee.

71. As such, even if the Tribunal accepted the written submissions – that Mrs Duhra has no dealings with the day-to-day management, tenancies, rent collection or maintenance – she is an owner of the property and no submissions have made that she does not receive the rent through Mr Duhra either as her agent or trustee, in fact, the replies to the PACE Questions confirms that she is paid the rent.

72. Accordingly, the Tribunal finds that Mrs Duhra is a person managing the Property and, thus, is just as liable as Mr Duhra in failing to comply with the management regulations.

Final Notices

73. In relation to the service of the Final Notices, as an application had been made to the Tribunal to appeal the imposition of the same by both of the Applicants, it was evident that the notices had been received.

74. The Tribunal also considered that, although the Applicants had notified one department of the local housing authority, it did not automatically follow that other departments would have been aware of the change of address. In addition, in this matter, Mrs Harley had stated that the Final Notices had been served at both addresses, which corresponded with the Applicants having received the same despite their move.

75. The Tribunal noted Mrs Buckley-Thomson's submissions with regard to service under the Local Government Act 1972 and also considered the decision of the Court of Appeal in *Oldham MBC v Tanna* [2017] EWCA Civ 50, in which the Court stated that unless there was a statutory requirement to the contrary, in a case where a person wished to serve a notice relating to a particular property on the owner and the title was registered, "*that person's obligation to make reasonable enquires goes no further than to search the proprietorship register to ascertain the address of the registered proprietor*" and that it is "*the responsibility of the registered proprietor to keep his address up to date*" [at paragraph 28].

76. The Tribunal noted that in the Office Copy Entries for the Property dated 11 August 2021, some five months after the Applicants had stated that they had sold 44 Eider Drive, 44 Eider Drive was still detailed as one of the Applicants' registered addresses in the Proprietorship Register. As such, even if the Final Notices had not been hand-delivered to the Applicants at their new address, the Tribunal would still have been satisfied that the Final Notices had been served correctly.

77. In relation to the issuing of the Final Notices, the Tribunal notes Mrs Buckley-Thomson's submission, that there is no time period set out in the Act and, in any event, does not consider a period of 11 weeks between the two notices to be an unreasonable delay.

78. In relation to the wording of the Final Notices, the Tribunal notes that paragraph 8 of Schedule 13A to the Act does not require the recipient's residential address to be detailed. As such, the Tribunal does not consider the reference to the Applicants' previous address as nullifying the notices.

79. In relation to the information about rights of appeal, the Tribunal considered that the relevant information as to who the appeal was to be made to was detailed in the Final Notices, as the requirements under paragraph 8 of Schedule 13A of the Act simply state that "*information about rights of appeal*" must be set out. The Tribunal considers that the information detailed in the Final Notices did adequately comply with the requirements, albeit there was a small error to the telephone number and email address. The Tribunal also

accepts Mrs Buckley-Thomson's submission that no prejudice was caused to the Applicants by the errors.

80. Accordingly, the Tribunal finds that both the wording and the serving of the Final Notices were valid. The Tribunal is also satisfied that the Respondent had complied with all of the necessary requirements and procedures relating to the imposition of the financial penalties, as set out in paragraphs 1 to 8 of Schedule 13A of the Act.

Imposition of and Level of Penalty

81. As stated above, the Tribunal is satisfied beyond reasonable doubt that an offence was committed under section 234 of the Act, in that the Applicants had failed to comply with Regulations 3, 4, 5 and 7 of the management regulations, without reasonable excuse. As such, the Respondent was entitled to prosecute the Applicants under section 234(5) of the Act or, as an alternative to prosecution, impose a financial penalty under section 249A of the Act.

82. The Enforcement Policy states at section 3.3:

> "*When appropriate, reasonable effort may be made to ensure compliance with the law by a process of advice and education*"

However, section 3.4 states that formal action "*will normally*" be taken:

> "*where there is a history of non-compliance, and/or cooperation for an informal approach is not forthcoming*".

Although the Tribunal considers that it would, in the vast majority of cases, be inappropriate to take formal action without first having attempted to engage with the landlord by way of informal action, in this matter the Applicants had previously been spoken to informally with regard to fire safety issues in relation to three other properties – one within twelve months of the inspection of the Property and one only a few months following the inspection of the Property. In such circumstances, the Tribunal is satisfied that the Respondent's decision to take formal action was reasonable and in line with the Enforcement Policy. The Tribunal also considers that it was reasonable that a civil penalty should be imposed, rather than prosecution, as the majority of the offences were not considered high risk.

83. The Tribunal noted that the scoring matrix adopted by the Respondent appeared to take into account the list of factors set out in the Guidance and included the severity of the offence, the culpability and track record of the offender, the harm/ potential harm, the deterrence of the offender and landlord community, as well as the punishment and removal of any financial benefit (by considering the offender's assets and rental income).

84. In relation to the number of properties that the Applicants let, the information given in the Applicants' written submission confirmed that they let six properties: 172 Hurleybrook Way, 40 Bembridge, 105 Burford, 109

Hurleybrook Way, 52 Summerhill and 82 Boulton Grange. These addresses corresponded with the six properties which the Respondent had taken into account when considering the scoring matrix. In addition, although the Respondent calculated the potential gross monthly income for these properties as £7,490, the information in the Applicants' submission gave a gross monthly income of £5,040. As such, this did not affect the score, as a score of 15 was given for potential monthly rental income between £5,001 – £10,000.

85. In relation to the level of fee imposed for each breach, the Tribunal did accept Mr Craft's submission that there was little information as to how the Respondent chose which fee to charge within each band, in particular due to the fact that the Respondent had levied the highest fee in each band in the Notices of Intent and then reduced this to the lowest fee in each band in the Final Notices, without any proper consideration of the reason for the same. The Tribunal did not accept Mrs Buckley-Thomson's submission, that the level of the fee had been reduced in the Final Notices as the Applicants had carried out the works and had no previous convictions, as these were already included as '*Mitigating factors*' in the scoring matrix for the Notices of Intent, the works having been carried out in September 2020. In addition, as the Respondent chose to impose the full penalty on each of the Applicants in the Notices of Intent, the Tribunal considers that the score for the potential rental income when calculating the penalty in the Notices of Intent should have been based on their individual rather than their joint income.

86. That being said, the appeal to the Tribunal is in relation to the amount of the penalty in "*a final notice*". In the Final Notices, the Respondent chose to utilise the lowest fee in each band, which the Tribunal considers was appropriate based on the Applicants having no previous convictions, their co-operation with the Respondent and their having swiftly rectified the breaches. The Tribunal also considered the use of the joint income in the final scoring matrix was correct, as the final penalty was split between the Applicants.

87. With regard to the scoring for each of the breaches, the Tribunal did not consider that all of the scores were appropriate and, utilising the same scoring matrix, recalculated the same as follows:

    (i) Regulation 3 – the Tribunal considered that the scores awarded by the Respondent were correct, other than it considered that the deterrence factor should have scored 5 not 10. Based on the track record of the Applicants, the Tribunal was not "*Very confident*" that the financial penalty would ensure that the Applicants and landlord community would not offend again, however, the Tribunal did not find Mrs Harley's explanation as to why the deterrence score had not changed satisfactory. This was the first financial penalty imposed on the Applicants and they had rectified the breaches within two weeks of notification of the deficiencies, and some months before the Notices of Intent were issued. Accordingly, the Tribunal considered that it was "*Highly likely*" that the financial penalty would deter the landlord and community from offending and the total score was reduced to 17. The Tribunal applied the lowest fee in the band, which was £500.

(ii) Regulation 4 – the Tribunal considered that the scores awarded by the Respondent were correct, other than the score for the deterrence factor which the Tribunal considered should have scored 5 not 10 (for the reasons stated above). This reduced the total score to 50 and, applying the lowest fee in the band, the fee was £5,000.

(iii) Regulation 5 – the Tribunal considered that the scores awarded by the Respondent were correct, other than the score for the deterrence factor and the score for harm/potential harm. The Tribunal considered that the deterrence factor should have scored 5 not 10 (for the reasons stated above). The Tribunal also considered that there was very little harm likely to be caused and no evidence of any perceived harm. As such, the Tribunal considered that the harm score should have been 1 not 5. This reduced the total score to 17 and, applying the lowest fee in the band, the fee was £500.

(iv) Regulation 7 – the Tribunal considered that the scores awarded by the Respondent were correct, other than the score for the deterrence factor which the Tribunal, again, considered should have scored 5 not 10 (for the reasons stated above). This reduced the total score to 35, however, this did not alter the band and the fee remained at £2,500.

88. As such, the total penalty amounted to £8,500, which the Tribunal agreed should be split equally between both Applicants, amounting to a financial penalty of £4,250 each. In addition, the Tribunal considered that the 'Early payment discount', as set out in the Enforcement Policy should be re-offered.

Appeal Provisions

89. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). 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).

M. K. GANDHAM

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Judge M. K. Gandham