



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

Case Reference : **MAN/OOCG/HNB/2019 /0003 to 0010**

Property : **Flat 1, 3, 4 & 5, 648; Flat 2 & 4, 656; 654a and 650b, Abbeydale Road, Sheffield, S7 2BB**

Appellant : **Nigel Boyd Egginton and Jenny Carole Egginton**

Represented by : **Alfred Weiss, Counsel and Schofield Sweeney LLP, solicitors.**

Respondent : **Sheffield City Council**

Represented by : **Ellie Staniforth and Katherine Ferguson, Sheffield City Council legal department**

Type of Application : **Appeal Against a Financial Penalty, section 249 A, section 95 (1) and Paragraph 10 of Schedule 13 A of The Housing Act 2004.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Ms. A. M. Ramshaw, BSc, MRICS.**

Date of Determination : **12 July 2019**

Date of Decision : **31 July 2019**

DECISION

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Application and Background

1. Nigel Boyd Egginton and Jenny Carole Egginton "the Appellants" were, at all times relevant to this case, the owners of 8 flats on Abbeydale Road, Sheffield, flat 1, 3, 4 & 5, 648; flat 2 & 4, 656; 654a and 650b, Abbeydale Road, Sheffield, S7 2BB "the properties". By eight applications dated 13 March 2019, "the Appellants" appeal against the issue of 8 Civil Penalties, one in relation to each flat, of £4,000 by "the Respondent", Sheffield City Council, under section 249 A of The Housing Act 2004, "the Act". All these appeals are against the level of the penalty only. "The Appellants" also own an additional 8 flats on Abbeydale Road.
2. In June 2018 "the Respondent" approved a selective licence scheme designated under section 80 of "the Act" for London Road, Abbeydale Road and Chesterfield Road, Sheffield. The scheme requires all landlords renting out properties within this area to be licensed to do this, commencing 1 November 2018.
3. The scheme was given wide publicity, notices being placed in the Sheffield Star and Sheffield Telegraph news papers on six days between 5 July 2018 and 13 September 2018. Landlords were also contacted by letters, sent on various dates, informing them of their responsibilities. Public consultations were held. Failure to licence a property in this area after 1 November 2018 can lead to prosecution or a civil penalty.
4. Directions were issued on 26 April 2019, all 8 appeals have at all times proceeded as one case.
5. The Tribunal did not inspect the eight properties involved in this case, there being no good reason to do so.
6. The appeals were heard together on 12 July 2019 at Sheffield Magistrates Court.

The Law

The Housing Act 2004

Section 249A Financial penalties for certain housing offences in England

(1)The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(2) In this section “relevant housing offence” means an offence under—

(a) section 30 (failure to comply with improvement notice),

(b) section 72 (licensing of HMOs),

(c) section 95 (licensing of houses under Part 3),

(d) section 139(7) (failure to comply with overcrowding notice), or

(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

Section 95 Offences in relation to licensing of houses under this Part

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and

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

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

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

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

(b) for failing to comply with the condition,

as the case may be.

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

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this

section the person may not be convicted of an offence under this section in respect of the conduct.

(7) For the purposes of subsection (3) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

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

(b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are—

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

(b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

Paragraph 10 of schedule 13A

10(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

(a) the decision to impose the penalty, or

(b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

(a) is to be a re-hearing of the local housing authority’s decision, but

(b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Written Submissions

The Appellants

7. The Appellants' case is contained within a bundle of 164 pages in length and is too lengthy to set out in full here. Summarised, the Appellants accept that they let out these eight flats without the required licenses from 1 November 2018, applying for the licenses on 4 December 2018.
8. The Appellants accept that they both went to a consultation meeting at the Abbeydale Picture House, Abbeydale Road, Sheffield on 10 January 2018, where the scheme was discussed.
9. The Appellants accept that they received various letters informing them about the scheme and both Applicants agree that these letters were dealt with by Jenny Carole Egginton. Letters were received on or about, 22 November 2017, 17 January 2018, 1 August 2018 and 17 September 2018.
10. Jenny Carole Egginton accepts that as between her and her husband, she alone was responsible for the day to day management of these eight flats.
11. The Appellants agree that on 9 March 2018 they separated from each other and that divorce proceedings commenced thereafter. Both Appellants agree that the divorce was acrimonious and very stressful. In addition to emotional turmoil the couple had to divide a substantial joint estate, part of which has resulted on Nigel Boyd Egginton now being sole owner of "the properties".
12. Both Appellants agree that on 1 November 2018, when selective licensing came into force for "the properties" they were not licensed.
13. Jenny Carole Egginton accepts that on 14 November 2018 she received a phone call from Mr Tomlinson, Senior Private Housing Standards Officer of Sheffield City Council. Jenny Carole Egginton accepts that the unlicensed status of "the properties" was discussed, but there is a dispute as to what was actually said during this telephone call.
14. The Appellants' accept they committed the offence of failing to licence these eight flats, contrary to section 95 of the Housing Act 2004. The

Appellants' accept that Notices of Intent to Impose a Financial Penalty, dated 3 December 2018 were sent to them, indicating an intent to impose a financial penalty of £5, 000 per flat. The Appellants' accept the Respondent's decision to impose a Civil Penalty upon them. Nigel Boyd Egginton contends that it was receipt of this notice that put him on notice that the flats had not been licensed, he believing that his wife had done this. It is common ground that Appellants' separately replied to this notice setting out the circumstances and mitigation upon which they sought to rely.

15. On 5 December 2018 Nigel Boyd Egginton emailed and telephoned Mr Tomlinson. There was a discussion about the unlicensed status of "the properties". There is a dispute as to exactly what was said.
16. The Appellants' contend that they, through the actions of Nigel Boyd Egginton, submitted applications for licences for all eight flats to the Respondent on 4 January 2019.
17. The Appellants' accept that Notices of a Financial Penalty of £4,000 per flat, dated 15 February 2019 were received by them. The appeal is against the level of this penalty. The Appellants' contend that the Respondent was wrong to place this offence in the medium category of offending. The Appellants' submit that this fails to take account of the circumstances in which these offences were committed, which should have resulted in the low category being selected. Further to that the Appellants' submit that there are substantial mitigating circumstances that should have reduced the penalty to £500 per flat.
18. The relevant parts of this bundle will be referred to, briefly, by the Tribunal in the Determination of the case. The Tribunal decided to let the witness statements of the Appellants' stand as their evidence in chief.

The Respondent

19. The Respondent's case is contained within a bundle of 321 pages and is too long to deal with here. The Tribunal decided to let the witness statement of James Tomlinson, Case Officer and Senior Private Housing Standards Officer and the statements of tenants of "the properties"(pages 147 to 150 of this bundle) stand as their evidence in chief. The relevant parts of this bundle will be dealt with, briefly, in the Determination of the case.

The Hearing

20. The hearing at Sheffield Magistrates Court commenced at about 10 am on 12 July 2019. Ellie Staniforth and Katherine Ferguson, Sheffield City Council Legal Department, Mr James Tomlinson and Peter Ramsay, Legal and Policy Officer, attending on behalf of the Respondent. Both

Appellants attending, represented by Counsel, Mr Weiss and accompanied by Ms Lorrie Bray, sister of Jenny Egginton

Preliminary Points

21. The Respondent has sought to serve two items of evidence during the last couple of days, well outside the time period for doing so as set down in Directions and therefore in breach of those Directions. The Appellants' object to the admissibility of this evidence pursuant to rule 18 (6)(b)(i) of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 (S. I. 2013/1169) "the Rules". This rule permits the Tribunal, in appropriate circumstances, to exclude evidence that has been served outside the time permitted for service in a Direction. Mr Weiss, on behalf of the Appellants, could not demonstrate that admission of this evidence would prejudice the Appellants.
22. The first set of evidence contains contemporaneous notes of the two telephone calls that are in issue from 14 November 2018 and 5 December 2018 involving Mr Tomlinson. The Respondent accepts that these were served 20 days late, this was due to an oversight. The Respondent submits that the notes, recorded at the end of each telephone call by Mr Tomlinson will be helpful to all concerned in determination of what was said.
23. The second item of evidence is authorisation for Peter Ramsey to sign the two notices involved in this case.
24. The Tribunal retired to consider these two issues and determined that both will be admitted, announcing this decision.
25. In relation to the contemporaneous notes of the two telephone calls, the Tribunal determines that these are nearly contemporaneous records of the telephone calls that go directly to two important issues in the case that will have to be determined by the Tribunal. Admission of them will not cause prejudice to the Appellants. The overriding principle of ensuring that there is a fair and just hearing (rule 3 of "the Rules") requires that these notes be admitted in evidence.
26. In relation to the authorisation for Peter Ramsey to sign the two notices involved in this case. The Tribunal notes that Mr Ramsey is present in the Tribunal as a potential witness for the Respondent. There is no issue taken by the Appellants' as to the validity of either notice, only to the level of the penalty. It is accepted that there is no prejudice to the Appellants in the Respondent relying on this evidence. The overriding principle of ensuring that there is a fair and just hearing (rule 3 of "the Rules") requires that this authority to act be admitted in evidence.

27. The Appellants made it clear that they do not in any way challenge the Respondent's policy as set out at page 26 to 30 of the Respondent's bundle. At page 10 of the Appellants' bundle they set out 10 mitigating factors that the Respondent should have had regard to.
28. The Respondent has published a Civil Penalties Appendix (Respondent's bundle, page 171 to 179). This gives detail as to how the Respondent will calculate the level of a Civil Penalty (the matrix). Step 1. The Respondent will assess the culpability and track record of the offender and the level of harm, or potential harm, to the occupiers. The Respondent's employees assessed the culpability as medium and harm as low (Respondent's bundle, page 176). As a result those employees chose to assess the level of the offence as being medium, giving a starting point for the Financial Penalty as £5,000 per flat.
29. Step two of the Civil Penalties annex requires the Respondent to take account of mitigating and aggravating features. Mitigating features are recorded as "Claims to be going through a divorce" and "no previous offences" Aggravating features as "Clear and long standing knowledge of the scheme and deadline" and "Phone call to Mrs Egginton on 14 November 2018, to remind her to apply, informed me she would not be applying". The employees of the Respondent continued to assess the appropriate Financial Penalty as £5,000.
30. Step three of the Civil Penalties annex requires the Respondent to make any final adjustments to make sure that the level is fair and proportionate but in all circumstances act as punishment, a deterrent and removes any benefit of the offence. The Step three factors box is blank, suggesting that the employees of the Respondent determined that there was nothing relevant at this stage and the determination remains £5,000.
31. The Respondent then takes into account representations made by the offenders and there is recorded "Representations received and considered from both Mr and Mrs Egginton". At this stage a reduction of £1,000 is made to the Financial Penalty for each flat, to £4,000. This section gives no detail as to what those representations were, or how the reduction was calculated. Mr Tomlinson for the Respondent assured the Tribunal that this is the correct way of calculating the reduction, to take an overall view, rather than putting a figure on each relevant consideration and then adding them together.
32. The remainder of the annex gives non- exhaustive guidance as to what to assess in each step and what kind of facts to take into account. Paragraph 12 (Respondent's bundle, page 179) requires the Respondent to ensure that the offender has not made any financial benefit from his offending that has not been taken from him as a result of the penalty. Mr Tomlinson agreed

- that there was no financial benefit in this case, save for the possibility of a small amount of bank interest on the application fees.
33. Mr Tomlinson dealt with the phone call on 14 November 2018 to Jenny Carole Egginton. He made this call because he wanted to get the Freeholder of "the properties" to licence them. He made the contemporaneous note immediately after he put the phone down by typing the information into an information system. The note reads, "...Discussed selective licensing with her. Said she cannot apply as they are going through a divorce. Informed her that we would still require licensing of any rented properties. She was argumentative and said would not apply. Advised her to apply. To monitor."
 34. Mr Tomlinson suggested that the Respondent's employees (of which he was one of three) who set the level of the Financial Penalty had taken account of the fact that there are 16 flats on Abbeydale Road owned by these Appellants and that the Appellants could have faced a financial penalty in relation to all 16 flats. He stated that by January or February 2019 the Appellants' had submitted tenancy agreements for these flats. This would have proven that all were tenanted at the time that they were required to be licensed.
 35. Mr Weiss raised an objection that evidence on behalf of the Respondent was straying from admitted offences to matters that were not admitted and had not been proceeded with by the Respondent. He submitted that if any questions were to be asked of his clients with regard to such matters he would have to ask that the Appellants be reminded of their right not to answer questions that might incriminate them. He asked the Tribunal to limit the case against the Appellants to that which is admitted.
 36. The Tribunal conferred on the bench and decided that the evidential position of the other 8 flats now referred to was not fully covered in the papers before it. That in any consideration of establishing facts beyond reasonable doubt, the evidence must be clear. Further, the overriding objective to ensure that that there is a fair and just hearing requires that evidence be kept to the issues that are properly before the Tribunal, rather than seeking to extend them in this way. The Tribunal directed that the case be kept to the eight admitted offences that are subject to this appeal. As such it was wrong of the Respondent's employees to determine that this was an aggravating feature. The existence of 8 other flats is in the view of the Tribunal irrelevant to the Financial Penalty imposed because in any event it is clear that in owning 8 flats, these Appellants are experienced professional landlords.
 37. Mr Tomlinson dealt with the phone call with Nigel Boyd Egginton on 5 December 2018. He considered written evidence suggesting that he had stated that Mr Egginton had a further month in which to apply for

- licences. He denied this stating that the Notice of Intent to Impose a Financial Penalty had already been sent. Two emails are attached to this note one of which is from Mr Egginton to Mr Tomlinson which expresses horror at being in this situation and an intention to resolve it.
38. Mr Tomlinson stated that the decision making group had taken totality of the Financial Penalty into account but had decided that £4,000 per flat making a penalty of £32,000, was proportionate.
 39. Under cross examination Mr Tomlinson stated that he had been told about the divorce. He did not accept or reject this fact because he had no proof that it was correct, he had taken it in good faith. He had noted it. He agreed that during the telephone conversation of 14 November 2018 he had advised Mrs Egginton to apply for licences. He accepted that he had given Mrs Egginton the impression that she had some time before she would be prosecuted or a civil penalty be imposed. Mr Tomlinson added that this time was in fact given, the Notice of Intent to Impose a Financial Penalty not being issued until 3 December 2018. Mr Tomlinson also agreed that Mrs Egginton had not been told that the extra time she was being allotted would expire on 3 December 2018.
 40. Turning to the emails and phone call with Mr Egginton on 5 December 2018. Mr Tomlinson stated that he had not attempted to contact Mr Egginton by telephone because he did not have his telephone number. He accepted that he could have contacted the estate agents acting as management agents for the couple, but he had not contacted them to ask for Mr Egginton's number. Mr Tomlinson accepted the proposition that if he had contacted Mr Egginton earlier, this Financial Penalty might have been avoided entirely.
 41. Mr Tomlinson was referred to a letter from Mr Egginton to Mr Tomlinson (pages 243 and 244 of the Respondent's bundle). In that letter the following is typed, "The applications will be with you as agreed by the 4 January 2019". Mr Tomlinson stated that he had no recollection of agreeing this date, but agreed that he had not replied to Mr Egginton to point out that this date had not been agreed.
 42. It was established that in addition to the Financial Penalty now subject to this appeal, Mr Egginton was being required to pay £1,500 per flat to licence them instead of £750 he would have been charged if the Appellants had not failed to licence them. Mr Tomlinson said that this would always happen in every such case of failure to licence "as sure as night follows day".
 43. In answer to questions from the Tribunal, on behalf of the Respondent the following evidence was given. This is a five year scheme and the objective is to improve the condition of the rental properties on this arterial route.

Conditions are frequently placed upon licences that will have this effect, together with training that is being offered to landlords.

44. The potential witness, Peter Ramsay could not be called because the Respondent had not served a witness statement from him. The third person present when decisions were made on behalf of the Respondent, deciding the level of the Financial Penalty had not provided a witness statement and was not in attendance.
45. Both Appellants were called to be cross examined.

The Deliberations

46. The Tribunal determines that a selective licensing scheme for an area including "the properties" has been established by the Respondent and that between 1 November 2018 and 3 December 2018 the Appellants required a license for each flat, issued by "the Respondent" to permit them to rent out "the properties"(Respondent's bundle, pages 3 to 6 and 252 to 254).
47. The Tribunal considers the dates referred to in the Final Notice To Issue A Civil Penalty (Respondent's bundle, page 254), being, between 1 November 2018 and 3 December 2018 and upon the evidence of the Respondent and the admissions of the Appellants the Tribunal determines that it is satisfied beyond any reasonable doubt that during this period the Appellants rented out eight flats "the properties" when required to have licences to do so and that they did not have licences, committing eight offences under section 95 of "the Act".
48. The Tribunal approves of the Respondent's decision to issue a Financial Penalty, rather than prosecute these first offenders for this conduct. The Tribunal considers the Respondent's Policy (Respondent's bundle, pages 151 to 170) and Appendix 1 (Respondent's bundle, pages 171 to 179). This establishes a policy and matrix that is not challenged by the Appellants and serves as a reasonable approach as to how to quantify a Financial Penalty, complying with the Department for Communities and Local Governments, Civil Penalties Under The Housing And Planning act 2016 : Guidance for Local Authorities.
49. The Tribunal notes that the Respondent's employees utilised a Civil Penalties Determination Record for each of the eight flats (Respondent's bundle, pages 180 to 187), recording the assessment of the level that the Respondent set the Civil Penalties at.
50. The Tribunal notes that in this process the Respondent issued a Notice of Intent to Issue a Financial Penalty on 3 December 2018 and then took account of some of the representations made by the Appellants. The

Respondent issued Final Notices of a Financial Penalty on 18 February 2019, setting the penalty at £4,000 per flat.

51. The Tribunal considers the facts that are in issue. First, the phone call of 14 November 2018. The Tribunal having considered all the evidence referred to above determines that Mr Tomlinson upon his own acceptance had given Mrs Egginton the impression that she had some time before she would be prosecuted or a civil penalty be imposed. Mr Tomlinson added that this time was in fact given, the Notice of Intent to Impose a Financial Penalty not being issued until 3 December 2018. Mr Tomlinson also agreed that Mrs Egginton had not been told that the extra time she was being allotted would expire on that date. The Tribunal takes this into account in deciding how culpable the Appellants are, they having been informed by the Respondent's Case Officer that time was being allowed to them, without giving any warning as to when that time would end.
52. The communications of 5 December 2018, by email and telephone between Mr Egginton and Mr Tomlinson. The Tribunal determines that it is clear from the email that Mr Egginton was expressing remorse and an intention to licence "the properties". The Tribunal determines that there was no statutory duty for Mr Tomlinson to telephone Mr Egginton, but the Tribunal bears in mind that Mr Tomlinson has accepted that he could have obtained Mr Egginton's telephone number from the estate agent acting as the Appellants' management/ letting agent. Further, Mr Tomlinson accepted that had he contacted Mr Egginton earlier their might not have been any Financial Penalty imposed. The Tribunal determines that it is fair and just (overriding objective, rule 3 of "the Rules") to take this into account in deciding culpability and in mitigation.
53. The Tribunal considers the letter sent by Mr Egginton to Mr Tomlinson (Respondent's bundle, page 244). In that letter the following is typed, "The applications will be with you as agreed by the 4 January 2019". Mr Tomlinson did not remember an agreement being made but accepted that he had done nothing to correct Mr Egginton's belief that there was such an agreement. The Tribunal determines that this letter, supported by the evidence of Mr Egginton and the lack of a response from Mr Tomlinson, establishes that there was such an agreement. The Tribunal determines that it is fair and just (overriding objective, rule 3 of "the Rules") to take this into account in deciding culpability and in mitigation.
54. The Tribunal now considers the Civil Penalties Determination Record (Respondent's bundle, page 180) and the matrix (Respondent's bundle, page 176 to 179). In particular the Tribunal has regard to the non-exhaustive definition of low culpability (Respondent's bundle, page 177). Bearing in mind the above determinations coupled with the facts that these offences were committed for a short period of time, corrected expeditiously by Mr Egginton, the Tribunal determines that these offences

- were committed with low culpability. The Tribunal determines that these landlords have a good track record, having been landlords for a substantial period of time without coming to the attention of the licensing authority. The Respondent has already decided that any harm was low. As a result the Tribunal determines that the correct decision at step 1 in a case of low culpability and low harm is £2,500 (Respondent's bundle, page 178).
55. The Tribunal now considers step 2 (Respondent's bundle, page 180), in which mitigating factors of which the Respondent was aware at this stage must be taken into account. The Tribunal having determined above that as a result of the interaction between the Case Officer and the Appellants there were already mitigating features in existence, these should have been taken into account. The record makes it clear that the divorce and good character were taken into account. The Case Officer was also aware that these landlords have a good track record, having been landlords for a substantial period of time without coming to the attention of the licensing authority and that there was no appreciable financial gain to the Appellants, who have in fact been required to pay an extra £750 to licence each flat because they were not licensed, amounting to a financial loss to the Appellants of £750 per flat. The Tribunal accepts the aggravating features as described on the record, but point out that the Tribunal has determined that there was more to the phone call of 14 November 2018 than is recorded on the record.
 56. The Tribunal notes that there was no deduction made at this stage and determines that the Respondent's employees were wrong in making that decision. There should have been a substantial deduction from the penalty.
 57. The Tribunal notes that at step 3 there is nothing recorded as relevant to the level of the penalty.
 58. The Tribunal notes that at "representations received and considered from Mr and Mrs Egginton" there is a deduction of £1,000. This is meant to reflect the mitigating factors not know about at step 2, but brought to the attention of the Case Officer by the Appellants. The Tribunal accepts the Case Officers approach to the determination of reductions from the Financial Penalty, in that it is better to consider the whole of the factors to be taken into account and decide on an appropriate deduction in the round, rather than deciding the deduction for each factor and adding them up.
 59. The Tribunal determines that taking all the above into account the appropriate reduction in the Financial Penalty, whether made partly at step 2 or not, should have been £1,500, making the fair and just Financial Penalty £1,000 per flat. There are 8 flats subject to this appeal so the total penalty to pay is £8,000.

The Decision

60. The Tribunal is satisfied beyond any reasonable doubt that "the property" did need to be licensed under "the Respondent's" Selective Licensing Scheme. The Tribunal is satisfied beyond any reasonable doubt that "the Appellants " have let out "the properties" without a licence between 1 November 2018 and 3 December 2018 and have therefore committed the offence as detailed on the Final Notice to Issue A Civil Penalty for each of the 8 flats in question.
61. The Tribunal is not satisfied that the Civil Penalty imposed has been set at the correct level. The Tribunal decides that the Civil Penalty is now set at £1,000 per flat, the Final Notice for each flat is varied accordingly.
62. Any party wishing to appeal against this decision has 28 days from the date that the decision is sent to the parties in which to deliver to the Tribunal an application for permission to appeal, stating the grounds for the appeal and giving particulars of such grounds.

Signed: Judge C. P. Tonge

Date: 31 July 2019