FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**BIR/00GL/HNA/2020/0022**
HMCTS Code	:	**V:CVPREMOTE**
Property	:	**20 Joanhurst Crescent, Shelton, Stoke on Trent ST1 4LA**
Applicant	:	**Saadia Jabeen Ibrahim**
Representative	:	**Tanveer Qureshi - Counsel**
Respondent	:	**Stoke on Trent City Council**
Representative	:	**Grant Reardon**
Type of application	:	**Appeal against a Financial Penalty Section 249A and Schedule 13A of the Housing Act 2004**
Tribunal members	:	**P Wilson BSc (Hons) LLB MRICS MCIEH CEnvH – Chair** **Judge T N Jackson** **V Ward BSc Hons FRICS – Regional Surveyor**
Date of decision	:	**26 March 2021**

DECISION

Covid-19 Pandemic: Remote Video Hearing

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

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

Decision

1. The Tribunal determines that the Final Notice dated 16 September 2020 imposed on the Applicant, Ms Saadia Jabeen Ibrahim, be cancelled.

Reasons for Decision

Introduction

2. By an Application, received by the Tribunal on 22 September 2020, Ms Saadia Jabeen Ibrahim ('the Applicant') applied to appeal against a decision to impose a financial penalty under section 249A and paragraph 10 of Schedule 13A to the Housing Act 2004 ('the Act'). The financial penalty had been imposed on her by Stoke on Trent City Council ('the Respondent') in respect of her failure to comply with an improvement notice served under sections 11 and 12 of the Housing Act 2004 on the 30 September 2019 in respect of the property known as 20 Joanhurst Crescent, Shelton, Stoke on Trent ST1 4LA ('the Property').

3. The Respondent had, on the 14 May 2020, issued to the Applicant a notice of their intention to impose a financial penalty ('the Notice of Intent') in respect of the improvement notice and, on 16 September 2020, the Respondent gave the Applicant a single Final Notice imposing a financial penalty of £5,000 in respect of the offence of failing to comply with the improvement notice served on the Property ('the Final Notice').

4. The Tribunal issued Directions on 28 September 2020. The Directions included confirmation that, because of the Covid-19 pandemic, an oral

hearing would be held via remote video conferencing and that the Tribunal would not be inspecting the Property.

5. In accordance with those Directions, the Tribunal received a statement and bundle of documents from the Respondent on 21st October 2020 and a statement and bundle of documents from the Applicant on 4 December 2020.

6. An oral hearing was held via Cloud Video Platform (CVP) on the 15 December 2020. At the start of the hearing, the Applicant was not present. Her husband, Mr Shazad Lookman Ibrahim attended the hearing as did her representative Mr Tanveer Qureshi of Counsel. Mr Grant Reardon (an Environmental Health Officer for the Respondent's Private Sector Housing Team) and Mr Tom Amblin-Lightowler (Enforcement manager for the Respondent's Private Sector Housing Team) attended the hearing on behalf of the Respondent.

7. The Respondent raised concern that that the Applicant herself was not present at the oral hearing. Mr Ibrahim contended that the Applicant had only very limited ability to understand and to speak English and that evidence he could give would reflect her views. Mr Qureshi stated that if there could be a brief adjournment the Applicant would be able to attend the oral hearing in person.

8. After an interval the Applicant appeared at the oral hearing and the hearing commenced. Mr Qureshi undertook to convey the meaning of the evidence given to the Applicant.

9. As is common practice in cases of this type, and with the agreement of both parties, the Respondent made their submissions first. The hearing proceeded to hear evidence from the Respondent with cross examination by Mr Qureshi and questioning from the Tribunal. The Applicant took no real part in the hearing and from direct questioning of her it became clear that, in the absence of professional translation (the need for which had not been communicated to the Tribunal beforehand), she had little understanding of the evidence given and what had transpired during the hearing so far.

10. The Tribunal put it to both parties that the almost complete lack of understanding by the Applicant meant it was wholly impossible for the Tribunal to decide the matter in accordance with its statutory obligation to do so fairly and justly and that it proposed to adjourn the matter to allow for a translator to attend. Furthermore, given the clear lack of understanding demonstrated by the Applicant, it would not be appropriate for the matter to be adjourned part heard. Neither party raised any objection to either proposal. The Tribunal decided that the matter be adjourned to a future date with the hearing to start afresh with a translator present.

11. Arrangements were made for an oral hearing to hear the matter afresh with translator present via Cloud Video Platform (CVP) on the 17 February

2021. The Applicant submitted additional documents on the 10 February 2021 including recent photographs, a credit check report for the Applicant and witness statements from the Tenant and a window supplier.

The Law

12. Under section 249A of the Act, a local housing authority may impose a financial penalty on a person if satisfied beyond reasonable doubt that the person's conduct amounts to a '*relevant housing offence*'. Section 249(A)(2) defines the relevant housing offences, which include a failure to comply with an improvement notice (Section 249(A)(2)(a)). The imposition of the penalty is an alternative to prosecution for a relevant housing offence.

13. Where an improvement notice becomes operative, the person on whom the notice was served commits an offence if that person fails to comply with it. Under section 30(4) of the Act, it is a defence that the person upon whom an improvement notice was served had a reasonable excuse for failure to comply with the said notice.

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

15. Paragraphs 1 to 6 of Schedule 13A to the Act set out the procedure for imposing financial penalties 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.

3 The notice of intent must set out—
(a) the amount of the proposed financial penalty,
(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4.

Right to make representations

4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.
(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given ("the period for representations").

Final Notice

5 After the end of the period for representations the local housing authority must—
(a) decide whether to impose a financial penalty on the person, and
(b) if it decides to impose a financial penalty, decide the amount of the penalty.

6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a "final notice") imposing that penalty."

As such, prior to imposing a financial penalty, the local housing authority must give an initial notice of intent and, following receipt of any representations, must decide whether to impose a financial penalty and the amount of that penalty prior to issuing a final notice.

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

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

17. The person upon whom a final notice is given may appeal to the First-tier Tribunal (Property Chamber), under paragraph 10 of Schedule 13A to the

Act, against the decision to impose the penalty or the amount of the penalty. The appeal is to be a rehearing of the local housing authority's decision but may be determined having regard to matters of which the authority was unaware. Paragraph 10(4) confirms that the Tribunal may confirm, vary or cancel the final notice.

The Property

18. No physical inspection was carried out by the Tribunal but information from the bundles provided by both parties, along with online street view information, shows that the Property is a two storey end terrace house with cavity walls under a hipped roof with plain tile covering. The Property occupies a sloping site and the ground floor entrance is significantly below pavement level and the property is approached via an extended flight of concrete steps with landings. The accommodation comprises two reception rooms and kitchen (the latter in a single storey rear addition) to the ground floor and two bedrooms and bathroom to the first floor. The Property was built probably during the interwar period

19. An official copy of the Land Registry register of title dated the 30 October 2013 show the registered proprietor of the freehold title to be Ms Saadia Jabeen Ibrahim. The register of title gives her address as 20 Joanhurst Crescent, Stoke on Trent ST1 4LA.

Hearing

20. A second oral hearing was held via Cloud Video Platform (CVP) on the 17 February 2021. The Applicant attended the hearing and was represented by Mr Tanveer Qureshi of Counsel. She was accompanied by her husband, Mr Shazad Lookman Ibrahim. Mr Grant Reardon (an Environmental Health Officer for the Respondent's Private Sector Housing Team) and Mr Tom Amblin-Lightowler (Enforcement manager for the Respondent's Private Sector Housing Team) attended the hearing on behalf of the Respondent. Mr Ahmed Farooq Butt attended as an interpreter to provide translation in the Applicant's first language of Urdu.

21. Mr Qureshi reminded Mr and Mrs Ibrahim that she must give evidence in her own right and that, whilst Mr Ibrahim could speak on his own behalf to respond to any questions asked of him, he could not respond on behalf of the Applicant nor should responses be discussed between them.

22. The evidence of the Applicant comprised the application dated the 22 September 2020 and supporting documents and exhibited 27 documents including a chronology of events.

23. The evidence of the Respondent comprised a witness statement dated the 19 October 2020 and exhibited 30 documents including a statement of reasons and copy photographs taken during inspections on the 26 July 2019, 19 September 2019 and 28 November 0219.

24. As is common practice in cases of this type, and with the agreement of both parties, the Respondent made their submissions first.

The Evidence and Submissions of the Respondent

25. Mr Reardon stated that a case relating to alleged disrepair was referred to him on the 24 July 2019. He contacted the tenant by telephone the same day and established that the main concern of the tenant related to the Property not retaining heat because of draughty windows. An inspection was arranged for the 26 July 2019. He further stated that he carried out a Land Registry search on the 24 July 2019 which showed the owner of the Property to be Saadia Jabeen Ibrahim of 20 Joanhurst Crescent, Stoke on Trent ST1 4LA. A search of council tax records on that day showed the responsible person for council tax to be Staffordshire Housing Solutions Ltd C/0 Homes 2 Let ("Homes 2 Let") of 48 Regent Road, Hanley, Stoke-on-Trent, ST1 3BU. Notices were served under section 239 of the 2004 Act on the owner, the tenant, Mr Roman Bogdan, and the person responsible for council tax advising of the intention to inspect the Property on the 26 July 2019.

26. Mr Reardon stated that the inspection identified the following deficiencies and referred to exhibited photographs:

    (i) Gap below bottom edge of rear external due to absence of storm guard/weather strip;
    (ii) Rotted/weathered timber frames with gaps between the edge of glazing and the frame in some cases;
    (iii) Wiring to the cooker unit poorly covered and protected;
    (iv) Controls to the cooker rings causing the electricity to trip off;
    (v) Double plug socket to the wall behind the cooker;
    (vi) Broken window pane to the window adjacent to the front entrance door and both top opening casement windows to the kitchen as well as the top opening casement window to the front ground floor reception room were incapable of being shut tightly enough to prevent draughts and heat loss.

27. On the 26 July 2019 he stated he used the Housing Health and Safety Rating System (HHSRS) to assess the hazards arising from the deficiencies found. He exhibited the assessments which included one category 1 hazard (excess cold) and seven category 2 hazards (entry by intruders, falling on level surfaces, falling on stairs etc, fire, damp & mould growth and falling between levels).

28. The Respondent sent a letter on the 31 July 2019 advising of the deficiencies and the associated hazards. This included a schedule of works to eliminate or effectively reduce the hazards and requested that the works should be completed by the 13 September 2019. The letter was sent to the Applicant at the Land Registry address of 20 Joanhurst Crescent with copies to Homes 2 Let at 48-50 Regent Road, Hanley, Stoke-On-Trent ST1 3BU.

29. Mr Reardon stated that he received a telephone call from Mr Bogdan, the tenant, advising that remedial works were not progressing. As he did not have contact details other than the contact address for the person given as the owner on the Land Registry title document he rang the telephone number given for lettings on the Homes 2 Let website with a view to establishing why repairs were not progressing. He was advised that the person dealing with the Property was not available.

30. The Respondent states that there was a further telephone call from Mr Bogdan on the 13 September 2019 in which he advised that he was disappointed with the works carried out which had not prevented continuing heat loss through draughts from the windows. Accordingly, arrangements were made for a second inspection on the 19 September 2019 with the Applicant, Mr Bogdan and Homes 2 Let receiving statutory notice of the inspection in accordance with section 239 of the 2004 Act.

31. During the inspection on the 19 September 2019, the Respondent states that most deficiencies remained with the exception of the fixing of balustrades to the main (internal) staircase and the fitting of panels to the rear external door and partially to the frame of the rear kitchen window. There remained a visible gap to the lower corner of the kitchen window adjacent to the rear external door, some ill fitting opening lights and some rotted woodwork to windows, the wiring behind the cooker remained inadequately protected, no handrail to the external flight of steps and there remained a plug socket on the wall directly behind the cooker. Mr Reardon exhibited photographs to show the conditions found. There remained in the opinion of the Respondent a category 1 hazard and accordingly a mandatory duty to take action.

32. An improvement notice was served on 30 September 2019 on the Applicant at the contact address on the Land Registry title document with copies on Homes 2 Let, the mortgagee and Mr Bogdan, the tenant. Mr Reardon stated that the improvement notice became operative on the 28 October 2019 and the work set out in the five schedules was to be completed by the 25 November 2019. There was one category 1 hazard (excess cold) and four category 2 hazards (damp & mould growth, electrical hazard, fire and falling on stairs etc).

33. The improvement notice was served on the Applicant at the 20 Joanhurst Crescent address by first class post. A copy was sent by first class post to Homes 2 Let at 48-50 Regent Road with further copies posted to the mortgagee and Mr Bogdan the tenant. A Certificate of Notice Service document was exhibited in the Respondent's bundle.

34. After service of notices to give the required notice of entry, a further inspection was carried out on the 28 November 2019. This showed that all of the works remained outstanding. Mr Reardon exhibited photographs to evidence the conditions found.

35. Mr Reardon stated that on the 14 January 2020, he sent letters to the Applicant at both 20 Joanhurst Crescent and at the offices of Homes 2 Let

at 48-50 Regent Road, Hanley, Stoke-On-Trent ST1 3BU inviting her to a formal interview to be conducted under caution in accordance with the provisions of the Police and Criminal Evidence Act 1984 and associated Codes of Practice on the 28 January 2020. The letter advised that the Applicant was the person allegedly responsible for an offence under section 30(1) of the 2004 Act and the interview was to provide an opportunity for an explanation to be given.

36. Mr Reardon stated that Mr Shazad Lookman Ibrahim from Homes 2 Let Ltd/Staffordshire Housing Solutions contacted him by telephone on 21 January 2020 and advised that he was the agent for the property. Mr Ibrahim was advised that he could not attend the interview as he was not the person responsible for the alleged offence. The Respondent states that Mr Ibrahim said the Applicant could not attend on that date and asked that an alternative date on a Wednesday or Thursday at 9.45 am be given. A further letter was sent inviting the Applicant to attend a PACE interview under caution for Thursday 30 January 2020 at 09:45am. Mr Reardon stated that the Applicant did not attend with no explanation being given and no further contact was received from anyone connected with the Property until the 21 May 2020.

37. Mr Reardon states that on the 19 May 2020 a Notice of Intent to issue a Financial Penalty was sent by first class post to the Applicant at 20 Joanhurst Crescent with a copy of the Notice of Intent also sent to Homes 2 Let at 48-50 Regent Road. The Notice of Intent indicated that the intended Financial Penalty would be £5,000 and included the matrix (Charging Table) used for determining the value of such penalties. The sum chosen reflected the fact that the Respondent considered this to be a first offence and there were no other factors which would warrant the imposition of a premium under the matrix. The Notice of Intent of enclosed a form for the Applicant to make representations within 28 days of the date of the Notice of Intent.

38. Mr Reardon stated that he received an email from Adam Butler, Administrator at Homes 2 Let on the 21 May 2020 requesting a copy of the original schedule of work and copies of all documents sent to Homes 2 Let. In response, the Respondent sent a copy of the improvement notice and accompanying cover letter sent to Homes 2 Let on the 24 September 2019 along with the original informal schedule of work and cover letter sent to Homes 2 Let on the 2 August 2019.

39. Mr Reardon enquired as to whether copies of any other specific documents were required; in response he was asked for copies of documents and correspondence between the Applicant and himself. He replied by advising that numerous documents had been sent to Homes 2 Let; this was met by a further request for copies of all documents sent to Homes 2 Let and the Applicant as a matter of urgency. In this email correspondence, Homes 2 Let referred to Ms Ibrahim as "the landlord". A further email from Mr Reardon on the 22 May 2020 listed all documents sent and requested which specific documents were required. Again a

response from Homes 2 Let sought all documents and then all documents were sent.

40. On the 27 May 2020 Mr Reardon states a further email was received from Mr Butler requesting an extension of the time to make representations due to copies of documentation being received on 22 May 2020 and because Mr Ibrahim was self isolating and suffering from ill health. Mr Reardon replied requesting further information as to why an extension was required on behalf of the Applicant, Ms Ibrahim not Mr Ibrahim. This led to further email correspondence in which Homes 2 Let advised that the office had not been operating because of Mr Ibrahim's absence from the office because of self isolation and Mr Reardon again requesting why this meant an extension was required for the Applicant, Ms Ibrahim.

41. A further email from Homes 2 Let on the 29 May 2020 reiterated that the office had not been operating for several weeks for the previously stated reasons. Mr Reardon replied by email the same day to say that an extension could not be granted as the self isolation of Mr Ibrahim would not affect the ability of the Applicant to respond, and furthermore because it was unclear why arrangements could not be put in place for documents and information to be shared with Mr Ibrahim if he was representing the Applicant. He pointed out that there had been no direct contact with the Applicant. In an email the same day, Homes 2 Let advised that the documents had been sent to their solicitor, Mr Nathan Cook who would be making further representations in due course. Further time was required because of limited resources because of the pandemic. Mr Reardon replied saying that no extension could be given because all necessary documents had been sent to the home address of the Applicant before lockdown and therefore should have been retrieved by her. Mr Reardon then sent a further email asking that further contacts be made with the Private Sector Housing Enforcement Manager, Mr Tom Amblin-Lightowler. Homes 2 Let responded with an email by advising that future contact should be made through their solicitor.

42. In an email of the 1 June 2020, Homes 2 Let advised that they still wished the timescale to make representations to be extended and also that the work has been completed as evidenced by an attached statement by the tenant expressing satisfaction with the property condition also explaining that the delay was due to lack of access towards the end of August and in September 2019. The email pointed out that the documents had not been received by the Applicant as they had been sent to the wrong address (the tenanted address not the landlord's address).

43. On 2 June 2020 Mr Reardon stated that he had received an email from Adam Butler at Homes 2 Let advising that an order had been processed for the windows to be replaced in October to November 2019 which was when the tenant was expected to move out, but this did not progress due to the tenant deciding to stay at the property. Mr Reardon stated that he replied to this requesting to be advised of the contact address of the Applicant and was duly advised of the home address of the Applicant on

the 3 June 2020 (33 Greylag Gate, Keele, Newcastle Under Lyme, ST5 2GP).

44. Mr Reardon received an email on the 8 June 2020 from Adam Butler confirming that they intended to dispute the financial penalty through their solicitor and further that the solicitor, Mr Cook, was furloughed at that time.

45. Mr Reardon carried out a second Land Registry search on the 12 June 2020 and noted that the entries in the title document proprietorship register were unchanged.

46. Mr Reardon stated that on the 23 June 2020 he received an email from Adam Butler asking for an update and confirmation that the Notice of Intent was being withdrawn.

47. Mr Reardon stated that on the 23 July 2020 he received an email from Mr Ibrahim of Homes 2 Let addressed to Mr Amblin-Lightowler and himself with a number of attachments including a word document outlining the chronology of the case and the 18 PDF attachments which included emails between Homes 2 Let and the Respondent relating to the case and documents sent to Homes 2 Let and to 20 Joanhurst Crescent. The email expressed concern about what Mr Ibrahim perceived as an additional level of focus on Homes 2 Let and himself. The email expressed concern that the documentation relating to the schedule of work and the intention to issue a financial penalty was sent to the wrong address. The email stated that there was no instruction of legal representation at that point in order to minimise costs but if the matter were to proceed to formal notification and the council subsequently withdrew, if legal representation had been instructed then costs would be sought. He said his health had been poor since September 2019 and referred to a letter from his GP which was included in the attachments.

48. Mr Reardon stated that he served a Final Financial Penalty Notice on Ms Saadia Jabeen Ibrahim of 20 Joanhurst Crescent on the 16 September 2020. He sent copies of the notice to 48/50 Regent Road, Hanley, Stoke on Trent City ST1 3BU and to 33 Greylag Gate, Keele, Newcastle Under Lyme, ST5 2GP.

49. Mr Reardon further stated that on the 17 September 2020 Homes 2 Let forwarded an email which they had received from a company called K2 Windows and Doors on 17 September 2020. The email states that the company visited on 9 October 2019 to take measurements of the windows but were denied access.

50. Mr Amblin-Lightowler stated that the Respondent was obliged under the provisions of the Housing Act 2004 to take reasonable steps to identify the person on whom a statutory notice should be served. Here, a search had been made of the Land Registry to identify the owner and of council tax records to identify the person responsible for paying council tax. These enquires had shown the relevant addresses to be 20 Joanhurst Crescent

and 48/50 Regent Road, Hanley, Stoke on Trent City. It was not until the 3 June 2020 that the Respondent became aware of any other correspondence address.

51. Prior to that, there had been no other communication with the Applicant. Based on that, correspondence went to the address the Respondent was reasonably aware of and this met the requirements of the 2004 Act. It is the responsibility of the owner of a property to ensure that correspondence details are updated. In addition, any evidence of the works was from the agent not the owner. The Respondent had accepted submissions from Homes 2 Let as to what had been done as there had been no communication from the Applicant. The Respondent was unaware of the direct relationship between the Applicant and Mr Ibrahim. The Respondent was entitled to rely on the address given in the proprietorship register of the Land Registry title document for the purposes of service.

52. With regard to the amount of the penalty, Mr Amblin-Lightowler said £5,000 was the starting point for a first offence according to the Respondent's charging matrix. No premiums were applied for multiple hazards or for potential harm to the occupier. There was no evidence the Applicant had a large property portfolio, no evidence of a previous record of similar offences and no evidence of high culpability so again there was no reason to apply a premium. As no evidence in respect of income had been submitted, there was no reason to reduce the financial penalty; the matrix provided for reduction by 50% with a low income. The Applicant had provided income information in the documents submitted on the 20 February 2021 and in the light of this the Respondent stated that they would have applied a 50% reduction.

53. Other than the possible reduction for low income, there is no discretion in the policy for determining financial penalties to reduce the starting amount below £5,000.

The Evidence and Submissions of the Applicant

54. Mr Qureshi submitted that a contention of the Applicant was that the documentation including the informal schedule of works, the improvement notice itself, the Notice of Intent to impose a financial penalty and the Final Notice of Financial Penalty had all been served at the tenanted Property address and not the address of the Applicant and this had disadvantaged her. Furthermore, she had a reasonable excuse for failing to comply with the improvement notice in that the tenant had denied access for works to be carried out and also because she had relied on her husband as her agent to deal with the management of the Property and he had failed to do so effectively.

55. The Applicant gave direct oral evidence with all questions and her responses being translated. In response to questions from Mr Qureshi, she stated that the Property had been bought in her name in 2011 but she

had never lived there (it had always been tenanted) and she had no other involvement with the Property (she had not visited it since it had been acquired). Her involvement with Homes 2 Let was because the proprietor was her husband. It was entirely his responsibility to manage and look after the Property.

56. The Applicant confirmed that her address was 33 Greylag Gate, Keele, Newcastle Under Lyme, ST5 2GP and that she had lived there for six or seven years. Prior to that, she had lived at 42 Pitgreen Lane, Newcastle Under Lyme. She stated that she had not received the correspondence from the Respondent but did accept that as her husband was proprietor of Homes 2 Let correspondence sent there should have been seen by her, but she could not read English.

57. Mr Ibrahim had told her that works needed to be done but he was ill with very high blood pressure and the people living in the house wouldn't cooperate. She couldn't remember the exact date but in August or September 2019 her husband was trying to mend the windows.

58. She said she did not attend the PACE interview as her husband was ill. She emphasised several times that Mr Ibrahim was responsible for dealing with the Property. she said she knew he was capable of doing the work and trusted him. She said she received the rent but it was paid to her husband and he paid the bills.

59. In his evidence, Mr Ibrahim said that he recalled receiving the improvement notice in September 2019 but couldn't be sure as to correspondence in July 2019. He said that he recalled Mr Bogdan the tenant bringing the list of works to him. He stated his first discussion with his wife, the Applicant, was when they were prevented from carrying out the works to the windows. He stated that no information in the name of his wife had been received at the office. Mr Bogdan had brought in to his office the information relating to the proposed financial penalty and it was an open document; there was no envelope.

60. He stated that it was the tenant's denial of access that had prevented work to the windows; he had finally allowed access around six or seven weeks ago. Some repairs had been done to the windows by contracting maintenance tradesmen used by the company. He could not confirm which of the conflicting dates given in the evidence including emails from the window supply company were the correct dates. He said invoices for the maintenance work done had not been included in the bundle as it had not come to mind to do this. The tenant had allowed access for some internal works including to the windows but not for the replacements.

61. Mr Ibrahim stated that it was May 2020 when he first advised the Respondent of his wife's home address.

62. On behalf of his client, Mr Qureshi said it was accepted that there was a prima facie case an offence had been committed; works had not been completed to the required standard in the time stipulated by the

improvement notice. Nonetheless, for the Applicant to be liable for the financial penalty imposed, it was necessary for the Respondent to have followed relevant legal requirements.

63. The primary submission on behalf of the Applicant was that procedures set out in the 2004 Act had not been followed, in particular requirements set out in section 246 of the Act.

64. Mr Qureshi stated that section 246(2) requires a local housing authority to take reasonable steps to identify the person on whom a document should be served where there is a duty on the authority to do so by virtue of any provision under Parts 1 – 4 of the Act. Section 246(5) further provides that, if it is not practicable after reasonable enquiry to ascertain the name or address of that person, then the document may be served in accordance with section 246(6). That subsection provides that a person is correctly served in accordance with section 246(5) where:

    (a) the document is addressed to him by describing his connection with the premises (naming them), and

    (b) delivering the document to some person on the premises or, if there is no person on the premises to whom it can be delivered, by fixing it, or a copy of it, to some conspicuous part of the premises.

65. Mr Qureshi contended that the Respondent had not made reasonable enquiries in this case. He referred to the case of *Oldham v Tanna [2017] EWCA Civ 50* which states that an obligation to make reasonable enquiries in terms of identifying a person goes no further than to search the proprietorship register to ascertain the address of the registered proprietor. He contended that *Oldham v Tanna* was related to very specific facts and was not applicable to the circumstances in this case.

66. He contended that it was clear from all the circumstances that the Applicant was not resident at the Property and invited the Tribunal to make a finding of fact in this regard. The Respondent was content to rely purely on the information from the Land Registry but they were acting in bad faith doing so. Furthermore, they had failed to make it clear that documentation was addressed to the Applicant in her capacity as owner.

67. With regard to the amount of any penalty, Mr Qureshi submitted that a local authority policy should provide for discretion with the starting point.

68. Turning to the question of whether there was liability for a criminal offence, Mr Qureshi submitted that two arguments for the Applicant having a defence of reasonable excuse were:

    (a) The Applicant had delegated responsibility for the Property entirely to her agent, Homes 2 Let, and her agent had failed to keep her informed of the Respondent's concerns and documentation sent in respect of the Property

(b) There was no suggestion from the Respondent that the denial of access by the tenant had not occurred.

Tribunal Deliberations

69. When considering an appeal against a financial penalty, it is usual for a Tribunal to consider three key issues:

    (i) Has the local housing authority followed the correct procedures to impose a penalty?

    (ii) Has the relevant housing offence been proved to the relevant standard of proof?

    (iii) Is the amount of the penalty appropriate in the circumstances?

70. It must be said at the outset that the Tribunal found the evidence of both the Applicant and Mr Ibrahim to be unreliable. Evidence advanced by both was unconvincing and answers to questions from both the Respondent and the Tribunal were on occasions vague and on occasions evasive. Mr Qureshi acknowledged in his submissions that the Tribunal might feel frustrated by the lack of engagement by the Applicant and by the manner in which the Property had been managed.

71. It was clear from the evidence that, whilst the Applicant might hold title to the Property, it reality she had no dealings with it and indeed had not visited it since its purchase. She also had no knowledge of the involvement of the Respondent probably until August/September 2019 and then in outline only. In reality, in the view of the Tribunal, Mr Ibrahim had de facto control and management of the Property to a degree which exceeded his stated role as the agent of the Applicant.

72. Notwithstanding this, it is the responsibility of the Tribunal to make a decision on the basis of the facts found and the application of the relevant law.

Has the local housing authority followed the correct procedures to impose a penalty?

73. The Tribunal is satisfied that, other than the issue of service, there was no evidence produced at the hearing which would demonstrate that the Respondent had not followed the correct procedures to impose a penalty. However, the Applicant submitted that the service on the Applicant of the original improvement notice, the Notice of Intent to impose a financial penalty and the Final Notice along with all associated correspondence at the Property which was clearly tenanted both failed to comply with statutory requirements and also had materially disadvantaged the Applicant in that she had been unaware of the action being taken by the Respondent. Against this, the Respondent submitted that they had taken all reasonable steps to identify the Applicant, they were entitled to rely on

the address given on the proprietorship register, that copies had been served on her agent and that all documentation and notices had been properly served.

74. The Applicant in particular argued that specific requirements in section 246 of the 2004 Act had not been followed and, further, that the decision in *Oldham v Tanna* in respect of what amounted to 'reasonable enquiries' was not applicable to the circumstances of this case.

75. Section 246 of the 2004 Act deals with the service of documents and is as follows:

246 Service of documents

> *(1) Subsection (2) applies where the local housing authority is, by virtue of any provision of Parts 1 to 4 or this Part, under a duty to serve a document on a person who, to the knowledge of the authority, is—*
>
> > *(a) a person having control of premises,*
> >
> > *(b) a person managing premises, or*
> >
> > *(c) a person having an estate or interest in premises,*
>
> *or a person who (but for an interim or final management order under Chapter 1 of Part 4) would fall within paragraph (a) or (b).*
>
> *(2) The local housing authority must take reasonable steps to identify the person or persons falling within the description in that provision.*
>
> *(3) A person having an estate or interest in premises may for the purposes of any provision to which subsections (1) and (2) apply give notice to the local housing authority of his interest in the premises.*
>
> *(4) The local housing authority must enter a notice under subsection (3) in its records.*
>
> *(5) A document required or authorised by any of Parts 1 to 4 or this Part to be served on a person as—*
>
> > *(a) a person having control of premises,*
> >
> > *(b) a person managing premises,*
> >
> > *(c) a person having an estate or interest in premises, or*
> >
> > *(d) a person who (but for an interim or final management order under Chapter 1 of Part 4) would fall within paragraph (a) or (b),*
>
> *may, if it is not practicable after reasonable enquiry to ascertain the name or address of that person, be served in accordance with subsection (6).*
>
> *(6) A person having such a connection with any premises as is mentioned in subsection (5)(a) to (d) is served in accordance with this subsection if—*
>
> > *(a) the document is addressed to him by describing his connection with the premises (naming them), and*
> >
> > *(b) delivering the document to some person on the premises or, if there is no person on the premises to whom it can be delivered, by fixing it, or a copy of it, to some conspicuous part of the premises.*

(7) Subsection (1)(c) or (5)(c) applies whether the provision requiring or authorising service of the document refers in terms to a person having an estate or interest in premises or instead refers to a class of person having such an estate or interest (such as owners, lessees or mortgagees).

(8) Where under any provision of Parts 1 to 4 or this Part a document is to be served on—

(a) the person having control of premises,

(b) the person managing premises, or

(c) the owner of premises,

and more than one person comes within the description in the provision, the document may be served on more than one of those persons.

(9) Section 233 of the Local Government Act 1972 (c. 70) (service of notices by local authorities) applies in relation to the service of documents for any purposes of this Act by the authorities mentioned in section 261(2)(d) and (e) of this Act as if they were local authorities within the meaning of section 233.

(10) In this section—

(a) references to a person managing premises include references to a person authorised to permit persons to occupy premises; and

(b) references to serving include references to similar expressions (such as giving or sending).

(11) In this section—

"document" includes anything in writing;

"premises" means premises however defined.

76. The power to impose a financial penalty as an alternative to prosecution and the procedure to be followed are set out in Section 249A and Schedule 13A of the 2004 act. Both were introduced by the Housing and Planning Act 2016. Neither contain any explicit provisions as to service and accordingly it must be taken that the provisions of section 233 of the Local Government Act 1972 apply to the service of notices.

77. Section 233(2) provides that "Any such document may be given to or served on the person in question either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address." Section 233(4) provides that for the purposes of service by post, "...the proper address of any person to or on whom a document is to be given or served shall be his last known address...". Section 233(5) provides that "if the person to be given or served with any document mentioned in subsection (1) above has specified an address within the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this section and section [233] of the Interpretation Act [1978] as his proper address.

78. In *Oldham v Tanna*, the appellants, Oldham Metropolitan Borough Council, had served a statutory notice under section 215 of the Town and Country Planning Act 1990 in respect of an empty property, a dilapidated and derelict former nursing home. Initial correspondence to the address in Stockport of the owner, Mr Tanna, given in the proprietorship register of the Land Registry title was returned marked "Not here!". The appellant then purported to serve the notice under section 215 by both delivering the notice by hand at the Land Registry address by placing through the letterbox when no response after knocking the door and also affixing a second copy in a conspicuous place on the empty property. There was a further service at a second address in Stockport which had been given to the appellant's planning officer by their credit control department. It later transpired that he was not living at the Land Registry address when the notice was served (and his family had also moved from there) and also that he had never lived at the second address.

79. The trial judge considered the meaning of 'last known address' for the purposes of section 233 of the Local Government Act 1972 and also the meaning of 'last known place of abode' for the purposes of section 329 of the Town and Country Planning Act 1990. The trial judge reasoned that the word "known" in the two phrases "last known address" and "last known place of abode" includes both actual knowledge and constructive knowledge: *R (Tull) v Camberwell Green Magistrates Court* [2004] EWHC 2780 (Admin), [2004] RA 31 at [18]; *Collier v Williams* [2006] EWCA Civ 20, [2006] 1 WLR 1945 at [71]. Therefore, a former address will only be the "last known" address if the server of the notice has taken reasonable steps to find out what the intended recipient's current address is. What he would have found out on making reasonable inquiries will be knowledge imputed to him. This reasoning was not challenged. The view of the judge was that what the planning officer "ought to have done was to have contacted all Oldham's departments to see if they had contact details for Mr Tanna. He held that the notice had not been validly served.

80. The Court of Appeal upheld the appeal by Oldham Metropolitan Borough Council. The court examined in particular the status of information given in the proprietorship register of a registered title having regard to the Land Registration Rules (now the Land Registration Rules 2003) and the effect of that for the purposes of section 233. These require a proprietor to give an address for service "... to which all notices and other communications to him by the registrar may be sent..." and this must be a postal address. The court emphasised that the address to be given is an address for service and, as a Land Registry registered title is now a public document and, as such, as indicated a relevant Law Commission report, is "... a source of public information about land that can be used for many purposes unconnected with conveyancing".

81. Accordingly, the court held that "... as a general rule, unless there is a statutory requirement to the contrary, in a case in which

i) a person (in this case the local planning authority rather than the council taken as a whole) wishes to serve notice relating to a particular property on the owner of that property, and

ii) title to that property is registered at HM Land Registry

that person's obligation to make reasonable inquiries goes no further than to search the proprietorship register to ascertain the address of the registered proprietor. It is the responsibility of the registered proprietor to keep his address up to date. If the person serving the notice has actually been given a more recent address than that shown in the proprietorship register as the address or place of abode of the intended recipient of the notice, then notice should be served at that address also."

82. The Applicant submitted that *Oldham v Tanna* is case specific and the circumstances here can be distinguished; the Respondent maintains that they satisfied statutory requirements by serving on the address given on the proprietorship register of the registered title.

83. The Tribunal is of the view that there is a material difference in the facts of this case:

i) *Oldham v Tanna* related to an empty property where the establishing of ownership can frequently be problematic and in the absence of information from an occupant or other sources the proprietorship register may be the only direct information as to ownership;

ii) The Property was occupied by a tenant and that in itself gives clear constructive notice that the Applicant was not resident there;

iii) When investigating a complaint about housing conditions, it is usual practice for a local housing authority to enquire as to whom rent is paid and prior to serving a statutory notice to serve either a notice under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 or section 235 of the 2004 Act to obtain details of those with an interest in the land including their name and address. Indeed, clarity on such details is necessary in order to establish the person/body having control/management of a property. The services of such notices is standard practice and is not onerous; it does not amount to an authority having to 'trawl' through numerous council departments for information.

84. As indicated above, section 246(2) of the 2004 Act imposes a specific obligation on local housing authorities to "take reasonable steps to identify the person or persons…' where they are under a duty by virtues on any provision in Parts 1 – 4 of the Act to serve a document on a person having control of or managing or having an interest in premises. It may also be noted that the Act does make provision to assist local housing authorities in making such enquiries in the power to obtain information under section 235 and also in section 237 which allows information

obtained from local authority benefits and council tax records to be used when exercising powers under Parts 1 – 4 of the Act.

85. There is no such explicit obligation in section 233 of the Local Government Act 1972 but in *Collier v Williams* the Court of Appeal had to consider the meaning of 'last known residence' in the Civil Procedure Rules relating to service of notices. The court decided that in those rules the use of the concept of 'knowledge' was deliberate and that the trial judge "... was right to hold that service was not effected on the defendant's last known residence for the simple reason that he had never resided..." at that address. Section 233 refers to "last known address" not "residence" but the ordinary and natural meaning of 'address', and dictionary definition, is the property where a person lives. It was clear from the evidence that the Applicant had never lived at the Property and the Tribunal makes a finding of fact to this effect.

86. The court went on to discuss further the meaning of 'last known'. "The draftsman of the rules deliberately chose the word 'known'. In our view, knowledge in this context refers to the serving party's actual knowledge or what might be called his constructive knowledge, ie knowledge which he could have acquired exercising reasonable diligence. We arrive at this conclusion on the basis of what we understand the words to mean." The Respondent made two inspections of the Property and spoke a number of times to the tenant and the Tribunal is of the view that the Respondent will have had at the minimum constructive notice that the Applicant did not live at the Property. Service on the Applicant relying simply on the proprietorship register of the title document was not, in the view of the Tribunal, exercising reasonable diligence.

87. In the view of the Tribunal, simply relying on the proprietorship register to establish the name and address of a property owner when about to exercise powers under Parts 1 – 4 of the Housing Act 2004 in respect of a tenanted property does not amount to taking 'reasonable steps'. Questions may be asked of the tenant/agent and it is a straightforward matter to serve notices under either section 16 of the Local Government (Miscellaneous Provisions) Act 1976 or indeed section 235 of the Act itself to obtain necessary information if not otherwise available.

88. Accordingly, the Tribunal finds that the Respondent failed to take the reasonable steps required under section 246(2) to identify the person and address on whom to serve the improvement notice and also that the Respondent failed to serve the Notice of Intent and the Final Penalty Notice at the last known address of the Applicant (albeit that a copy was served on the actual address of the Applicant in the case of the Final Notice. The failure to comply with the service requirements stipulated in section 246 means that the Improvement Notice is invalid and accordingly, following the principle set in *Isaac Odeniran v Southend on Sea Borough Council* [2013] EWHC 3888 (Admin) failure to comply with an invalid improvement notice does not constitute a relevant housing offence. In any event, the Notice of Intent and Final Penalty Notice were also not validly served. Accordingly, the Final Penalty Notice is cancelled.

89. The Tribunal regrets the need to make this decision as there is clear evidence that the Property was in poor condition, that the Applicant and her husband as agent/manager had failed to respond effectively to the deficiencies at the Property and the action by the Respondent and enforcement action was indeed warranted.

Has the relevant housing offence been proved to the relevant standard of proof?

90. As the Tribunal has determined that the Final Notice be cancelled, it is not necessary for the Tribunal to make a decision on this issue but the Tribunal confirms that, having regard to all the evidence, it was of the view that a relevant housing offence had been committed. The Tribunal does note, however, that the Respondent accepted that they had assessed the hazard of excess cold without having inspected the roof space to determine whether to not insulation material was present and, if so, to what depth. Assessment of any hazard should have regard to all potential deficiencies and with excess cold this should include levels of insulation.

Is the amount of the penalty appropriate in the circumstances?

91. Again, because of the conclusions reached in respect of the validity of the notices, it is not necessary for the Tribunal to give a decision on this point but nonetheless comments will be made. Following the Respondent's policy on financial penalties, the starting point for a first offence is £5,000, which is a significant sum and, in reality, probably appreciably higher than a fine which might be handed down by a magistrates court for more minor housing offences. Premiums may be added if certain criteria are met. The only option for reduction (by £2,500) is if the person on whom the financial penalty is being imposed demonstrates that they are of limited means.

92. The Respondent accepted that, other than the application of fixed premiums and the deduction of the one set amount for low income, there is no allowance for discretion in the policy. The Respondent further accepted that, having regard to the to the evidence in this case, that the reduction for limited means would have been applied and indicated that the Tribunal should vary the amount of the financial penalty to £2,500 if they were minded to confirm the Final Notice. The Applicant had submitted that the Respondent's policy on financial penalties/charging matrix should allow for discretion on the starting point. The Tribunal agrees that any review of the policy/matrix should make provision for discretion.

93. Had the financial penalty been confirmed, having regard to all the circumstances, the Tribunal is of the view that a penalty of £2,500 would not have been disproportionate.

Would the Applicant have had a reasonable excuse?

94. The Applicant had argued that that the Applicant had a reasonable excuse firstly in that she had delegated responsibility for management of the Property entirely to her agent and her agent had failed to keep her informed of the Respondent's concerns and documentation sent in respect of the Property and secondly because of denial of access by the tenant to replace the windows had occurred.

95. Again, it is not necessary for the Tribunal to make a decision but it is of the view that neither contention would have succeeded. The first contention would not have succeeded because it is a well established principle of agency law that instructing an agent does not in ordinary circumstances absolve a principal of responsibility for the actions or lack of necessary action by an agent. The Tribunal does not consider that the fact that agent and landlord here were husband and wife assists the Applicant.

96. The second contention would not have succeeded because it was not supported by the conflicting evidence and more particularly regarding dates, the Applicant had not communicated this issue to the Respondent at the time, the Applicant appeared not to have considered the legal options open to a landlord to gain access to carry out necessary work and, in any event, there were items of work on the improvement notice other than the full repair or replacement of windows which had not been completed.

Decision

97. The Tribunal determines that the Final Notice dated 16 September 2020 imposed on the Applicant, Ms Saadia Jabeen Ibrahim, be cancelled.

Appeal Provisions

98. 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).

P J Wilson

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Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).