



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

**Case Reference** : **MAN/OOBN/HML/2021/0002**

**Property** : **95 Monton Road, Eccles, Manchester  
M30 9HQ**

**Applicant** : **Ms Gaynor Saunders**

**Representative** : **In Person**

**Respondent** : **Manchester City Council**

**Representative** : **Ms Anna Short (Counsel)**

**Type of Application** : **Housing Act 2004 -Schedule 5  
Paragraph 31(1)**

**Tribunal Members** : **Tribunal Judge J. E. Oliver  
Tribunal Member P. Mountain**

**Date of  
Determination** : **12<sup>th</sup> August 2021**

**Date of Decision** : **23<sup>rd</sup> August 2021**

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**DECISION**

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## **Decision**

1. The Final Notice, being the subject of this appeal is varied; Ms Gaynor Saunders must pay a financial penalty of £22,500 to Manchester City Council.

## **Background**

2. This is an application by Ms Gaynor Saunders (“Ms Saunders”), to appeal a financial penalty in the sum of £27,500 issued by Manchester City Council (“the Council”) pursuant to section 249A and Schedule 13A of the Housing Act 2004 (“the Act”) in respect of 95 Monton Road, Eccles, Manchester (“the Property”).
3. The Council issued the financial penalty for housing offences arising from breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the Regulations”). The Final Notice was dated 30<sup>th</sup> September 2020.
4. Ms Saunders submitted her application on 25<sup>th</sup> October 2020, within the 28 day period allowed for the appeal.
5. The Tribunal issued directions on 2<sup>nd</sup> March 2021 providing for the filing of statements and bundles and for the matter to be determined by way of a Video Hearing. The matter was listed for determination on 12<sup>th</sup> August 2021.
6. Ms Saunders was unrepresented at the hearing. The Council was represented by Counsel, Ms Anna Short.

## **Chronology**

7. On 6<sup>th</sup> February, the Council received a complaint from an occupant of the Property Amber Saunders, regarding overcrowding.
8. The Council applied to the Court for a warrant to enter the Property to determine whether an offence had been committed under the Regulations.
9. On 27<sup>th</sup> February 2020 the warrant was executed by the Council. During the inspection it was found the Property was divided into two parts comprising the main house and a self-contained flat in the basement. There were several breaches of Regulation 4 of the Regulations to include:
  - (1) The main house is over 3 floors and had no fire alarm fitted
  - (2) The main house was not fitted with an emergency lighting system.
  - (3) The main house protected escape route in the event of fire was not protected to the 30-minute standard as none of the doors and cupboards that lead onto it were fitted with FD30 fire rated doors in appropriate frames and the required furniture.
  - (4) The main house escape route was compromised as it contained a large amount of fire loading.
  - (5) The separation between the main house and the self-contained flat was not to the correct standard as it did not meet the relevant standards for compartmentation in the event of a fire.
  - (6) The cellar was fire loaded with a large amount of fire loading and electrical items in use at the time of the inspection.

- (7) The cellar did not meet the correct standards for compartmentation between itself, the main house and the self-contained flat.
- (8) The final exit door from the main house did not have a thumb turn lock fitted.
10. On 15<sup>th</sup> May 2020 the Council received the PACE interview completed by Ms Saunders.
11. On 22<sup>nd</sup> July 2020 Ms Saunders was served with a Notice of Intent to issue a financial penalty in the sum of £28,500
12. On 18<sup>th</sup> August 2020 Ms Saunders made representations to the Council in respect of the proposed penalty.
13. On 30<sup>th</sup> September 2020 a Final Civil Penalty Notice was served upon Ms Saunders for the sum of £27,500. The penalty for this sum was based upon harm being classified as High and culpability as Very High. The accompanying invoice stated the penalty was in the sum of £28,500.

### **The Law**

14. Section 249A (1) of the Act provides that “a local 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...”
15. Section 249 (2) sets out what amounts to a housing offence and includes at section 249(e) an offence under section 234 of the Act, namely a breach of management regulations in respect of HMOs. Section 234(4) further provides that a person does not commit the offence if he has a reasonable excuse for not complying with the relevant regulation.
16. Section 249 (3)-(4) further provides that only one financial penalty can be imposed for each offence and that cannot exceed £30,000. The imposition of a financial penalty is an alternative to criminal proceedings.
17. The Management of Houses in Multiple Occupation (England) Regulations 2006 contain those regulations that govern the management responsibilities of a manager in respect of an HMO.
18. Regulation 4 imposes a duty upon a manager to take safety measures to ensure means of escape from a fire. This includes ensuring all means of escape are free from obstruction, there is adequate fire-fighting equipment and adequate notices to advise of means of escape

### **Procedural requirements**

19. Schedule 13A of the Act sets out the procedural requirements a local authority must follow when seeking to impose a financial penalty. Before imposing such a penalty, the local authority must give a person notice of their intention to do so, by means of a Notice of Intent.
20. A Notice of Intent must be given within 6 months of the local authority having sufficient evidence of the conduct to which the financial penalty relates. If the conduct continues beyond that date, then the Notice of Intent may be given at any time when the conduct is continuing or within 6 months of the day when the conduct last occurs.
21. The Notice of Intent must set out:
- the amount of the proposed financial penalty
  - the reasons for imposing the penalty

- Information about the right to make representations regarding the penalty
22. If representations are to be made, they must be made within 28 days beginning with the day after that on which the Notice of Intent was given. At the end of this period the local authority must then decide whether to impose a financial penalty and, if so, the amount.
23. The Final Notice must set out:
- the amount of the financial penalty
  - the reasons for imposing the penalty
  - information about how to pay the penalty
  - the period for the payment of the penalty
  - information about rights of appeal
  - the consequences of failure to comply with the notice

## **Guidance**

24. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties. The Ministry of Housing issued such guidance (“the HCLG Guidance) in April 2018: *Civil penalties under the Housing and Planning Act 2016-Guidance for Local Authorities*. This requires a local authority to develop their own policy regarding when or if to prosecute or issue a financial penalty.
25. The Council has developed its own guidance, Association of Greater Manchester Authorities (AGMA) Policy on Civil (Financial Penalties as an Alternative to Prosecution under the Housing and Planning Act 2016 (“the Greater Manchester Guidance”) that follows the HCLG Guidance in setting out the criteria to be taken into account when determining any penalty:
- The seriousness of the offence, determined by the harm caused and the culpability of the offender
  - The history of compliance of 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.
26. The Greater Manchester Guidance states that in determining the level of harm the local authority will have regard to:
- 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
27. The examples of harm categories are:

**High:** Housing defect 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 serious risk of harm to the occupants and/or visitors; for example, localised damp and mould, entry by intruders

28. The Greater Manchester Guidance provides that in determining culpability, there are 4 levels. These are:

- 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.

29. The examples of culpability are:

**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 systematic 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 by 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 with 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.

30. Once the appropriate levels have been determined a schedule is given to fix the level of penalty. The Greater Manchester Guidance provides the starting point for any penalty will be mid-point of the relevant band and an offender will be expected to pay the maximum penalty “unless they can demonstrate otherwise”.

31. A penalty can be increased by £1000 for each aggravating factor and reduced by the same amount for each mitigating factor

## Hearing

32. At the hearing Ms Saunders attended in person. She confirmed she did not have a copy of the Tribunal bundle with her, having failed to print it out. She confirmed she had read the papers and wanted to proceed. It was confirmed the hearing could be adjourned at any stage should she feel unable to proceed and was disadvantaged by the lack of the paperwork.
33. The Tribunal advised it did not have a copy of the Council's matrix when determining the financial penalty, but this was provided. Ms Saunders confirmed she had received a copy the day prior to the hearing and had read the same.
34. Ms Short, Counsel, attended on behalf of the Council, together with the Council's officers Mr Michael Willis, Ms Gemma Chilton, Ms Karina Davies and Mr Chris Gleave.
35. Ms Saunders confirmed she was appealing on three grounds, namely that the Property was not a HMO, she did not accept the list of defects set out in the Final Notice and she challenged the penalty of £27,500.

## Property not an HMO

36. Ms Saunders advised that the residents of the Property were either family or friends. When the Council executed the warrant those living at the Property were her daughter Kendra and her son, her daughter Amber and partner, her son Ciaran, Harry Moore, Ross Davies, Martin Garnett, Marek Budzynski and Jack Richardson. She was also living there but was away. She confirmed that all the occupants made a financial contribution towards the running costs of the house; this was declared for income tax purposes.
37. In evidence, Ms Saunders accepted that in 2012 she had been the subject of an investigation by the Council regarding the occupancy of the Property. Mr Willis, a Housing Standards Officer, provided a statement, confirmed in person at the hearing, that he had been responsible for the enquiries into the Property at this time. Ms Saunders had been reported to the Landlord Licensing Scheme since she was suspected of running an unlicensed HMO. The Property had been inspected and a number of defects had been found, including a lack of fire safety. Mr Willis had sent to Ms Saunders the LACORS Fire Safety Guidance and a copy of Salford's HMO Standards. Ms Saunders had confirmed her intention to bring the Property up to date but had then notified the Council she had served her then tenants with notices to quit and intended to sell the Property. No further action was taken and when a colleague subsequently visited the Property in 2015 it was found to be only occupied by family members and the file was closed.
38. Ms Karina Daniels, a Housing Standards Officer and Ms Gemma Chilton, a Landlord Licensing Officer both confirmed their statements filed with the Tribunal. They had been present when the warrant had been executed and had interviewed the occupants then present at the Property. Their statements confirmed:
  - Room 1 was occupied by Ms Kendra Saunders.

- Room 3 was occupied by Mr Martin Garnett who had lived at the Property for 10 years and paid rent of £300 pcm.
- Room 4 was occupied by Mr Ciaron Saunders.
- Room 7 was occupied by Mr Ross Davies who had lived there for approximately 4 months and paid £300 pcm.
- Room 8 was occupied by Mr Marek Budzynski who had found the self-contained flat advertised on the internet, but had instead occupied a room and had lived there for 12 months. He paid rent of £400 pcm.
- The self-contained basement flat was occupied by Mr Harry Moore who had lived there since January 2019 and paid rent of £625 per calendar month plus a further £100 for storage.

39. Whilst no reference to Jack Richardson was made by the Council, Ms Saunders agreed he lived at the Property and paid rent of £350 pcm and that neither he, Marik or Ross are family members. Ms Saunders confirmed that Ms Amber Saunders and her partner were also living at the Property. She also accepted the evidence of a WhatsApp group chat that had been included in the Tribunal bundle where she was the administrator and the other members of the chat were Ross Davies, Mike, Marek Budzynski, Harry Moore, Jack Richardson and two other unidentified numbers. The chat related to the Property and its condition.
40. Ms Saunders accepted she received an income from the occupants and said this amounted to approximately £2000 per month but from which she had to pay the mortgage and other running costs.
41. Ms Short referred the Tribunal to Council Tax records for the Property that showed there were 7 occupants registered in 2014. Those occupants, other than Ms Saunders, Mr Martin Garnett and her daughter Kendra were different from those at the Property in February 2020. Ms Saunders advised two of those had only lived there a short time and had been friends. One had only registered with the Council Tax department to obtain an N.I. number and bank account. One tenant had caused her enormous difficulty and had resulted in a dispute with the Council that had left her with a bill in excess of £10,000 that was now registered against the Property. Ms Saunders advised she had not registered any of the occupants with the Council Tax department and had assumed they had done this themselves.
42. Ms Saunders advised that some of the tenants had left and the Property was now only occupied by her, her son Ciaron, Ross Davies and Marek Budzynski.

### Defects at the Property

43. Mr Christopher Gleave, a Housing Standards Officer, confirmed a complaint had been received regarding overcrowding at the Property following which it was decided a warrant would be obtained to inspect the Property. This took place on 27<sup>th</sup> February 2020. In his statement, confirmed at the hearing, the following defects were found:
- The main house is over 3 floors and there is no fire alarm system fitted.
  - The main house is not fitted with an emergency lighting system.
  - The main house protected fire route in the event of a fire was not protected to the 30-minute standard as none of the doors or cupboards

that lead onto it were fitted with FD 30 fire rated doors in appropriate frames and the required furniture.

- The main house escape route was compromised as it contained a large amount of fire loading.
  - The separation between the main house and the self-contained flat was not to the correct standard as it did not meet the relevant standards for compartmentation in the event of a fire.
  - The cellar was fire loaded with a large amount of fire loading and electrical items in use at the time of the inspection.
  - The cellar did not meet the correct standards for compartmentation between itself the main house and the self-contained flat.
  - The final exit door from the main house did not have a thumb turn lock fitted.
  - The self-contained flat below has a single smoke detector near the final exit door with no other detection fitted.
  - The final exit route in the self-contained flat was via a risk room i.e. the kitchen and the lounge.
44. Ms Saunders confirmed there was no hard-wired fire alarm system but there were smoke alarm sensors on all floors. However, the batteries had been removed from one of the sensors by a tenant and she had asked her son to replace them, but this had not been done. The sensor in the kitchen had also been taken down by another occupant. She did not know whether the sensor in the flat was working since she had no key to enter.
45. Ms Saunders accepted all the other defects listed by Mr Gleave. In respect of the thumb turn lock, this had now been fitted. One had previously been fitted but had been removed due to her concern that her grandchildren could operate it and there was a main road outside the Property. The occupants were aware there was previously a key kept on a piece of string to open the door.
46. Ms Saunders said that with regard to the number of boxes in the Property and identified as fire loading, this was because her daughters Kendra and Amber had moved homes a number of times and their possessions were stored in the garage. Those had been brought into the Property during her absence for them to be sorted since they were to move out again. A door in the Property had been taken off for decorating and was on the landing but accepted this was a fire risk.

#### Amount of financial penalty

47. Ms Saunders stated the penalty was unaffordable and any sum would require her to sell the Property. She is self-employed and has had little work during the pandemic; her business is in debt to the sum of £95,000. Due to her mortgage and other debts secured against the Property, she has no means of raising monies to pay any financial penalty from any other source.
48. Ms Short confirmed that whilst the Final Notice set out the penalty is in the sum of £27,500, the correct amount due is £28,500. This is the amount referred to in the Notice of Intent and the invoice sent with the Final Notice.
49. The Council has calculated the penalty in accordance with its matrix. It has determined the level of Harm is High. This is in accordance with the criteria, one of which is that there was a serious fire risk. This was appropriate given



the lack of any fire alarm at the Property. Culpability is scored at Very High. This is because the breach was viewed as intentional. The Property had been investigated in 2012 and at that time, Ms Saunders had been given the LACORS guidance and a copy of the Council's HMO guidance. She was therefore aware of the requirements of a HMO.

50. The Council's matrix is to start at midway between the penalties in any given Band. This penalty is in the highest band, Band 8 that is £27,000-£30,000. This gives rise to a penalty of £28,500.

## **Determination**

51. Schedule 13A of the Act provides that before a local authority can impose a financial penalty, it must give the relevant person a Notice of Intent, setting out the amount of the proposed penalty, the reasons for imposing it and allow the relevant person the opportunity to make representations in respect of it. If the local authority decides to impose the penalty it must give a final notice setting out the penalty and the reasons for it. Here, the Tribunal finds the Council has followed the necessary procedures. However, the Tribunal does not accept the Council's suggestion that the penalty to be enforced is £28,500. This was the sum in the Notice of Intent and it would be reasonable for Ms Saunders to believe the amount she was to pay was £27,500, this being the amount set out in the Final Notice. She had submitted representations and there was nothing to suggest the sum had not been reduced after taking those into account. The Final Notice states that a Notice of Intent was served on 22.7.20, setting out the penalty. The next paragraph then states "*Having received and given consideration to your representations, the Financial Penalty imposed is £27,500*". It would be reasonable to assume the final sum was in the sum of £27,500 and this was the amount appealed. The accompanying invoice does not override the Final Notice.
52. A Tribunal may only uphold the decision to impose a financial penalty if it satisfied, beyond reasonable doubt, that the relevant housing offence has been committed. In ***Opara v Olasemo [2020] UKUT 0096(LC)*** it was said:  
*"For a matter to be proved to the criminal standard it must be proved "beyond reasonable doubt"; it does not mean "beyond any doubt at all". At the start of a criminal trial the judge warns the jury not to speculate about evidence they have not heard, but also tells them it is permissible for them to draw inferences from the evidence they accept."*
53. Here, the Tribunal must find there has been a breach of Regulation 4, that requires a manager takes all steps to ensure all means of escape are kept free from obstruction and in good repair, any fire-fighting equipment and alarms are maintained in good working order and there are adequate notices for the location of means of escape.
54. The Tribunal considered the submissions and evidence given by both parties and determined a relevant housing offence has been committed. Ms Saunders does not dispute she was the manager of the Property. She accepted the rent and was described as the administrator on the WhatsApp group that discussed issues relating to the Property. She accepted there was no hard -

wired fire alarm and admitted to all the remaining defects set out in the Final Notice. Consequently, the Tribunal finds the relevant housing offence has been committed to the necessary standard of proof.

55. Ms Saunders averred the Property was not an HMO. A HMO is a house occupied by three or more tenants forming more than one household with shared toilet kitchen or bathroom facilities. A large HMO, having five or more tenants is one that requires a licence. The Tribunal have found the Property to be an HMO, by satisfying the requirement that it was occupied by three or more tenants, to which the Regulations apply. Whilst Ms Saunders argued the Property was not a HMO, she admitted in evidence that, in addition to family members, there were at least 3 further tenants paying rent at the Property. The Tribunal therefore finds the Property was a HMO and Ms Saunders was its manager. There is a defence of reasonable excuse, for which the standard of proof is the balance of probabilities. In ***IR Management Services v Salford [2020] UKUT 0081 (LC)*** the UT observed:  
*“The issue of reasonable excuse is one which may arise on the facts of a particular case without an appellant articulating it as a defence (especially where an appellant is unrepresented). Tribunals should consider whether any explanation given by a person ... amounts to a reasonable excuse whether or not the appellant refers to the statutory defence.”*
56. Here, the Tribunal does not find anything within the submissions made to give rise to a defence of reasonable excuse. Ms Saunders explained the tenants had removed some of the alarm sensors, but no reason was given for there being no fire alarm. An explanation was given for the fire loading, but the Tribunal did not find this was a reasonable excuse for her failure to comply with the Regulations. Whilst Ms Saunders said she had been absent from the Property when the warrant was executed, she indicated this had been for a week. The evidence before the Tribunal suggested the fire loading had been there for a longer period.
57. The Tribunal is therefore satisfied the Council is entitled to impose a financial penalty and must consider the amount. When doing so, the Tribunal should make its own decision as to the appropriate amount and, in this, it should consider the factors referred to in paragraph 25 above.
58. In ***London Borough of Waltham Forest v Marshall & Another [2020] 0035 UKUT (LC)*** the UT said the starting point for a Tribunal should normally be to apply the policy from the Council’s perspective and said:  
*“If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision”.*  
The decision also stated the Tribunal could depart from the Council’s policy but only in certain circumstances, for example, where it had been applied too rigidly. It should also afford great respect to the decision and a Tribunal should be slow to disagree with any decision that is made in accordance with the local policy. Despite this, the Tribunal is conducting a rehearing and not a review and can vary any decision where it disagrees with it.
59. The factors to be considered by the Council when imposing a penalty are outlined in paragraphs 27-29 above.

60. The Council determined the harm caused by Ms Saunders' failure to comply with the Regulations was High and her culpability to be Very High.
61. The Tribunal, when considering harm and the factors in the Greater Manchester Guidance agrees with the level assessed by the Council of High. The offence posed a serious and substantial risk of harm and there was a serious risk of fire by reason of all the factors set out in the Final Notice.
62. In respect of culpability, the Council assessed this as Very High. When considering the Greater Manchester Guidance, the Tribunal finds culpability to be High rather than Very High. Whilst the Tribunal should be reluctant to move away from the Council's determination of this, as per **Waltham Forest**, it does consider the finding of Very High to be rigid. The Tribunal notes the history of the Council's involvement with Ms Saunders since 2012, but determines her actions fall into the description of "wilful blindness" as described in the High category, rather than an intentional breach as is required by the Very high category. Ms Saunders has persistently used her Property as a HMO and, in doing so, has failed to comply with the Regulations, as required. This is set out as the example of High culpability rather than Very High culpability.
63. The Tribunal, in adopting the method in the Greater Manchester Guidance, therefore notes the penalty falls within Band 6. The mid-point within that Band is £22,500.
64. The amount of financial penalty payable by Ms Saunders is in the sum of £22,500.

**Tribunal Judge J Oliver**  
**12<sup>th</sup> August 2021**