



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

**Case Reference** : **LON/00BK/HNA/2019/0021**

**Property** : **18 Star Street, London W2 1QB**

**Applicant** : **Olympia Estates Limited**

**Representative** : **Mr. Maddon, counsel**

**Respondents** : **Westminster City Council**

**Representative** : **Mr. Ashgar , counsel**

**Types of Application** : **Financial Penalty**

**Tribunal Members** : **Judge Tagliavini  
Mr. K Ridgeway MRICS**

**Date and venue of  
Hearing** : **17 May 2019  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **17 July 2019**

**DECISION**

## **Decisions of the tribunal**

- i. The Notice of Intent and the Final Notice are valid notices.**
  - ii. There were 5 persons in occupation on 19/09/2018.**
  - iii. An offence was committed as the subject property at 18 Star Street was a House in Multiple Occupation requiring a licence as at 19/09/2018**
  - iv. The Applicant had no reasonable excuse for not acquiring a licence.**
  - v. A financial penalty of £15,000 is appropriate.**
  - vi. Therefore, the tribunal confirms the making of a financial penalty but varies the amount from £25,000 to £15,000.**
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## **The application**

1. This is an appeal by the Applicant against a financial penalty imposed by the Respondent under section 249(a) of the Housing Act 2004 (“the 2004 Act”) in the sum of £25,000, for a failure to acquire a licence for a House in Multiple Occupation (HMO) under Part 2 of the 2004 Act, which is situate at the Upper Flat, 18 Star Street, London W2 1 QB (“the property”).

## **Background**

2. On 23 November 2018 the Respondent served a Notice of Intent indicating that it intended to impose a financial penalty of £25,000 on the Applicant, for failing to acquire an HMO licence for the subject property. On 15 January 2019 the Respondent served on the Applicant a Final Notice which imposed the financial penalty of £25,000. An HMO licence was applied for by the Applicant on 21 September 2018 stating that there are nine lettings with 12 tenants and a mixture of self-contained flats and shared accommodation and indicated on the form that the property is occupied by five or more people. Subsequently the HMO licence application was withdrawn on the assertion that “18 Star Street is occupied by 3 tenants.”

## **The premises**

3. The property comprises a building on the basement, ground, first and second floors divided into rooms with shared use of kitchen and bathroom/w.c. The “upper flat” is located on the ground, first and second floors. There are two self-contained flats in the basement which do not form part of the financial penalty notice.

## **The issues**

4. The tribunal was required to determine the following issues:
  - (i) Are the Notice of Intent and Final Notice valid?
  - (ii) Was 18 Star Street a house in multiple occupation on the date of the offence on 19 September 2019?
  - (iii) Has an offence been committed?
  - (iv) If “yes”, does the Applicant have a reasonable excuse?
  - (v) What is the appropriate financial penalty?

## **The hearing**

5. The tribunal determined this appeal as a rehearing requiring the Respondent to prove the validity of the financial penalty notice and the level of the fine imposed of £25,000. The tribunal was provided with an indexed bundle of documents from the Respondent together with an Expanded Statement of the Reasons for the Appeal and the witness statements of Dr Michel Dusek, Mr. Sergio-Ilie Rapan and Mr. Bogdan Tignascuel.
6. In oral evidence to the tribunal, Mr. Mark Pledger a manager with the Respondent’s Housing Standards Taskforce, spoke to his two witness statements dated 7 March 2019 and 1 May 2019. Mr. Pledger told the tribunal that he had visited the property on 30 July 2018 with a view to carrying out an inspection. On that date, he had a conversation with Dr Dusek of Olympia Estates Management, who told him that the property was converted into three flats, two in the basement and one, which encompassed the ground, first and second floors (“the upper flat”). Mr. Pledger was told that there were four people in the upper flats but was not permitted to carry out an inspection on that day.
7. On 1 August 2018 the Respondent served a formal notice under section 235 of the 2004 Act required certain information in respect of the tenancies in the property. This information was provided by Dr Dusek which comprised copies of three tenancy agreements and a management agreement dated 1 June 2018. The latter agreement was made between the Applicant and the registered owner, Jaycott Properties Ltd which allowed the Applicant to collect the rent for the whole property for a 10% fee. Two of the tenancy agreements concerned the two basement flats and the third was an assured shorthold tenancy agreement dated 1 July 2016 between Jaycott Properties Ltd c/o Olympia Estates and Mr. Sergiu-Illie Rapan and Mr. Bogdan Tiganescul for a fixed term of 24 months at a rent of £3,750 per month. However, information provided by a basement tenant

indicated that the upper flat was let to multiple occupants in six rooms. Consequently, Mr Pledger applied for a warrant of entry which was executed on 22 August 2018.

8. Mr. Pledger told the tribunal that on 22 August 2018 he gained entry to the “upper flat” which he found had been divided into rooms 2 to 9 (with flats 1A and 1B in the basement) and rooms 2 and 3 on the ground floor, rooms 4, 5 and 6 on the first floor and rooms 7, 8 and 9 on the second floor with rooms clearly numbered as shown in the photographs provided to the tribunal. Mr. Pledger told the tribunal that there were two bathrooms on the mezzanine floor between the ground and first floor, which were not connected to any particular room and appeared to be for shared use. Mr. Pledger told the tribunal that he spoke to the occupant of Room 3, Ieva Jurgelaityte who stated she had lived in the property since August 2017 paying £824 per month and had last paid her rent on 1 August 2018 in accordance with a tenancy agreement signed by Michal Dusek on behalf of the Applicant. Occupiers of Rooms 6 and 7 were also found to be in occupation on that date, with signs of occupancy of room 9 by the presence of shoes in the hallway outside. This evidence strengthened Mr. Pledger’s belief that the upper flat was an HMO which required a licence as none of the occupiers were identified as being the named tenants of the upper flat in the tenancy agreement produced by Dr Dusek.
9. On a second inspection, carried out on 28 August 2018, Mr. Pledger told the tribunal he spoke to Mr. Malcolm Thompson, the occupier of Room 8 who had lived in the property since January 2017 and paid his rent to Olympia Estates registered at 92 Star Street, for one room with cooking facilities. Room 2 was found by Mr. Pledger to currently being used by a New Zealand couple on a nightly, holiday type basis. On 19 September 2018, Mr. Pledger returned to the property having arranged to meet with the occupier of Room 9. However, on this visit he was unable to do so, but instead spoke to Mr. Albert Crognale, the occupier of Room 5 who stated he had been in residence since December 2017. Mr. Pledger also spoke to the occupier of Room 4 who gave his name as “Sergio” and who confirmed he shared a room with “Bogdan” but refused him access to the room, which could be seen from the doorway to contain a bunk bed. As a result of these inspections, Mr. Pledger stated he concluded that the “upper flat” at 18 Star Street met the description of an HMO as set out in section 254(c ) and 254(4) of the 2004 Act.
10. Mr. Pledger told the tribunal that he spoke to Dr Dusek on the 21 September 2018 under caution, who informed him that he realised the Applicant needed to apply for a licence. Subsequently, an application for a licence was made on 21 October 2018 and a fee paid, but the application was subsequently withdrawn by the Applicant on 19 November 2018. Mr. Pledger stated that in accordance with the Respondent’s Private Sector Housing Enforcement Policy 2018 and the Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities provided by the Ministry of Housing,

Communities & Local Government, the appropriate penalty was assessed as a severe matter representing a Band 5 offence and attracting a penalty of £20,000. However, as the Respondent believed that the Applicant had deliberately attempted to lead the Respondent into believing the upper flat was let as a single unit rather than as 9 separate rooms, the Respondent increased the penalty to £25,000 to reflect this aggravating feature.

11. On 23 November 2018 a Notice of Intent was sent to the Applicant and representations were received from the Applicant in response opposing the intended imposition of a financial penalty. On 15 January 2019 a Final Notice was issued to the Applicant imposing a fine of £25,000 for its failure to obtain a licence for the upper flat at 18 Star Street, a house in multiple occupation as at 19 September 2018.
12. The tribunal also heard evidence from Ms Natasha Davis, an Environmental Health Officer with the Respondent who spoke to her witness statement dated 1 March 2019. Ms Davis stated she had visited the property on 22 August 2018 and had spoken to a Ms Mita Andari who was occupying Room 6 and had been resident there since January 2018 paying a rent of £780 per month to the Respondent. Ms Andari's room comprised of a bedsitting room with cooking but no washing facilities. A welcome pack indicated that the landlord was Jaycott Properties Limited and rent was paid directly to the bank account in the name of the Respondent. Ms Davis also stated that she spoke to occupier of Room 7, a Mr. Aron Peterson and on 28 August 2018 in a repeat visit, to Mr. Malcolm Thompson the occupier of Room 8 which contained a bedsitting area with cooking but no washing facilities. Information was provided to the occupier by the Respondent on their headed notepaper posted on the ground floor notice board advising occupiers to contact the Respondent for non-emergency repairs and gave the management company as Olympia Estates, 92 Star Street W2. A visit to the property on 19 September 2018 provided access to room 5 occupied by Mr. Albert Crognale and seen to be another non self-contained room lacking washing facilities.
13. The tribunal was also provided with a witness statement from Mr. Kelvin Woodward an Environmental Health Officer with the Respondent, dated 7 March 2019 and to which a number of photographs taken on 22 August 2018 were exhibited to his statement. These photographs confirmed the presence of rooms numbered 2 to 9 and the two shared bathrooms each with a shower, sink and a w.c. and photographs of the Notice Board on the ground floor.
14. The tribunal was also provided with a witness statement from Mr. Aron Peterson dated 4 March 2019 who confirmed his current occupancy of Room 2, having previously occupied Room 7 from June 2015 to February 2019. Mr. Peterson stated that during his occupancy he had met a number of employees for Olympia Estates including Dr Dusek and that all matters concerning his tenancies were dealt with by Olympia Estates. Signed 'Statement of Witness'\* were provided from

Ieva Jurgelaityte (Room 3) dated 22 August 2018; Malcolm Thompson (Room 8) dated 28 August 2018; Albert Crognale (Room 5) dated 19 September 2018 and Ella Durant (Room 9) dated 23 November 2018 were also relied upon by the Respondent giving details of their occupation and the rent paid to Olympia Estates.

- ***Provided under the C.J. 1967 s.9; Criminal Procedure Rules r.16***

### **The Applicant's evidence**

15. Dr Dusek gave evidence to the tribunal and relied upon a document headed an 'Expanded Statement of the Reasons for the Appeal and Witness Statement of Dr Michal Dusek' dated 17/04/2029. Dr Dusek stated that he was a lawyer, although not registered with any legal governing body and had experience of working as an advocate for various London local authorities. Dr Dusek stated he had worked for the applicant for over 8 years assisting with the management, business development, legal affairs and process improvement.
16. Dr Dusek told the tribunal that in or around early 2018 a serious fraud was discovered by the Applicant as having been committed by one or more of its employees. This resulted in a number of people leaving the company and Dr Dusek becoming the single employee located at its offices in 92 Star Street from August 2018. Dr Dusek recounted meeting Mr. Pledger in July 2018 outside 18 Star Street and stated that he told Mr Pledger that he believed this property to be occupied by students, although he could not gain access on that date as he did not know the keypad access code on the front entrance door nor had the occupiers been given any notice of any visit.
17. Dr Dusek also told the tribunal that in answer to a Notice sent by Mr. Pledger seeking details of the occupiers of the property, he supplied copies of all tenancy or licence agreements as well as the Management Agreement between the Applicant and Jaycroft Property Limited. Dr Dusek stated that he had informed Mr. Pledger that there was an ongoing investigation being carried out by the police for the alleged fraud on the Applicant Company, a fraud which had been carried out between 2016 until March 2018. Dr Dusek informed Mr. Pledger that the tenant(s) were currently away from the property and refusing to grant access.
18. Dr Dusek stated that he next heard from Mr. Pledger on 21 September 2018 when in a telephone call he 'cautioned' him, which he found both shocking and surprising. Dr Dusek stated he had managed to gain access to the property where he found there to be a number of units and therefore the Applicant would be applying for a licence, if required as the Applicant had become aware of a number of units and occupiers at the property, although some were unoccupied and empty, including Room 4 which he had inspected on 20 August 2018.

19. Subsequently, the Applicant confirmed its position in writing that the records indicated that a single tenancy for the (whole) of the upper flat had been granted. Dr Dusek stated he had made multiple visits to the property and was satisfied that on or around 14 September 2018, that four units were occupied by four occupiers and that the rest of the units were either empty or used as short-term rentals or as changing rooms/storage rooms and that he had found no evidence or records of tenancy agreements being issued to more than four tenants. Dr Dusek told the tribunal that in early 2019 that works had been carried out to the property by the landlord and it had now returned to its original four bedroom layout.
20. In support of his assertion that the property was not an HMO as at 19 September 2018, Dr Dusek provided the tribunal with an email dated 9 September 2018 from Ms Mita Andari (also known as Pramita Diwi Andari) advising the Applicant she had moved out of Flat 6, a day after Pramita Diwi Andari had given notice of an intention to vacate with effect from 9 September 2018. On an inspection on 10 September 2018, Room 6 was found to be empty and unoccupied. Dr Dusek also relied upon the late admitted witness statements of Mr. Bogdan Tignascuel and Mr. Sergiu-Illie Rapan both dated 14 May 2019. In these, both witnesses denied that the tenancy agreement dated 1 July 2016 was a genuine tenancy and asserted that it had not been signed by either or them. Both witnesses also provided flight details to Romania on 8 August with a return flight on 15 September 2018. Further, Mr. Rapan and Mr. Tignascuel both stated that when they returned to London on 15 September 2018 they went to new accommodation. Mr. Rapan also stated that he had returned briefly to 18 Star Street to collect some personal belongings having first collected a key from the Applicant's office. Mr. Rapan recalled meeting someone from the Council and telling him he is not living there and that he did not mention Bogdan's name.
21. Further evidence relied upon by the Applicant included an email confirmation of Aron (Peterson) dated 19 February 2019 of vacating Room 2 a few days earlier; an Agreement dated 23 November 2018 made between Jaycroft Properties Ltd (landlord) and Olympia Estates Ltd (agent) and Mr. Aron Peterson, in full and final settlement of all matters agreeing that the tenancy agreement in respect of Room 7 was null and void together with other terms agreed between the parties. Various certificates relating to electrical, gas and fire inspections and pest control were also provided to the tribunal together with correspondence about the Respondent's closing of its investigation into unauthorised internal works at 18 Star Street.

### **The Respondent's submissions**

22. Mr. Ashgar submitted that both the Notice of Intent and the Final Notice were sufficient to meet the statutory requirements. Further,

these Notices should be read together with the letter dated 23 November 2019 accompanying the Notice of Intent, and the letter accompanying the Final Notice dated 15 January 2019 setting out in why the Notices had been served and providing the Applicant with detailed information. As templates of the requisite Notices are not provided by the Secretary of State, local authorities are required to satisfy the legislator requirements in the best way each chooses.

23. Mr. Ashgar submitted that the evidence given on behalf of the Respondent established without doubt, that as on 19 September 2018 an offence of failing to licence an HMO was being committed. Mr. Ashgar also submitted that the financial penalty of £25,00 was appropriate, as not only had the Respondent followed the necessary guidelines and policy it considered that the conduct of the Applicant, in failing to promptly investigate the situation at the property after the fraud had become known about at the latest in March 2018, at a property that had been converted ad let into individual units some time ago merited the additional £5,000 to its starting point of £20,000.

### **The Applicant's submissions**

24. Mr. Maddon for the Applicant submitted that both the Notice of Intent and Final Notice were defective in that, they failed to provide sufficient details as the alleged commission of the offence and failed to name the occupants who were said to be in occupation as at the date of the offence. Mr. Maddon submitted that had there been a criminal prosecution such details would have required to be made clearer and that a Summons would have required more particulars of the alleged offence.
25. Mr. Maddon submitted that the it was for the Respondent to establish that the evidence relied upon on 19 September 2019 was sufficient to be sure that the alleged offence had been committed. Mr. Maddon submitted that the Respondent had failed to establish who was in occupation at the date of offence and that its evidence on this was unreliable.
26. Mr. Maddon submitted that what is "a reasonable excuse" is difficult to quantify although the fraudulent behaviour by the applicant's former employers had led to the situation where the Applicant could not be assumed to know the nature and extent of the occupation of the property amounted a reasonable excuse for not having obtained a licence.
27. Mr. Maddon also submitted that the level of the fine imposed was excessive and did not adequately reflect the amount of discretion that was afforded to the Respondent as neither the Statutory guidance or the Westminster Policy document provided 'hard and fast' rules which had to be unquestionably followed.



## **The tribunal's decisions and reasons**

28. The tribunal finds and is sure that as at 19 September 2019 the “upper flat” at 18 Star Street was occupied by Mr. Rapan and Mr. Tiganescul (Room 4), Ms Durant (Room 9), Mr. Peterson (Room 7 – later Room 2), Mr. Crognale (Room 5). The tribunal accepts that Ms Mita Andari had left by 9 September 2019 leaving Room 6 unoccupied. The tribunal does not accept that at the date of the offence Mr. Peterson’s tenancy was ‘null and void’ despite the agreement subsequently reached between the parties. The tribunal also finds that on the balance of probabilities both Ms Jurgelaitye (Room 3) and Mr. Thompson (Room 8) were also in occupation as at 19 September 2019.
29. The tribunal found the evidence of Dr Dusek to be lacking in credibility and his explanation of why he was not aware of the occupiers of the “upper flat” to lack believability. The tribunal finds that the agreement dated 1 July 2016 granting Mr. Rapan and Mr. Tiganescul a tenancy of the upper flat at a rent of £3750 per month was a sham agreement, as there is no evidence to show, that any sort of financial checks were carried out by the Applicant to ensure that they could afford this level of rent. Further, the tribunal finds that work to convert the “upper flat” into rooms with cooking facilities and numbered 2 to 9 had been individually let for some time. The tribunal finds that in fact Mr. Rapan and Mr. Tiganescul had an agreement to jointly occupy Room 4.
30. The tribunal does not accept that, having been made aware of a systematic fraud which had ended by March 2018, the Applicant Company did not or could not have taken immediate steps to ensure that all of its properties were occupied in accordance with the tenancy agreements on file. The tribunal does not not accept the evidence of Dr Dusek, that he had not carried out an inspection of 18 Star Street before August 2018 and therefore did not know who was in the “upper flat,” despite being based in an office located just a few doors down and with rent being paid directly to the Applicant Company from a number of different occupiers in varying amounts for the same property. The tribunal was not provided by the Applicant with evidence as the number of residential properties owned by the Applicant Company, its number of employees or reasons why checks on all of its properties could not have either been carried out or were due to be carried out after the discovery of the fraud or at the very latest by March/April 2018. Further, if as asserted by the Applicant, a number of occupiers had left the property by 19 September 2019, this could have been, but was not supported by the disclosure of financial evidence showing that rent payments had ceased from certain occupiers, including Mr. Rapan and Mr. Tiganescul.
31. The tribunal finds the Mr. Rapan and Mr. Tiganescul were both in occupation of Room 4 as at 19 September 2018 and accepts Mr. Pledger’s evidence on this issue. The tribunal finds that Mr. Rapan and

Mr. Tiganescul were temporarily absent from Room 4 between 8 August 2018 to 15 September 2018 as this evidence is supported by copies of flight bookings and boarding cards but does not accept their written evidence that on their return they relocated to a new address. In support of these assertions, the tribunal would reasonably expect to be provided with the new address or a copy of any new tenancy or licence agreement. These were not forthcoming and neither Mr. Rapan or Mr. Tiganescul attended the tribunal to give oral evidence.

32. Therefore, the tribunal finds and is sure that as at the date of the offence on 19 September 2018 there were 5 people in occupation of the “upper flat.” Further, the tribunal finds that the Applicant Company has not demonstrated that it had a reasonable excuse for not carrying applying for a HMO licence, after it had been made clear that a systemic fraud had been occurring and that a number of occupants were residing at the “upper flat.”
33. In considering the level of the financial penalty, the tribunal regard to the Guidance issued and the Respondent’s policy documents. The tribunal considers that this is a serious, offence but does not meet the category of being one that can properly be classified as “severe” as set out in the Respondent’s enforcement policy document. The tribunal considers that the professional nature of the Applicant Company and its familiarity with the licensing requirements places this offence at the higher end of the ‘severe’ range and attracts a penalty of £15,000.
34. However, the tribunal does not consider that there that are specific aggravating features that attract the imposition of a higher penalty. The tribunal finds that the Applicant company has itself been a victim of fraud and although it could have been more overtly pro-active in ascertaining the extent of that fraud and the nature of the occupiers of the “upper flat,” complaints have been made in respect of the conditions or safety of the property. Further, the tribunal finds that there is no past history on the part of the Applicant Company which establishes that its regularly failed to apply for an HMO licence when required. Therefore, the tribunal finds that the appropriate level if financial penalty to be imposed is £15,000.
35. In conclusion, the tribunal confirms the Final Notice imposing the financial penalty but varies this and reduces it from £25,000 to £15,000.

**Signed: Judge Tagliavini**

**Dated: 17 July 2019**