



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

Case Reference : **BIR/OOFN/HNA/2022/0019**

Property : **100 Blue Gates Road
Leicester
LE4 1AB**

Applicant : **Ms N Morjaria**

Representative : **London Property Licensing
Mr R Tacagni**

Respondent : **Leicester City Council**

Representative : **Mr Justin Bates (Counsel)**

Type of Application : **An appeal under paragraph 10 of Schedule 13A
to the Housing Act 2004 against a decision by
the Local Housing Authority to impose a
Financial Penalty.**

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mr A McMurdo MSc, MCIEH**
:

Date of Hearing : **12th July 2022**

DECISION

INTRODUCTION

1. This is the Tribunal's determination on an appeal made by Ms N Morjaria ("the Applicant") against the decision of Leicester City Council ("the Respondent") to impose a financial penalty under section 249A of the Housing act 2004 ("the Act") relating to 100 Blue Gates Road, Leicester, LE4 1AB ("the Property").
2. On 31st January 2022 the Respondent served a Notice of Intention to Issue a Financial Penalty on the Applicant under paragraph 1 of schedule 13A to the Act. The notice was issued as the Respondent was satisfied beyond reasonable doubt that the Applicant had committed an offence under Section 72 of the Act, by being the person having control of an HMO required to be licensed under Section 61(1) but failing to apply for such a licence.
3. The notice of intention confirmed that the Respondent intended to impose a Financial Penalty of £29,817.00 because the person having control of a House in Multiple Occupation which was required to be licensed under Part 2 of the Housing Act 2004 failed to license the property which was an offence under section 61 and 72(1) of the Act. Representations were made by the Applicant prior to the service of the Final Notice.
4. On 7th July 2022 the Respondent served a Final Notice of Decision to Impose a Financial Penalty on the Applicant. The Respondent had considered the representations made and determined not to reduce the Financial Penalty. Pursuant to schedule 13A to the Act, the Final Notice imposed a Financial Penalty of £29,817.00 with respect to the alleged breach. The Notice confirmed that the Respondent was acting in exercise of its powers under section 249A of the Act.
5. On 4th April 2022 the Applicant applied to the Tribunal. The Application was received by the Tribunal on the same date. The Tribunal issued Directions on 21st April 2022 following which submissions were made by both parties.

INSPECTION

6. The Tribunal inspected the Property on 12th July 2022 in the presence of Ms N Morjaria (the Applicant) and Mr M Elliott and Ms V Zzinga-Johnstone (Environmental Health Officers employed by the Respondent).
7. The Property was found to be a relatively modern mid-terraced town house situated on a development of mixed type residential properties. It is of traditional construction having rendered elevations and a pitched tiled roof.
8. The house has gas fired central heating and upvc double glazing throughout. The heating is provided by the wall mounted Ideal gas fired combination boiler in the kitchen. There are smoke detectors fitted to all main rooms and communal areas which were noted to be mains wired and interlinked.
9. Briefly the accommodation comprises of entrance porch, hallway with meter cupboard and shower room off. To the rear is a fitted kitchen with base and eye level cupboards and two inset stainless steel sink units. There is a cooker with hob over. The hallway also leads to two further rooms. At the time of the Tribunal's inspection the front room was furnished as a bedroom and the rear room as a living room. The Tribunal accepts that at the time of the Respondent's initial inspection in August 2021, both rooms were

used as bed-sitting rooms. This is not disputed by the Applicant. These are referred to as Rooms 1 and 2.

10. On the first floor the landing, with a small cupboard off, leads to two further letting bed-sitting rooms (referred to as Rooms 3 and 4), one further small room (Room 5) and the bathroom being fitted with a three-piece sanitary suite having an electric shower over the bath.
11. At the time of the Tribunal's inspection Room 5 was being used for storage.
12. To the front of the property is a small open plan garden with driveway parking and to the rear a small untidy garden area with separate pedestrian access.
13. The Tribunal found the property to be in generally satisfactory condition throughout, commensurate with its age, type and use.

THE CALCULATION OF THE PENALTY

14. In respect of the alleged breach of Failing to licence the property as a House in Multiple Occupation the Respondent calculated the Financial Penalty as follows:

Very High Harm and Culpability	£27,500.00
Plus:	
Economic benefit (cost of Licence)	£900.00
<u>Costs incurred by the Respondent</u>	<u>£1,417.00</u>
Total Financial Penalty	£29,817.00

THE HEARING

15. A remote video hearing was held later that same day.
16. Present at the hearing were Mr R Tacagni (the Applicant's Representative), Mr J Bates (Counsel for the Respondent), Mr M Elliott and Ms Victoria Zzinga-Johnstone (Environmental Health Offices employed by the Respondent), Mr C Abu-Langi Sona (Witness for the Respondent) and as an observer, Ms A Lea (Team Manager, Private Sector Housing for the Respondent). Mr A Mursa attended the hearing later in the day as a Witness for the Applicant.
17. Prior to the commencement of the inspection and hearing the Tribunal had received representations from the Applicant's Representative confirming that due to a recent family bereavement and an ongoing medical condition, the Applicant may not be able to attend the hearing. At the same time the Applicant's representative confirmed that he understood that if his client did not attend then it was possible that the Tribunal might not attach as much weight to her witness statement than it would if she had attended. This information was accepted by the Tribunal and notified to the Respondent at the commencement of the hearing.
18. The submissions made on behalf of the parties in writing and in person at the hearing were briefly as follows:

THE RESPONDENT'S SUBMISSIONS

19. The Respondent submitted that it had determined that the property was being used as an HMO which was occupied by five persons and so was subject to mandatory licensing under part 2 of the Act. It had served a penalty notice on the Applicant under section 249A of the Act in the sum of £29,817.00.
20. The Respondent then detailed the chronology of events which is briefly detailed as follows and referred to in more detail in the witness statement of Mr M Elliott, the lead Environmental Health Officer dealing with the matter for the Respondent.

Chronology of Events

Date	Event	Comments
3 rd March 2014	Applicant purchases the property	Confirmed by Council Tax Records and Land Registry Entry
24 th April 2014	Applicant appears to have started renting out rooms	Copy tenancy agreements obtained for Room 1 (22/09/2015), Room 2 (08/01/2015), Room 3 (13/08/2015) and Room 4 (16/07/21)
1 st October 2018	The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 comes into force	The alteration of the definition of an HMO brought about by these regulations has the effect of making this property licensable under Part 2 of the Act
11 th August 2021	First Inspection	Room 5 Appears to be occupied
13 th August 2021	Respondent requests documents/evidence which might establish a 'reasonable excuse' defence	
17 th August 2021	Second Inspection	Room 5 Appears to be empty
6 th September 2021	Applicant accepts Room 5 is so small as to amount to a HA 2004 Hazard and invites a Prohibition Order	
6 th September 2021	Applicant appears to serve notice under Section 21 on (some of) tenants	
8 th October 2021	Prohibition Notice served	Prevents the letting of Room 5
8 th October 2021	Applicant invited by Respondent to attend an interview under caution	Applicant did not attend
8 th November 2021	Respondent sends written copies of questions to Applicant from interview under caution	No response received
31 st January 2022	Respondent serves Notice of Intention to impose a penalty	

15 th February 2022	Applicant sends written representations to the Respondent	
4 th March 2022	Respondent responds to the representations	
7 th March 2022	Applicant serves a Final Penalty Notice on the Respondent for £29,817.00	

21. In her defence the Applicant had submitted that:
- a) There were in fact only four occupiers in the property so the offence under section 72 was not made out; and
 - b) If that is incorrect, she challenges (albeit without any particulars) the quantum of the penalty.
22. In the submission of the Respondent the offence which had been committed was that of having control of or managing an HMO which is required to be licensed under Part 2 of the Act but which is not so licensed.
23. The Respondent submitted that the property was an HMO within the meaning of the Act. It was subject to the mandatory licensing requirements of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 because:
- a) It was occupied by five or more persons;
 - b) Those persons form two or more separate households; and,
 - c) It was not otherwise exempt
 - d) There was sharing of one or more basic amenities (in this case the kitchen and bathroom)
24. It was further submitted that where a property requires a licence and does not have one, then any person having control of the property, or managing it, commits an offence under section 72 of the Act. However, the legislation does provide for a reasonable excuse defence.
25. In the opinion of the Respondent this offence is a “strict liability” offence in that a person is guilty of the offence if they are proven to be managing or having control of the property. In their opinion there is no requirement to prove an intention to commit the offence.
26. The Respondent submitted that the Applicant denied that she had committed the offence and said that there were only ever four occupiers at the property and that Room 5 was not occupied although it had occasionally been used for storage.
27. The Respondent submitted that:
- a) It had in its possession the receipt for rent paid in respect of Room.
 - b) Other occupiers have given evidence that all five rooms were occupied. Mr C Abu-Langi Sona has confirmed that when he moved in on 8th January 2018 all the rooms were occupied including Room 5 and that there was a locker and small fridge on the landing which the occupier of Room 5 used. Mr C Abu-Langi Sona stated that he was in occupation for four months or so and that prior to the occupier of Room 5 there was another occupier named Mark.

- c) Other occupiers have given evidence that the Applicant moved the occupier of Room 5 out immediately after the Respondent inspected on 11th August 2022. Mr C Abu-Langi Sona has confirmed that the occupier of Room 5 returned at 4.00pm and saw the notice of Intended Inspection paperwork left under his door from the local authority. He then telephoned the Applicant and informed Mr Sona that the Applicant was coming to take him to another property she had. He left between 5:00pm – 5.30pm.
- d) That when the Respondent visited the property, there was circumstantial evidence of occupation including a cable plugged into a power socket on the landing (Applicant's supply) and then going under the door into Room 5, the window being open and, on the reinspection, a notice which had been pushed under the door of Room 5 had been taken.

28. In the submission of the Respondent this was compelling evidence and Mr Sona had no reason to lie. At the same time there was no suggestion that he, or anyone else had forged a rent receipt.

29. With regard to quantum, the appeal by the Applicant simply took issue with the amount of penalty imposed but gave no indication as to why it was being challenged. In the opinion of the Respondent, although the Tribunal had to decide what penalty was appropriate that decision was not an "at large" decision, but the Tribunal first had to look at the policy of the local authority as regards the level of penalty and then had to give "considerable weight" to the decision of the authority. The Tribunal must have regard to the Policy and it was the Applicant who had the burden of persuading it to reduce the penalty: see generally *Sutton v Norwich City Council* [2021] EWCA Civ 20.

30. The Respondent submitted that the policy had been disclosed and sought to identify the level of harm caused by the offence and noted that operating an unlicensed HMO is regarded as particularly serious. The policy then involved an assessment of the culpability of the offender and that in turn fed into a matrix for identification of a default penalty. The default penalty was then adjusted as circumstances required but unless and until the Applicant actually engaged with that policy, the Respondent could not take matters further.

31. In conclusion the Respondent drew attention to three points:

- a) The Applicant had considerable experience of residential property management and should be taken to be aware of her duties under the law
- b) The inspection revealed various concerns about the quality of the property which also goes to the seriousness of the failure to obtain a licence
- c) In the opinion of the Respondent the Tribunal may well take the view that the Applicant has tried to obstruct the proper process by moving a tenant out of Room 5 after the inspection by the local authority and that if it did take that view the Tribunal should seek to mark its disapproval of that practice when considering the level of fine to be imposed.

32. Counsel for the Respondent submitted at the hearing that at the initial inspection on 11th August 2021 it was evident to the Respondent that an offence had been committed on that date. It was further submitted that the evidence of various items of correspondence between the Applicant and the environmental health officers in respect of another property indicated that she was someone who was quite prepared to place tenants in small rooms. The circumstantial evidence on that date in respect of

the cable from the socket on the landing under the door and the open window indicated that the room was being used.

33. It was further submitted that in the Applicant's witness statement the Applicant was misleading the Tribunal in suggesting that she had not moved anyone out of the property on 11th August 2021. A text message had been sent by the Applicant on that date, which referred to the visit by the environmental health officers indicating that she was well aware of the visit. A photographic copy of the text message was included in the respondent's submissions. At the same time the witness statement of Mr Sona showed that the Applicant had returned to the property and moved the tenant out. In the submission of the Respondent Mr Sona had no reason to lie and the actions of the Applicant showed that she was aware she was running an unlicensed HMO and needed time to remove the tenant of Room 5 in an attempt to conceal the offence.
34. The Respondent referred to the rent receipt found on the floor of Room 5 and submitted that this, in conjunction with the evidence regarding the open window (noted to be closed on a subsequent inspection), the notice which had been pushed under the door and removed prior to the visit on 17th August 2021 and cable running under the door was circumstantial evidence that the room had been occupied.
35. The Respondent further submitted that the Applicant's refusal to allow the environmental health officers to inspect the property on 12th August indicated that she did not wish them to enter the room as it was occupied. As such she was attempting to obstruct the Respondent.
36. The Respondent submitted that in the questions answered by the Applicant on 6th September 2021 she stated that the room was '*not going to be let*' with no denial of it never having been let. It was only some six months later that the Applicant said that the room was not occupied. If the room was not being let or was only being used for storage then there was no reason for the Applicant not to have said so earlier and the use of the word '*going*' was, in the opinion of the Respondent a deliberate attempt to disguise the previous use of Room 5.
37. It was further submitted that in the opinion of the Respondent the receipt for payment of rent which had been found on the floor of Room 5 was unlikely to be the only payment that had been received. It was submitted that the receipt from 'Wojech' in Room 5 was for rent in respect of that room. If it had been paid, as was suggested by the Applicant, to cover a rental liability for the tenant of Room 1 it would have said so.
38. It was submitted by the Respondent that rent payments were generally made by bank transfer and that these records had not been submitted as it was likely, in the opinion of the Respondent, that they would show £150.00 being paid as rent for Room 5 over many months.
39. The Respondent referred to the alleged inspection of the gas service engineer in July 2021 when it was stated that Room 5 was not occupied. It was submitted that there was a gas safety certificate dated 6th January 2021, so another inspection would not be required in July of the same year. In any event a gas safety inspector would not need to gain access to Room 5 as the only gas appliance was the boiler located in the kitchen. This, in the opinion of the Respondent provided further evidence that the Applicant knew that she was running an unlicensed HMO.

40. Based on the evidence before it, the Respondent was entitled to deduce that the property was an unlicensed HMO on 11th August 2021 and that there were also probably several other months when someone was occupying the room. As such, in the submission of the Respondent the penalty imposed was reasonable as the Applicant had been obstructive, had concealed documents and had misled the Respondent.

41. The Respondent submitted the following witness statements in support of its case:

Witness Statement of Mr M Elliott

42. Mr Elliott confirmed that he was a Senior Environmental Health Officer employed by Leicester City Council and that:

- 1) As part of a wider investigation into potential unlicensed HMOs owned by the Applicant they requested information from the City Council, Council Tax Records. The Applicant was liable for council tax at the subject property since 3rd March 2014 with residents renting rooms separately since 24th April 2014. The Respondent also checked for previous history in relation to environmental health matters at the property but found none.
- 2) On 11th August 2021 the Respondent attempted to carry out an unannounced inspection of the property and arrived at approximately 8:50am. The Respondent knocked on the door and was met by the occupant of Room 2. The purpose of the visit was explained to ensure that the house was safe and suitable for occupation by the number of people living there and it was also explained that the Respondent had powers of entry under the Housing Act 2004. The Respondent was allowed access.
- 3) That the property is a mid-terraced house built in the 1980's. On the ground floor were two bed-sitting rooms and a shared kitchen with access to the rear yard. To the first floor there were three further bed-sitting rooms, a shared bathroom and a cupboard off the landing with a fridge inside. During the visit the Respondent noted a notice in the common parts giving the contact details for the landlord.
- 4) At the time of this inspection the Respondent was able to inspect the common parts and Room 2 but was unable to gain access to Room 1, Room 3, Room 4 or Room 5. The Respondent subsequently completed 'Time and Place Notices' requiring access to those rooms (satisfying the requirements of s239 of the Act). While the notices were being served the occupier of Room 3 came out and that room was inspected. The occupier of Room 4 also came out but advised it was not convenient for his room to be checked at that time. It was therefore agreed that the Respondent would return later that day to carry out the inspection.
- 5) With regard to Room 5, there was no access but it was noted that there was a cable going under the door which was plugged into a power socket on the landing. The Respondent subsequently received a telephone call from Mr Charles Abu-Langi Sona stating that the Applicant had moved the person from Room 5 out of the property. When the Respondent revisited the property that evening, he was informed by Mr Sona that the Applicant had visited earlier during the day and left in a car with the tenant who had been in the Room. A statement was requested but declined.

- 6) On 12th August 2021 the Respondent returned to the property and was again allowed access. At that time Mr Sona confirmed that the landlord had requested that they should not allow representatives from either a company or the council access without an appointment with her. A copy of the text message was included with the Respondent's submissions.
- 7) After a delay the occupier of Room 1 arrived but did not provide his name. He advised he had lived in the property for five years and was happy with the house. The Respondent was unable to gain access Room 1 at that time.
- 8) On 17th August 2021 the Respondent again visited the property but was unable to gain access to Room 1. However, Room 5 was empty and inspected. It was noted to be small measuring 4.7m² which was less than the statutory minimum of 6.51m² for a bedroom and half the size for a room for this type of HMO where there is limited communal space (when the City Council's local HMO standards are considered). At the time of this inspection Mr D Morjaria (the Applicant's Father) was at the property and when questioned as to whether anyone was living in Room 5, he denied that anyone had been living there.
- 9) Following the inspection Mr Elliott met his colleague Ms Victoria Zzizinga-Johnstone who confirmed that she had found a piece of paper on the floor of Room 5 which was a rent receipt for Room 5 dated 6th August 2021. A copy of this was included with the Respondent's submission as evidence.
- 10) On 20th August 2021 the Respondent revisited the property together with Mr D Morjaria and the tenant of Room 1.
- 11) On 25th August 2021 the Respondent hand-delivered a letter to the Applicant together with a further email copy. This letter acknowledged receipt of documents from the Applicant and requested a copy of the gas safety certificates and a copy of the tenancy agreement for Room 5.
- 12) The letter also confirmed that at the time of the Respondent's visit on 11th August 2021 the property was occupied as a licensable HMO without being licensed contrary to section 72 (1) of the Act and that the matter was subject to further investigation. The Respondent also confirmed that it was considering serving a Prohibition Order in relation to Room 5.
- 13) On 6th September 2021 the Respondent received an email from the Applicant which amongst other things included a copy of a current gas safety certificate, confirmation that the Applicant had no objection to the issuing of a Prohibition Order in relation to Room 5 and asked for evidence that Room 5 was occupied when the Respondent first visited the property.
- 14) On 8th September 2021 the Respondent sent an email to the tenant of Room 2, Mr Sona who was being evicted, asking if he would now provide a witness statement detailing what he witnessed in relation to the occupation of Room 5. He agreed and a copy of the witness statement was included with the Respondent's submission.
- 15) On 8th October 2021 the Respondent served a Prohibition Order, with a Notice of Statement of Reasons, Notice to Recover Costs in determining the necessary action and serving a Notice in respect of the small size of Room 5. On 20th October 2021

the Applicant sent an email to the Respondent confirming that she had no objection to the Prohibition Order and again asked for evidence as to why the Respondent thought Room 5 had been occupied.

- 16) On 21st October 2021 the Respondent sent an email to the Applicant advising her it was awaiting legal advice prior to providing any further information regarding the provision of evidence and on 22nd October 2021 the Respondent sent to the Applicant a further email attaching a copy of the witness statement provided by a former tenant together with a copy of the receipt for rent found in Room 5 dated 6th August 2021 and a notice of rights, entitlements and safeguards that apply to voluntary interviews under PACE Code C.
- 17) An interview was arranged with the Applicant but she did not attend. However, the Applicant confirmed that she did not agree with either the witness statement or copy of the receipt for rent sent with the Respondent's email of 22nd October 2021 and that she would not attend the voluntary interview as requested.
- 18) On 8th November 2021 the Respondent hand-delivered a letter to the Applicant including a series of questions which it had proposed to ask at the formal interview.
- 19) In conclusion the Respondent submitted that it was satisfied that the Applicant was the person having control of the property and that it was operating as a Licensable HMO at the time of the Respondent's visit on 11th August 2021 contrary to section 72 (1) of the Act.
- 20) The Respondent submitted that it was unable to determine how long the property had been operating as an HMO with 5 occupiers but it seemed likely that this had been the case since the Applicant first registered the house with the City Council, Council Tax Services on 24th April 2018. If that was the case then the property was a licensable HMO since the requirements to licence this type of property came into force on the 1st October 2018.
- 21) The Respondent further submitted that it was satisfied that the Applicant had not provided a reasonable excuse for contravening the Act which it considered to be a deliberate act on her behalf and that she had tried to cover up the breach by removing the tenant from Room 5.
- 22) At the same time the Respondent considered the Applicant to be a professional landlord and with her father Mr D Morjaria, an experienced landlord with many years as an HMO licence holder within the city.
43. At the hearing Mr Elliott was asked by Mr Tacagni if he had served a copy of the "Time and Place Notice" on the Applicant and it was confirmed that on 11th August 2021 Mr Elliott did not know where the Applicant lived so a notice had not been served. Mr Elliott also confirmed that he did not know why the electric cable was running from a socket on the landing under the door of Room 5 and that he had not checked the electric key meter to that room.
44. With regard to the Applicant saying that she required any appointment for an inspection to be made through her, Mr Elliott was of the opinion that this was because she wished to control access to the property to give her time to remove traces of occupation from Room 5. Mr Elliott confirmed that he had left a voice mail for the

Applicant to contact him. She subsequently telephoned but was cut off during the conversation. The Applicant phoned back but Mr Elliott did not take the call.

45. Mr Elliott confirmed that he emailed the Applicant on 13th August 2021 and arranged an inspection on 17th August. At the inspection he met Mr D Morjaria and cautioned him although no discussion took place. In the submission of the Applicant the proper process was not followed.
46. On further questioning Mr Elliott accepted that he had never met anyone living in Room 5 and had not seen any tenancy agreement although he had seen the cable under the door. He also agreed that the Applicant had provided all the documentation requested and confirmed that after he had taken the witness statement of Mr Sona on 30th September 2021, he had discussed with him the possibility of Mr Sona applying for a Rent Repayment Order.
47. On questioning by the Tribunal Mr Elliott confirmed that he did not recall whether he asked the Applicant why she was refusing access but he considered that the Applicant had a poor compliance history on another property which was subject to a civil penalty for the same offence as on the subject property.
48. Mr Elliott also confirmed that Ms Johnstone had removed the piece of paper from the floor and that he had photographed it at a later time. It was also confirmed that they had attempted to trace the tenant referred to as 'Wojech' but not until the last few weeks and they had been unable to trace him.

Witness Statement of Ms Victoria Zzinga-Johnstone

49. Ms V Zzinga-Johnstone confirmed that she was an Environmental Health Officer employed by Leicester City Council and that:
 - 1) On 11th August 2021 she accompanied Mr M Elliott, Senior Environmental Health Officer to the property as part of an investigation into Houses in Multiple Occupation operated by Ms N Morjaria.
 - 2) She and Mr Elliott arrived at the property at 8:50am and were met by Mr Charles Abu-Langi Sona who allowed them access into the common parts and into his room which was Room 2. Mr Sona was questioned by her and a questionnaire completed.
 - 3) At the time of their inspection there were five bed sitting rooms at the property and that Time and Place Notices were drafted in respect of Rooms 1, 3, 4 and 5.
 - 4) Mr Mihai Herghilighu answered the door to Room 3 and she confirmed his identity and established details regarding his tenancy. A questionnaire was also completed.
 - 5) Mr Herghilighu knocked on the door to Room 4 and Mr R Owowok answered. It was agreed that the Respondent would return later that day to inspect his room.
 - 6) The Respondent knocked on the door to Room 5 and there was no answer. It was noted there was a cable plugged into a power socket which went under the door and on leaving the property to the front she noted that the window for Room 5 was open.

- 7) Later that day Mr Elliott and herself returned to the property at 5:50pm. Mr Sona answered the door and allowed them access. He explained to them that the Applicant had visited earlier that day and left in a car with the tenant who had been in Room 5. He did not wish to provide a statement.
- 8) It was noted that the cable that had previously been seen on the first visit which went across the landing and under the door to Room 5 had been removed and on leaving the property she also noted that the window of Room 5 was closed.
- 9) On 12th August 2021 she returned to the property with Mr Elliott. Mr Sona allowed them access and at 6:22pm the tenant of Room 1 arrived at the house. He refused access to his room.
- 10) On 17th August 2021 at 10:45am she and Mr Elliott again visited the property. On this occasion they were met by Mr D Morjaria. Mr Morjaria provided access to Rooms 4 and 5. Room 5 was empty and although the notice pushed under the door on 11th August was not on the floor there was a scrap of paper on the floor which she picked up. A copy of this was submitted as a receipt for rent in the sum of £150.00 for Room 5. The rent receipt had the name 'Wojech' written upon it.
- 11) Ms Johnstone confirmed to the Respondent's Representative that she had not been into Room 5 on 11th August 2021 but she believed that it was being used as a bed-sitting room.
- 12) The Tribunal asked Ms Johnstone to explain in more detail how she came to collect the rent receipt from the room on 17th August 2021 and it was confirmed that she noticed what she thought was a scrap of paper and just picked it up as she thought it might be evidence. The receipt was not photographed in the room and she showed it to Mr Elliott later on.
- 13) On being questioned by the Tribunal Ms Johnstone confirmed that she did not know what power she had to remove potential evidence from the property at that time. She also confirmed that she had not carried out any checks on the property around the time of inspection but that Mr Elliott had. As far as she was aware no further more recent checks had been carried out.

Witness Statement of Mr Charles Abu-Langi Sona

- 1) Mr Charles Abu-Langi Sona confirmed that he lived in Room 2 of the property from 8th January 2018 and that it was a house with five bedrooms, a shared kitchen, off road parking and garden.
- 2) At the time he moved into the property all five rooms were occupied although he did not know the other tenants. The occupancy of the rooms changed but this did not cause him any problems.
- 3) He confirmed that his landlord was Mrs N Morjaria and that he paid a monthly rent of £325.00.
- 4) If there were any problems with the house, he contacted the landlord. On 11th August 2021 two officers from Leicester City Council visited the property and

introduced themselves as Matthew Elliott and Victoria Johnstone. They informed him that they wished to check the house and they subsequently inspected his room.

- 5) At 4:00pm on the same day, the occupier of Room 5 had returned and saw the paper left under his door. He showed it to Mr Sona who explained to him what had happened. He then telephoned the Applicant who subsequently arrived and he was informed, took him to another property. The occupier of Room 5 had a bag and some food which he took with him in the landlord's car. There was a locker which he used on the landing in which he hung his clothes and there was also a small fridge. He had occupied the room for approximately four months. Previously the room had been occupied by an English man named Mark who had advised him that the room was too small.
- 6) On 6th September 2021 he was served with notice seeking possession of his room by 7th January 2022. He moved out on 15th September 2021 and felt he had been harassed a number of times by different people including the landlord's father who arrived unannounced to his room requiring access to carry out works and accused him of reporting the Applicant to the Respondent.
- 7) At the hearing Mr Sona confirmed that he moved into the property in 2018 and that Mr Mursa was already living there at that time. He did not know how many people lived in the property but confirmed that one-person lived in Room 5 which had always been occupied. The person's name was 'Mark' he left because the room was small. He was living in the room for something between 1 – 2 years but he could not be more precise. After 'Mark' a Polish gentleman moved in and he stayed there until the Applicant collected him on the evening of 11th August 2021. He thought the Polish gentleman 'Jech' was there for some 3 months.
- 8) He confirmed that the Environmental Health Officers had mentioned the possibility of applying for a Rent Repayment Order if the financial penalty was upheld but this was not until after his witness statement had been completed and signed.
- 9) On questioning by the Tribunal Mr Sona was unable to describe in any meaningful detail either Mark, or Wojech.

THE APPLICANT'S SUBMISSIONS

50. The Applicant submitted that her submission was in three parts:

- a) A Preliminary Issue
- b) The alleged HMO licensing offence
- c) The quantum of the penalty

51. In respect of the preliminary issue the Applicant submitted that the Final Penalty Notice issued on 7th March 2022 referred to a continuing HMO licensing offence from 1st October 2018 to 11th August 2021. However, the only date of occupation the Respondent has referenced in their evidence was 11th August 2021 and the Respondent's witness statement acknowledges that they possess no evidence of a continuing offence from 1st October 2018 to 11th August 2021.

52. There was no evidence of an ongoing offence and the Respondent does not explain its reasons for believing a continuing offence '*seems likely*'. The Applicant submitted that a judgement that something '*seems likely*' does not meet the criminal standard of proof required. The submission of the Applicant was that if the evidential stage in the Crown Prosecution Service Code for Crown Prosecutors had been applied, no penalty would have been imposed for a continuing offence and at most this case would concern an alleged HMO licensing offence at a single point in time (that point being 11th August 2021).
53. In respect of the alleged HMO licensing offence the Applicant submitted that to impose the financial penalty the Respondent must be satisfied an offence under section 72 (1) of the Act has been committed to the criminal standard of proof. In the submission of the Applicant the Respondent had failed to prove offence beyond reasonable doubt during any of the relevant period.
54. The Applicant acknowledged that she had been the owner of the property since 2014 and that it had been privately rented. The Applicant submitted that she was a small portfolio landlord operating in the local area and that over the seven-year period the property has been rented out the Applicant received no complaints from anyone living in the house. It was submitted that the property was fitted with a mains wired fire alarm system and the Respondent had been provided with copies of the gas and electrical safety certificates.
55. The Applicant further submitted that the Respondent had acknowledged that they found no history of non-compliance relating to the property on the council's system and that the property had always been let on single room tenancies with an occupancy level below the HMO licensing threshold of 5 people. To the Applicant's knowledge the 11th August 2021, was the first time the property had been inspected by the Respondent.
56. Based on the Respondent's submission during their inspection on 11th August 2021 Mr Elliott and Ms Zzinga-Johnson observed an electrical cable running from a socket on the landing under the door of Room 5. In his statement, Mr Alexandru Mursa, the tenant of Room 1 has confirmed that this was an extension lead which he used for a lamp in that room. He had also confirmed that he used that room for storage.
57. The Applicant submitted that the Respondent had confirmed after the visit to the property on 17th August 2021 that Room 5 which was unfurnished was very small and this was not disputed. In fact, at 4.7m² it was too small to function as a bedroom except perhaps for a young child sleeping in a cot or a child's single bed although no children have ever been housed in the property by the Applicant.
58. It was further submitted by the Applicant that on 17th August 2021 she had confirmed to the Respondent that there were four single room tenancy agreements for the property and copies of the tenancy agreements had been provided both to the Respondent and to the Tribunal. On 6th September 2021 the Applicant emailed the Respondent to confirm that she could not provide a tenancy agreement for Room 5 as that room was not let although in a letter dated 31st January 2022 a letter from the Respondent stated:

"I am satisfied at the time of visit on 11th August 2021 all 5 bedsits were occupied and subject to tenancy agreements".

59. The Applicant submitted that Room 5 had never been used as a bed-sitting room and that it was intrinsically too small for that purpose. In a written representation submitted on 21st February 2022 the Applicant submitted there had only ever been four tenants living in the property and that Room 5 was used as a storage room.
60. The Applicant provided handwritten notes from 2 tenants and a gas contractor to support this assertion. The use of Room 5 for storage purposes did not, in the opinion of the Applicant, make the property a licensable HMO.
61. The Applicant further submitted that the Respondent had dismissed this representation without following all reasonable lines of enquiry. The Respondent could have contacted the tenants directly to verify what they had said was true but they chose not to. Instead, in a letter to the Applicant dated 4th March 2022 which had not been formally exhibited the Respondent described the tenants' witness statements as not being credible. In the submission of the Applicant, they were not witness statements but handwritten notes and no explanation had been provided why the Respondent drew that conclusion.
62. In the opinion of the Applicant the limited evidence presented by the Respondent does not prove the property was a house in multiple occupation that met the prescribed description for licensing purposes. In fact, the Respondent's statement of case acknowledges this supposition in that on 11th August 2021 it stated '*Room 5 appears to be occupied*' and on 17th August 2021 '*Room 5 appears to be empty*'. The existence of a rent receipt was not disputed and as confirmed by the statement of Mr Mursa, this was a payment for his use of Room 5 for storage.
63. The Applicant submitted that on 15th February 2022 the tenant of Room 3 wrote a handwritten note to confirm that no one had lived in Room 5 and on 19th February 2022 Mr M Palmer, a gas engineer, sent an email to confirm that Room 5 was inaccessible due to "*heavy furniture and boxed goods*". Unfortunately, attempts to obtain witness statements from both the tenant of Room 3 and the gas engineer had been unsuccessful. However, a witness statement from the Applicant's electrician, Mr D Zambezi confirms that Room 5 was empty when he visited in 2020 and 2021 to service the fire alarm system. In the opinion of the Applicant this contradicts the Respondent's belief that a continuing offence since October 2018 '*seems likely*'.
64. In conclusion, the Applicant submitted that there was no evidence the property was being occupied as a licensable but unlicensed HMO on 11th August 2021 and the Respondent's officers did not enter Room 5 on that date. In fact, the officers for the Respondent never saw the room furnished as a bedroom or bed-sitting room, they have not seen any tenancy or licence agreements and have not spoken to anyone who has allegedly lived in Room 5 to verify the nature of their occupancy.
65. Mr Mursa rented Room 5 as an extra room for storage and he also allowed a friend to stay with him for a short period of time. Whilst it is accepted the room was not suitable for that purpose, occasional overnight guests do not constitute 'an occupant' for the purposes of the HMO licensing and in any event the room had been vacated before the Respondent visited on 11th August 2021.
66. The Applicant submitted that under section 262(6) of the Act an occupier in relation to premises means a person who (a) occupies the premises as a residence, and (b) occupies them as a tenant of a person having an estate or interest in the premises....

No evidence has been presented by the Respondent to demonstrate Mr Mursa's friend met the definition of an occupant for licensing purposes.

67. The Applicant submitted an appeal against the Final Penalty Notice within the time limit and a copy was contained within the Applicant's bundle. It was therefore contended that there was no evidence to prove a criminal offence under section 72 (1) of the Act and the Tribunal was urged to quash the financial penalty.
68. In respect of the quantum of penalty it was submitted that although there was no evidence of a criminal offence the Applicant wished to make reference to the quantum of penalty imposed. It was submitted that under the Housing and Planning Act 2016, the maximum civil financial penalty that can be imposed for any offence is £30,000.00 and that at £29,817.00 penalty imposed for this alleged HMO licensing offence is at the very top end of the scale.
69. To support this opinion the Applicant referred to the MHCLG guidance which states:
- “Generally, we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence while taking account of the landlord's previous record of offending”.*
70. The Applicant submitted several First-tier Tribunal cases to support this opinion although it accepted that they set no precedence. The Tribunal does not intend to detail them here and they are referred to in detail in the Applicant's bundle, pages 009 – 012 with copies of the decisions at pages 049 – 186.
71. The Applicant submitted a personal witness statement as follows:

Witness Statement of the Applicant

- 1) The Applicant submitted that she purchased the property with a mortgage in 2014 and had always rented out the property as a small HMO with four bed-sitting rooms.
- 2) Each of the four rooms was rented on an Assured Shorthold Tenancy Agreement, copies of which had been provided to the Respondent and were also copied to the Tribunal. Each room had a number and there was a further very small room on the first floor which was too small to be used as a bedroom. This is Room 5. It was too small for furniture to be fitted and too small for a bedroom unless it was for a small child. The Applicant had explained to the Respondent that she could not provide a tenancy agreement for Room 5 as there had never been one and the room had never been rented out.
- 3) During the previous year Mr Alexandru Mursa who was the tenant living in Room 1 on the ground floor had asked if he could use Room 5 for storage for which he would pay additional rent. He had always been a good tenant having lived in the property since 2015 and the sum of £150.00 per month was agreed. As far as the Applicant was concerned, he was the only person with keys to access that room.
- 4) On 6th August 2021 the Applicant went to see Mr Mursa to collect the additional rent. She knocked on the door to Room 1 which was answered by a friend who told her that Mr Mursa had given him £150.00 to pass on to her which she took and gave him a receipt of a cash payment.

- 5) The Applicant confirmed that she had no knowledge of the Respondent's intention to carry out an inspection on 11th August 2021 but she did not visit the property on that day and did not remove anyone from Room 5. There had only ever been four people living in the property.
- 6) In conclusion the Applicant stated that she was a small portfolio landlord with three properties in Leicester. She was aware of the need for obtaining an HMO licence if a property was rented out to five or more related people and as she only rented this property to four people, she did not think a licence application was required. In her opinion the property was not suitable for more than four people. She confirmed that she carried out her landlord's business on a self-employed basis.

72. The Applicant did not attend the hearing and her witness statement could not therefore be questioned by either the Respondent or the Tribunal.

Witness Statement of Alexandru Mursa

- 1) Mr Mursa confirmed that he was a tenant living in Room 1 and that he had been in occupation since 2015 paying a rent of £350.00 per month. He was in occupation when the Respondent visited the property in August 2021.
- 2) Mr Mursa stated that on the first floor was a small room to the front which was not used for anything. This was Room 5. He had agreed to rent this space from the landlord for an additional £150.00 per month. This was an informal arrangement with nothing in writing. He wanted the room for storage as he purchased items from online auctions and needed somewhere to store them as there was not enough space in his room. He purchased televisions, clothes, radios and watches which he then sold online make a profit.
- 3) A friend called 'Jech' had asked if he could stay. He thought his full name was 'Wojech' and he agreed to clear the items from Room 5 and place a mattress on the floor for him. No rent was paid. As Mr Mursa was out, he asked his friend to pay the rent to the landlord when she called. He did not stay long and had vacated before the two people from the council visited. He thought 'Wojech' had subsequently moved back to Poland.
- 4) There was no charge on the key meter for room five so Mr Mursa ran an extension cable from the landing so he could plug a lamp in when he was there.
- 5) Mr Mursa confirmed that he remembered the people from the Council coming to the property in August 2021. They wanted to inspect his room but he told them that if they needed to inspect, they had to make an appointment. The same people returned to the house a few days later and he let them into his room while he waited in the garden. They were only in there for a few minutes and he did not see them again. Mr Mursa did not recall them asking questions about the house as they only said they needed to inspect his room. On 15th February 2022 he wrote to his landlord confirming that no one had been living in Room 5 at he used it for storage. He did not think at that time that it was important to tell the landlord that he had let his friend stay in the room for a short while.
- 6) Mr Mursa confirmed that he was still living at the property and that at present there were only two tenants in the house.

- 7) Mr Mursa attended the hearing to be cross examined on his witness statement and confirmed to the Respondent's Representative that he was using Room 5 for storage purposes at various times during 2019, 2020 and 2021 but was unable to provide exact dates. He confirmed that he used it to store items he purchased at online auctions but was unable to provide details of any account names although he stated that he used several online platforms.
- 8) The Tribunal questioned Mr Mursa regarding his relationship with the tenant referred to as 'Jech' or 'Wojech'. Mr Mursa confirmed that he had met him at a party in 2019 and that he needed somewhere to stay for his job. Mr Mursa did not know what or where the job was. He explained that he had not informed the Applicant beforehand and that when the Applicant found out she was not very happy. Mr Mursa could not say how long Room 5 was occupied by Wojech, but he thought it was 2 – 3 weeks.
- 9) The Respondent's Representative informed Mr Mursa that the Applicant had said that noone was let into Room 5 without permission. Mr Mursa did not offer any further explanation but confirmed that he usually paid rent by bank transfer and that he only paid the additional rent for Room 5 by cash on one occasion. He could not explain why the receipt did not have his name on it or why he had only paid rent once in respect of Room 5.
- 10) The Tribunal then questioned Mr Mursa regarding his use of Room 5 and were informed that he had used the room 'on and off' since 2019 during which time he had not paid any rent until he decided to inform the Applicant that he had allowed a friend to stay there. He now confirmed that he had only ever paid rent once which the Tribunal must conclude is the sum of £150.00 for which the receipt was found by Ms Johnston. This is at odds with the earlier submission that the rent was usually paid by bank transfer, had only been paid on one occasion in cash and had been paid regularly.

Witness Statement of Mr Duncan Zambezi

- 1) Mr Zambezi stated that he was a self-employed electrician and was employed to carry out the annual fire alarm safety check at the property by the Applicant.
 - 2) Mr Zambezi confirmed that he had visited the property on two occasions, once in 2020 and again in 2021 but had not visited so far during 2022. His job was to ensure the mains wired fire alarm system was working correctly. This involved inspecting every smoke and heat detector and to test the system.
 - 3) At the subject property there was a detector fitted in every room so he had to enter them all to carry out the safety check. Room 5 is a small room on the first floor which overlooks the street and on both of his visits there was no evidence of anyone living in it. The room contained a smoke alarm which he tested.
73. Mr Zambezi was unable to attend the hearing and could not therefore be cross examined.

FINAL SUBMISSIONS

74. The Applicant's Representative submitted that Mr Elliott had accepted that his client had no previous history of non-compliance and although reference had been made to another property this had no relevance to this case.
75. It was submitted that Room 5 was a box room and clearly not suitable for letting as a bed-sitting room. The test to be employed was that of 'beyond reasonable doubt'. Mr Sona had said that there were two tenants in Room 5 during the time he had lived at the property but they had not spoken to Mr Mursa who has submitted that he used the room for storage and for a friend to stay on a temporary basis.
76. In the submission of Mr Tacagni, Wojech could not be considered as an occupant under the Act and the property did not meet the prescribed description as not only must there be five occupants but they must all have a tenancy or licence to occupy. This was not the case in respect of Room 5 as Wojech was not a tenant; he had no tenancy agreement and was not a long-term occupier. It was therefore submitted that the Respondent had not proved beyond reasonable doubt that anyone was living in the property and certainly not since 1st October 2018. In the opinion of Mr Tacagni, the Respondent should have sought out other tenants as well as Mr Sona to provide confirmation of its submission regarding occupancy.
77. With regard to the circumstances of the Applicant it was submitted that she was a small landlord with some three properties. She made profits of approximately £15,000.00 per annum. When questioned by the Tribunal the Applicant's Representative submitted that he did not know if she had any other employment but suspected that this was her only source of income.
78. The Respondent's Representative submitted that the Tribunal had to look at the position on 11th August 2021 and that the evidence provided by the parties was not equal. In particular the Applicant had not asked Mr Sona if he was telling the truth and it was obvious from the evidence of Mr Mursa that he did not know when he started using Room 5 and the Applicant had not mentioned it in her evidence. Nor had she made any reference to challenging Mr Sona about the sub-letting of the room.
79. In the opinion of Mr Bates, Mr Mursa was making his evidence up as he went along. The Applicant had said she knew nothing about the use of Room 5 at the time of the Respondent's inspection on 11th August 2021 until several months later. Had she mentioned it at the outset it might have provided the basis of a defence.

SUBMISSIONS IN RESPECT OF QUANTUM

80. Mr Tacagni, on behalf of the Applicant submitted that the Tribunal should consider the severity of the matter, the culpability of the Applicant and the harm that had been inflicted or could potentially be inflicted on tenants.
81. The Notice of Intent had attached the level of harm as being very high. The level of harm arising from a failure to have an HMO licence had been determined using a policy that was principally formed to deal with harm arising from HSSRS hazards. It was submitted that matters to be dealt with under the HSSRS were completely different in terms of risks to the concerns posed by licensing offences. The consideration of risks stemming from a failure to licence in isolation cannot be

considered in the same category as risks which can lead to death or a requirement for intensive medical intervention.

82. The Respondent's Policy specified that the offence of failure to obtain an HMO licence was always high risk, regardless of any other factors. Therefore, a property which had numerous failings would not attract a higher penalty than a property which had few or none, such as the subject house. This was clearly unfair.
83. In the submission of the Applicant, the Respondent should look behind the 'tick boxes' and assess the actual level of harm. Although no documents have been presented in respect of quantum in the written statements, in the opinion of the Applicant, in this case we should be looking at the lower end of the scale as there has been no harm.
84. On the question of culpability, the Respondent had said that the failure to obtain a licence was a deliberate act and that in their opinion the offence had been ongoing over some three and a half years. In the submission of the Applicant there was no evidence of this and the Respondent had only seen what it assumed to be the offence on one day being 11th August 2021, although that was disputed by the Applicant.
85. It was further submitted that there was nothing in the bundle or in evidence given to show that the Applicant has acted deliberately and furthermore she had co-operated with the Respondent and arranged an inspection at the first opportunity.
86. With regard to the application fee of £900.00 for obtaining a licence the Applicant submitted that this should be disregarded as she would not have been able to obtain a licence in any event due to the small size of Room 5. Also, licence fees were normally paid in two stages so it was unfair to expect the whole of the fee to be paid as part of the penalty. On questioning by the Tribunal, the Respondent confirmed that the whole fee of £900.00 was payable when the application was initially submitted and was not accepted in two stages.
87. The Penalty charged of £29,817.00 was almost the maximum penalty permitted but this should be reserved for the most serious offenders and other situations where penalties of this level had been upheld involved cases such as fatal fires where there were no fire precautions and no licence. In the opinion of the applicant there were errors in the Respondent's Policy.
88. For the Respondent, Mr Bates submitted that the property had been subject to a Prohibition Order and was considered to be a high risk. Although the HSSRS had been referred to HMOs were different and it was not always about the standard of the property but was about the ability to obtain information to allow the Council to fulfil its regulatory functions.
89. In this case the Applicant had consistently lied to the Respondent and there was high culpability. In the opinion of the Respondent the evidence of Mr Mursa was not credible and there was a financial benefit of £900.00 by not applying for a licence. It was not realistic for the Applicant to rely on her own illegality to avoid payment of this sum.
90. In conclusion the Respondent submitted that the financial penalty imposed was proportionate to the illegality of the offence.

THE LAW

91. Paragraphs 1 to 10 of Schedule 13A to the Housing Act 2004 state as follows:

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.

The notice of intent must set out—

(a) the amount of the proposed financial penalty,

*the reasons for proposing to impose the financial penalty, and
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

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.

The final notice must set out—

(a) the amount of the financial penalty, the reasons for imposing the penalty, information about how to pay the penalty, the period for payment of the penalty, information about rights of appeal, and the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

(1) A local housing authority may at any time—

withdraw a notice of intent or final notice, or reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

the decision to impose the penalty, or

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—

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.

Section 263 of the Act states

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.

THE TRIBUNAL’S DETERMINATION

92. The Tribunal has considered this case based on the papers before it, the submissions of the parties and the witnesses who were examined at the hearing as far as detailed above. The Tribunal was disappointed that the Applicant was unable to be present but full consideration has been given to her witness statement although it is fair to say that the submissions of the parties and particularly the witnesses are often contradictory.

93. The Tribunal then considered the appeal in three parts:

- 1) Whether the Tribunal was satisfied, beyond reasonable doubt, that the Applicant’s conduct amounted to a “relevant housing offence” in respect of premises in England (see sections 249A (1) and (2) of the Housing Act 2004);
- 2) Whether the Local Housing Authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act); and/or
- 3) Whether the financial penalty was set at an appropriate level, having regard to any relevant factors, including:
 - a) the offender’s means;
 - b) the severity of the offence;
 - c) the culpability and track record of the offender;
 - d) the harm (if any) caused to a tenant of the premises;

- e) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
- f) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

94. Did the Applicant's conduct amount to a relevant housing offence?

95. It was not contested by the Applicant that she owned the Property.

96. In essence the evidence that the property was a licensable HMO comes down to the rent receipt for £150.00 found at the property, the statement provided by Mr Sona, the cable under the door/lamp in the room, the open window and cupboard and fridge on the landing. The Applicant has offered an explanation for all these matters and the Tribunal has exhaustively questioned the parties accordingly. Conversely Mr Mursa has provided conflicting information regarding the use/occupancy of Room 5.

97. The Tribunal is of the opinion that the witness evidence from Mr Sona points strongly towards the Applicant attempting to cover up the letting of Room 5 by removing the occupier. This was not challenged during the hearing and due to her absence, we could not put these points to her.

98. Mr Elliott provided in his statement a transcript of a text message sent from the Applicant to Mr Sona dated 11th August 2021 in which she asks him not to let anyone into the property apart from the tenant's own guests without making an appointment. Whilst the image quality of the exhibit is very poor the Tribunal have given substantial weight to this as Mr Elliott provided testimony during the hearing and was not challenged on this point. In the opinion of the Tribunal, sending this text is not consistent with the Applicant's narrative and points strongly towards a cover-up.

99. There is further evidence in Mr Elliott's statement concerning a text message he saw on Mr Mursa's phone from the Applicant in which she stated that the Council needed a warrant to enter the house. There is also Mr Elliott's phone call with the Applicant on 12th August 2021 where it is clear she is trying to control the situation by asking the Respondent to make an appointment with her before inspection. The Tribunal determined that there is no requirement for the local authority to seek the owner's permission to enter a property when investigating HMO offences (Section 239(7) of the Act).

100. The evidence provided by Mr Elliott that person's unknown had removed the cable under the door to Room 5 and that the window which was open on the Respondent's first visit and then closed on its return is circumstantial but, in the opinion of the Tribunal the rent receipt from 6th August 2021 clearly indicates a rental payment for Room 5. The rent receipt is in the name of 'Wojech' and the Tribunal is of the opinion that a rent receipt is more likely to be in the name of the person who has the liability to pay the rent rather than the person who simply handed it over (otherwise, what purpose does it serve?).

101. In the opinion of the Tribunal Mr Mursa's responses under cross examination were not credible in relation to the agreement he had reached around paying for Room 5 as storage space. The Tribunal does not understand why the additional amount would not simply be added to his rent which he confirmed he paid by electronic bank transfer. The Tribunal does not consider it likely that the Applicant would want to visit

the property once per month to take receipt of £150.00 in cash. Mr Mursa stated that he had been using the room since 2019 and that rent was agreed at £150.00 per month but he had only made payment for it once and then only when the Applicant had discovered he had allowed a friend to stay there. The Tribunal does not accept that the Applicant would have visited in 2019-2020 and not noticed that the room was in use.

102. Furthermore, Mr Mursa explained that when the Applicant noted that Wojech was staying in the room she got angry with him. In the opinion of the Tribunal if this was the case, she would have mentioned it in her statement as it could have provided a reasonable ground of defence rather than denying any knowledge of occupancy.
103. Critical to finding an offence is the HMO definition provided by S254 of the Act and most importantly whether the living accommodation is a person's only or main residence. Mr Mursa's evidence is critical in this respect. He stated that Wojech needed somewhere to stay because of his job. This implies that he had no other option and in the opinion of the Tribunal excludes the possibility that this was a temporary stay while he was visiting.
104. The Tribunal also agrees with Mr Bates when he says that the language in the email stating that *"the room is not going to be let"* indicates that it has been let in the past. Otherwise the Tribunal would have expected to see something along the lines of *"the room has never been let and I have no intention of letting it. It is only used by the occupier of Room 1 for additional storage"*.
105. The Tribunal is therefore satisfied beyond reasonable doubt that the alleged offence was committed and that the Applicant was the person in control of the property.
106. Whether the Local Housing Authority complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty?
107. There was no challenge by the Applicant in this element of the appeal and the Tribunal determines that the procedural requirements for the imposition of the Financial Penalty were satisfied.
108. Whether the financial penalty was set at an appropriate level?
109. The Respondent has a Matrix of Harm/Culpability and 'Fines' as follows:

<u>Culpability</u>	Deliberate	Reckless	Negligent	Low/No Culpability
<u>Harm</u>				
Very High	£27,500	£22,500	£17,500	£12,500
High	£25,000	£20,000	£15,000	£10,000
Medium	£20,000	£15,000	£10,000	£5,000
Low	£15,000	£10,000	£5,000	£2,500

110. It is clear to the Tribunal that in its Notice of Intent the Respondent was influenced by its conclusion that the property had been let as a licensable HMO since the regulations changed on 1st August 2018. However, the Tribunal determined that it could only be satisfied to the criminal standard that an offence occurred on 11th August 2021. The Tribunal considered that the evidence of Mr Sona, when considered in isolation was not strong enough to substantiate occupation before that date. The

Tribunal therefore determined that this had to reduce the level of harm because the evidence can only prove that the occupier of Room 5 was exposed to risks for one day.

111. In terms of the harm the Tribunal determined that it was necessary to narrow it down to the period for which it can be proved to a criminal standard that the offence was taking place. The Tribunal accepts that someone was in the room on 11th August 2021 (and almost certainly from 6th August 2021 given that this is the date on the rent receipt) but determines that there was only limited exposure to the risks.
112. The primary risk would be posed by the HHSRS hazard of “Crowding and Space”. Having considered the HHSRS Guidance the Tribunal determines that the impact of these risks would only manifest over a period of time (reference is made to psychological distress caused by inadequate space). The Tribunal determines that it is also fair to apply this logic to the issues around fire detection and means of escape. The offence is that of failing to licence so we cannot account for the other four occupiers as they could have resided there legally. The Tribunal considers that this would be different if a penalty had been imposed for the breaching of HMO management regulations. Account must also be had for the fact that the Respondent is unable to evidence any actual harm being caused. It is clear from the MHCLG policy guidance that the financial penalty provisions can be used to deal with situations of physical and mental harm.
113. With regard to the licence fee which the Applicant avoided paying, from its experience the Tribunal notes that many local authorities charge the fee in two stages; the first with the application and; the second prior to the granting of the licence. In this case Leicester City Council confirmed that they required the whole fee to be paid at the time of the application. The Tribunal accepts this submission which was not challenged by the Applicant.
114. The Tribunal determined that the Financial Penalty should be adjusted to take account of the aggravation caused by the Applicant’s concealment and her failure to take part in the PACE interview.
115. The Tribunal does not agree that the Respondent can charge costs for their investigation time. It is clear to the Tribunal that although the Government intended that the income from civil penalties should be used in housing enforcement activities, the legislation does not make any reference to being able to recharge costs for investigating and then serving notices. Local housing authorities can recharge for other enforcement notices but the provisions are clear in law. The Government guidance makes clear at 3.5 what factors local authorities are to account for in determining the penalty level. Their costs are not mentioned.
116. Having considered the Respondent’s policy the Tribunal determined that it needed to be extended. The Tribunal considered that it had been designed around harms associated with the HHSRS and in the opinion of the Tribunal does not cater well for licensing offences.
117. The main issue with the policy as it currently exists that it is not realistic to assume that a tenant is exposed to a risk simply because there is no licence in place. It is entirely possible that a property could in fact exceed the standards prescribed by licensing conditions but that the landlord simply failed to apply for a licence. The main threat posed by a landlord’s failure to licence is the undermining of the Council’s

regulatory activity and the undermining of legitimate landlord's businesses. However, the Tribunal determined that this could not be considered in the same category as serious category 1 hazards where there are substantial risks of an occupier being killed or injured. It is important to note that the Government guidance references "*harm or potential harm*" so there needs to be scope in any potential financial penalty to deal with situations where an occupier has come to some form of harm.

118. The Tribunal noted that one of the factors provided by the Government Guidance is the punishment of the offender and it makes clear that the penalty must have a real economic impact on the offender. In this case the Applicant only has three properties with an overall profit of some £15,000.00 per annum. Therefore, if a penalty of £29,817.00 is applied there is no scope for upward movement in circumstances where the offence was committed by a large landlord business making substantial profits. The Tribunal is of the opinion that the financial penalty as it stands is considerably above what would be required to cause real economic impact for a business of this scale.
119. The Tribunal also noted that another key aim of a civil penalty that the Government requires local authorities to account for, is to deter the offender from repeating the same offence. Again, the Tribunal determined that a penalty of £29,817.00 was considerably beyond what is required to achieve this, given the size of the business and the fact that a licence costs £900.00.
120. The final factor provided by the Government guidance is the removal of financial benefit as a result of offending. Again, the Tribunal determined that the penalty imposed by the Respondent goes beyond what is required to achieve this.
121. The Tribunal determined that the Applicant deliberately committed the act of not licensing the property. In her statement she admits that she is aware of HMO licensing. However, the Tribunal also determines that the Local Authority's Policy is too stringent when it comes to culpability. For example, in the case of a minor breach of licensing conditions a landlord could receive a £15,000.00 fine which the Tribunal considers cannot be correct or reasonable.
122. The Tribunal determined that although the Applicant did not attend the PACE interview it is not fair to say she did not take steps to assist the investigation. She provided information when requested and arranged for an inspection of the property. The Tribunal determined that although her motives were questionable, she did take steps to rectify the offence upon discovery.
123. In summary, the Tribunal entirely accepts that part of the purpose in imposing Financial Penalties is punitive; they should punish the offender to deter repetition and remove any financial benefit from failure to comply with statutory requirements whilst also protecting the tenant of the premises. It is an alternative to prosecution. It would however, seem wholly inappropriate if the level of financial penalties levied were substantially greater than the level of fine(s) that might reasonably be expected had the local housing authority opted for the alternative of prosecution. The Tribunal recognises that in putting in place the legislation permitting local housing authorities to levy civil penalties the Government was no doubt seeking to make those responsible for committing breaches of statutory housing requirements contribute towards the cost of enforcement.

124. However, the Tribunal would also express the view that local housing authority civil penalty notices should be carefully drafted and sufficiently flexible to allow penalties levied to properly reflect all the circumstances of a particular case. They have a proper place in the overall legislative framework aimed at dealing with unsatisfactory housing conditions and in drafting and reviewing them local housing authorities should bear in mind their prime purpose.
125. In this case the Tribunal is not persuaded by the Respondent's submission in respect of either the 'starting point' or the additional 'add on' amounts of the penalty. Neither is it persuaded that the amounts demanded are in any way reasonable or reflect the actual failures of the Applicant.
126. Further, it is evident to the Tribunal that the Applicant, whose only source of income appears to be derived from letting three properties does not have ready access to substantial funds and there is no indication that the property does not conform to the standard required, apart of course from the small size of Room 5 which is the whole point of these proceedings and has previously been dealt with, not least by the Prohibition Notice served by the Respondent.
127. The Tribunal also accepts that the Respondent invited the Applicant to attend a PACE interview which she did not attend. It would have been preferable if the Applicant had co-operated in attending an interview. However, there is no legal requirement for the Applicant to have attended. This is also the first offence the Applicant has committed although the Respondent did allude to a further similar offence having been committed on another property. However, no evidence was produced to the Tribunal to confirm this and the Respondent acknowledged that there were no issues with the property in the Council's records when they checked.
128. All these matters are relevant considerations which, in the Tribunal's view, the Local Authority should have taken into account in the exercise of its discretion in determining the amount of any Financial Penalty rather than simply following its Civil Enforcement Policy in a somewhat blinkered fashion without giving any consideration to the circumstances surrounding the offence and applying appropriate discretion.
129. It is not for the Tribunal to indicate the specific starting point for any offence but it is aware that some other City Authorities do have a significantly lower starting point.
130. The Tribunal has considered the matters listed above and determine that in this case, based upon the Local Authority's Matrix there is a 'Low Level of Harm' and that the level of Culpability was 'Deliberate'. This gives a starting point of £15,000.00 for the Financial Penalty. However, we reduce this by 30% as there was no evidence of a previous offence submitted but add on 10% due to the Applicant's acknowledgement that she was aware of HMO Regulations.
131. There is then the matter of the Applicant's circumstances and the deterrent effect of the penalty. The Applicant has a profit of approximately £15,000.00 per annum from the renting of three properties and as far as was submitted has no further employment or income. It is therefore the Tribunal's determination that the penalty be reduced by a further 60% accordingly.

132. The Applicant derived a financial gain in not applying for a licence and therefore not paying the licence fee. This was £900.00 and although the Tribunal was surprised that this had to be paid when the application was submitted rather than in two stages it determines that this should be added to the financial penalty. As previously determined the Tribunal disallows the Respondent's costs in the matter as detailed in the Notice of Intent.

133. The penalty is therefore reduced to £3,900.00 as follows:

Starting Point	£15,000.00
Less: 30% for no previous convictions	£4,500.00
60% to reflect personal circumstances	£9,000.00
Penalty	£1,500.00
Plus: Licence Fee	£900.00
10% to reflect Applicants knowledge of Regulations	£1,500.00
Financial Penalty	£3,900.00

DECISION

134. The Tribunal varies the Financial Penalty under paragraph 10(4) of Schedule 13A Housing Act 2004 to £3,900.00 (Three Thousand Nine Hundred Pounds).

APPEAL

135. 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).

Graham Freckelton FRICS (Chairman)
First-tier Tribunal (Property Chamber) (Residential Property)

Date: 1st August 2022