



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

<b>Case reference</b>	<b>:</b>	<b>LON/00AJ/HNA/2019/0114</b>
<b>Property</b>	<b>:</b>	<b>85 Saxon Road, Southall UB1 1QQ</b>
<b>Applicants</b>	<b>:</b>	<b>Homeseekers Ltd Narinder Singh Joginder Singh</b>
<b>Representative</b>	<b>:</b>	<b>Victorimax solicitors</b>
<b>Respondent</b>	<b>:</b>	<b>London Borough of Ealing</b>
<b>Type of application</b>	<b>:</b>	<b>Appeal against a financial penalty – Section 249A &amp; Schedule 13A to the Housing Act 2004</b>
<b>Tribunal</b>	<b>:</b>	<b>Judge Nicol Mr MA Mathews FRICS</b>
<b>Date and venue of hearing</b>	<b>:</b>	<b>4<sup>th</sup> December 2019 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	<b>:</b>	<b>11<sup>th</sup> December 2019</b>

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**DECISION**

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**Each Applicant shall pay a penalty of £30,000 in accordance with section 249A of the Housing Act 2004.**

Relevant legislation is set out in an Appendix to this decision.

**Reasons**

1. The subject property is a two-storey semi-detached house owned by Mr Harbachan Singh Gill and Mrs Harjinder Kaur Gill. On 11<sup>th</sup> December 2017 Mr Gill entered into a management agreement for the property with the First Applicant, of which the Second and Third Applicants are directors. The agreement included the following terms:

8. Arrange rental payment as per Tenancy Agreement £50. Services include paragraphs 1 to 12 inclusive. ...
  9. Preparing brief inventory for the property in a standard form to be signed by Landlord and Tenants(s). ...
  10. On commencement we will collect rent for one calendar month (if applicable) in advance plus a deposit equal to the month's rent from the Tenant(s). Commission will be deducted as per the fee agreed and should the same tenant(s) or other tenant(s) introduced by the existing tenant(s) take up the tenancies for further periods we shall be remunerated in the same from and basis as before.
  11. During the tenancy we will supervise repairs and maintenance work up to £100. We will execute repair up to that amount without reference to the Landlord.
  12. We will do a final check out and closing of account when Tennant(s) vacate. Once the Tenant(S) has/have vacated, the property is handed back to the Landlord, and thereafter we as Agents are not responsible for the property management. We cannot accept responsibility for later defects.
2. Mr Rajinder Singh Matta signed the management agreement on behalf of the First Applicant, being an employee of theirs (although he replaced the Third Applicant as a director from 1<sup>st</sup> March 2019). The Second and Third Applicants delegated all management responsibilities to Mr Matta although he had the assistance of two colleagues in the lettings team and up to 3 other colleagues who completed the staff at the First Applicant's office.
  3. On 1<sup>st</sup> January 2018 Mr Gill granted a one-year fixed-term assured shorthold tenancy of the property to Mr Sarbjit Singh and Mr Karnail Singh. The tenancy agreement had been drawn up with the assistance of the First Applicant whose address was given as the landlord's. The agreement was renewed on 1<sup>st</sup> January 2019, again with the assistance of the First Applicant, the only difference being that the monthly rent increased from £1,500 to £1,600.
  4. Mr Sarbjit Singh and Mr Karnail Singh shared the tenancy with others who contributed to the rent. There were up to 10 occupants at any one time, making it a house in multiple occupation. Whether as a house in occupation by a single household or as an HMO, the property had to be licensed under the Respondent's selective or additional licensing schemes respectively.
  5. The Applicants' solicitors provided the Respondent with a bundle of relevant documents on 1<sup>st</sup> July 2019. They included a standard letter asking the landlord for various documents, including the gas safety certificate and any licence. They also included information about the

need for a licence. Mr Matta told the Tribunal that this information had been given to Mr Gill. The gas safety certificates were provided to the First Applicant but no licence. At no time did any of the Applicants or Mr Matta question the absence of a licence or check whether one had been applied for or obtained.

6. On 7<sup>th</sup> January 2019 there was a fire at the property causing injuries amongst the occupants. Ms Nancy Kaur, aged 17, died from smoke inhalation. Her mother was hospitalised and, as far as the Tribunal is aware, has since remained in critical condition.
7. Both the London fire brigade and the police investigated. From the information they provided and from their own investigations, the Respondent concluded that fire safety measures which would have been put in place as a requirement of any licence application had not been in place and their absence was a cause of the occupiers' injuries. In particular:
  - (a) There was no smoke alarm on the first-floor landing. The Respondent believes that the warning from such an alarm would have allowed the sleeping family whose daughter died to wake and escape or take mitigating action.
  - (b) The family's bedroom door was not compliant with fire regulations and had no self-closing device or smoke barrier so that smoke entered the room when it should not have done.
8. On 4<sup>th</sup> July 2019 the Respondent served on each of the Applicants notices of intent to impose financial penalties. The Applicants' solicitors, Victorimax, made representations on their behalf on 30<sup>th</sup> July 2019. Nevertheless, on 30<sup>th</sup> August 2019 the Respondent served final notices imposing the maximum penalty of £30,000 on each Applicant. On 17<sup>th</sup> September 2019 all 3 Applicants appealed to the Tribunal.
9. At the hearing of the appeals on 4<sup>th</sup> December 2019 the Applicants were represented by Mr Osara Richards, solicitor-advocate, and the Respondent by Mr Underwood, counsel. They conferred before the start of the hearing and reached some common ground:
  - (a) The property was a house in multiple occupation.
  - (b) The property was required to be licensed.
  - (c) There was no licence.
  - (d) Therefore, an offence had been committed under section 72 of the Housing Act 2004.
10. The issues were:
  - (a) Liability under section 72 falls on the "person having control of or managing an HMO." The quoted phrase is defined in section 263 of the Act. The Respondent asserted that the First Applicant fell within this definition but the Applicants denied this.

- (b) If the First Applicant is guilty of the offence, under section 251 liability may also fall on the Second and Third Applicants as directors of the company if the offence is proved to have been committed with their consent or connivance or to be attributable to their neglect. The Respondent asserted that the problem in this case was neglect.
- (c) If the Tribunal is satisfied that any of the Applicants are liable, it must consider the amount of the penalty.
11. The Respondent presented four witnesses at the hearing, each of whom had also provided a written statement of their evidence:
- Mr Boota Samra, Service Manager, Property Regulation – his statement was also the Respondent’s Statement of reasons for opposing the Appeal.
  - Ms Mandip Rihal, Team Leader in the Property Regulation Team.
  - Mr Khalid Mahmood, Regulatory Services Officer.
  - Ms Allison Forde, Head of Property Regulation, Planning Enforcement & Environment.
12. Mr Richards had no cross-examination for any of the four witnesses so they actually gave no live evidence.
13. Mr Underwood also relied on written statements from three witnesses who did not attend:
- (a) Mr Resham Lal, the tenant of the room where the fire started.
- (b) Mr Sarbjit Singh, a tenant and father of the deceased.
- (c) PC Ben Robinson, whose evidence simply reported what Mr Lal and Mr Sarbjit Singh had told him.
14. Mr Underwood sought to introduce some notes from a police interview of Mr Gill but, through oversight, they had only been served on the Applicants on 29<sup>th</sup> November 2019 and Mr Richards objected. The Tribunal took time to consider this and decided to exclude this evidence. No good reason had been put forward as to why it had been served so late. It would be unfair to the Applicants, facing criminal sanctions, to have to address the evidence in these circumstances.
15. Mr Underwood also sought permission to ask one of his witnesses additional questions arising from a very recent meeting with Mr Gill but, again, notice of this possibility had only been given on 29<sup>th</sup> November 2019 and Mr Underwood admitted that the evidence would have the effect of getting round the exclusion of the aforementioned interview notes. Therefore, the Tribunal refused permission.
16. The Second and Third Applicants and Mr Matta gave live evidence, supported by written witness statements. The Second Applicant gave his evidence through a Tribunal-appointed Punjabi interpreter.

17. It was asserted on behalf of the Applicants that the First Applicant could not be regarded as managing the property within the meaning of section 263(3) of the Act because they did not receive the rent, Mr Gill having retained responsibility for rent collection and most other management issues, including repairs. The Respondent contended otherwise by pointing to the documentary evidence:
- (a) On 25<sup>th</sup> June 2019 each of the Second and Third Applicants completed a Reply form in response to a request for information from the Respondent. Both stated that the property was “partially managed” by the First Applicant.
  - (b) The bundle of relevant documents provided by the Applicants’ solicitors on 1<sup>st</sup> July 2019 included 18 pages of rent receipts headed with the First Applicant’s name, address and phone number. Some purported to accept rent from Mr Karnail Singh and others purported to hand over most of that rent to Mr Gill, with £60 being retained as commission or, in one case, to pay for a gas safety certificate. One receipt had a handwritten note on it which appeared to record a direct communication between the First Applicant and the tenant.
  - (c) The management agreement described in paragraph 1 above and also contained in the Applicants’ bundle conferred responsibility for rent collection on the First Applicant and remuneration was provided specifically for that service. Clause 12 also specified that the agreement was to run for as long as the tenants occupied the property.
  - (d) The Applicants’ bundle also contained a pro-forma letter to landlords asking for various documents including the gas safety certificate and the property licence or application reference and Instructions to Staff asserting that checks must be made for various things, including matters relevant to payment of rent and for a property licence.
  - (e) As referred to above, the tenancy agreements gave the First Applicant’s address as that of the landlord.
  - (f) Gas certificates were issued on 15<sup>th</sup> December 2017 and 18<sup>th</sup> December 2018, addressed to the First Applicant.
18. For the first time at the hearing, the Applicants put forward a new explanation of the arrangements they had with Mr Gill. Mr Gill is illiterate, with limited English. In order to give the tenants a receipt for their rent, Mr Gill would bring the rent he had collected into the First Applicant’s offices. They would then give Mr Gill two receipts: one, addressed to the tenant, for the rent and a second, addressed to Mr Gill himself for the rent less the First Applicant’s deductions. Otherwise, it was claimed, Mr Gill retained full management of the property. The Respondent conceded that Mr Gill is illiterate, which raises questions as to whether he understood any of the written information the First Applicant provided to him or even whether the First Applicant expected him to.
19. Under section 263(1) the “person having control”, in relation to premises, means (unless the context otherwise requires) the person

who receives the rack-rent of the premises. The Tribunal is satisfied that, even if Mr Gill sometimes conveyed the rent between the tenant and the First Applicant, the First Applicant did receive the rent and, therefore, satisfies the definition in section 263(1). There can be more than one person who satisfies the definition so that Mr Gill also receiving the rent does not exclude the First Applicant. The Tribunal cannot accept the Applicants' protestations that Mr Gill retained all the control over the property – the matters highlighted by the Respondent demonstrate otherwise. Moreover, Mr Gill's illiteracy would suggest he needed the First Respondent for more than just providing receipts.

20. On the matters agreed between the parties, this finding means that the First Applicant did commit the offence under section 72 of having control of an HMO which is required to be licensed but is not so licensed.
21. The Tribunal is further satisfied that this situation arose through the neglect of the Second and Third Applicants. The Second Applicant regarded his role as purely that of an investor and took no interest in the management of the property beyond leaving everything to Mr Matta. He had no experience in property letting and made no effort to familiarise himself with any aspect of the business. The Third Applicant was more aware of the duties of a director to ensure that the First Applicant complied with its legal obligations but made as little effort as the Second Applicant to comply with those duties. His only experience of property letting was in another country and he also made no effort to familiarise himself with the business in the UK. Both were apparently satisfied that Mr Matta, to whom they delegated all management, had no qualifications beyond a single day's training some years ago. The Tribunal is not suggesting that they had to do anything onerous or time-consuming – just the occasional well-timed question about whether the property was licensed may well have been sufficient to avoid the tragic loss of life in this case.
22. Therefore, in accordance with section 251 of the Act, the Second and Third Applicants are guilty of the same criminal offence under section 72 as the First Applicant.
23. This leaves the question of the quantum of the financial penalty to be imposed on each Applicant. Although the appeal is a rehearing and the Tribunal needs to reach its own conclusion on this issue, the Tribunal is entitled to have regard to the Respondent's views (*Clark v Manchester CC* [2015] UKUT 0129 (LC)) and must consider the case against the background of the policy which the Respondent has adopted to guide its decisions (*R (Westminster CC) v Middlesex Crown Court* [2002] EWHC 1104 (Admin)).
24. The Respondent has a Corporate Enforcement Policy with an Addendum which covers the calculation of financial penalties to be imposed in cases such as this one. In his statement, Mr Samra set out in careful detail the calculation made in order to determine the penalties

the Respondent thought each Applicant should pay in the circumstances. The severe harm to the tenants weighed very heavily – the Applicants objected that unforeseen outcomes should not carry such weight but the Tribunal has no hesitation in rejecting this. Of course, none of the Applicants wanted any of their tenants to suffer severe harm but the entire purpose of the licensing system is to minimize the chances of such harm and any penalties must reflect the harm which does actually result from non-compliance.

25. The Respondent's calculation covered other matters as well, including the fact that none of the Applicants had a criminal record but also the need to punish the Applicants and to deter others from committing the offence in future. The Tribunal has already set out above the severe degree of neglect involved in this case. When the Applicants involved themselves in the letting and management of this property, they could not absolve themselves from their important responsibilities by leaving it all to one unsupervised employee and some vague arrangement with the landlord.
26. The Respondent's calculation resulted in a sum substantially in excess of the maximum fine of £30,000 under section 249A(4) of the Act and the Tribunal agrees with their reasoning. The maximum fine should be reserved for the most severe cases. The Applicants protested that their lack of involvement meant that this case was not in that category but, as has been demonstrated here, neglect can be every bit as harmful as actively bad management.
27. Therefore, the Tribunal is satisfied that it is appropriate to impose the maximum fine of £30,000 on each Applicant.

**Name:** NK Nicol

**Date:** 11<sup>th</sup> December 2019

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **72 Offences in relation to licensing of HMOs**

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal has not expired, or



- (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

#### **249A Financial penalties for certain housing offences in England**

- (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
- (2) In this section “relevant housing offence” means an offence under—
- (a) section 30 (failure to comply with improvement notice),
  - (b) section 72 (licensing of HMOs),
  - (c) section 95 (licensing of houses under Part 3),
  - (d) section 139(7) (failure to comply with overcrowding notice), or
  - (e) section 234 (management regulations in respect of HMOs).
- (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
- (4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.
- (5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—
- (a) the person has been convicted of the offence in respect of that conduct, or
  - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
- (6) Schedule 13A deals with—
- (a) the procedure for imposing financial penalties,
  - (b) appeals against financial penalties,
  - (c) enforcement of financial penalties, and
  - (d) guidance in respect of financial penalties.
- (7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.
- (8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.
- (9) For the purposes of this section a person's conduct includes a failure to act.

#### **251 Offences by bodies corporate**

- (1) 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) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in such a capacity,
- he as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**263 Meaning of “person having control” and “person managing” etc.**

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

**SCHEDULE 13A  
FINANCIAL PENALTIES UNDER SECTION 249A**

**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”).

**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.