FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/38UE/HNA/2019/0006**
Property	**:**	**Tintern House, 37 High Street, Banbury, Oxon OX16 5ET**
Applicants	**:**	**Maria Carr**
Representative	**:**	**In person**
Respondent	**:**	**Cherwell District Council**
Representative	**:**	**Mr Tristan Salter of Counsel**
Type of Application	**:**	**Appeal against the imposition of a financial penalty, pursuant to s.249A and Schedule 13A of the Housing Act 2004**
Tribunal Members	**:**	**Tribunal Judge Evans** **Mrs S Redmond MRICS** **Tribunal Judge Dutton**
Date and venue	**:**	**Best Western Banbury House Hotel, Oxford Road, Banbury, OX16 9AH on 13 June 2019**
Date of Decision	**:**	**18 July 2019**

DECISION

DECISION

The Tribunal determines that the Appeal by the Applicant is partly successful, in that the Tribunal varies the financial penalty by reducing the amount imposed to the figure of £5,000.

INTRODUCTION

1. By an application dated 3rd April 2019 made under section 249A and Schedule 13A of the Housing Act 2004 ("the 2004 Act"), the Applicant appeals the imposition of a financial penalty of £12,500 imposed by the Respondent Council, the latter having been satisfied that the Applicant had committed an offence pursuant to section 234 of the 2004 Act, in so far as she had breached various regulations contained in the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Management Regulations"), arising from her management of Tintern House, 37 High Street, Banbury, Oxon OX16 5ET ("the Property"), on 18th June 2018.

2. On 4th April 2019 the Tribunal granted the Applicant an extension of time to bring her appeal. The Tribunal also gave directions towards this hearing. Prior to the hearing we were provided with, and we have considered, a bundle from the Applicant consisting of her application, her statement of case/statement, and various exhibits. We had also received and considered a paginated indexed bundle of evidence from the Respondent.

3. We inspected the subject Property before the hearing. Neither party attended, but access was given by a Mr Green on behalf of the Applicant. The Property is now fully refurbished, and we had access to the common parts, kitchens, bathrooms and one of the unlet bedrooms.

4. The Respondent's Counsel provided a skeleton argument in advance of the hearing, for which we express our gratitude.

BACKGROUND

5. The Applicant has been a property manager since 2014 in relation to the Property, amongst others.

6. On 26th March 2015 a HMO Licence was granted in respect of the Property, which comprises a 10 bedroom house on 4 floors in the centre of Banbury.

7. In November 2017 the then owner of the Property sold it to Chennai44 Limited ("the Landlord").

8. Shortly after that sale, the Applicant met with the sole director of the Landlord, Mr Jandhyala, when a decision was made to refurbish the Property.

9. On 12th January 2018 the Landlord applied for a HMO Licence to the Respondent in respect of the Property.

10. On or about 23rd January 2018 the Applicant sent a draft Schedule of Works for the refurbishment to the Landlord for approval. We have not seen a copy of that Schedule. We have seen an email from the Applicant detailing the bedroom rotations for the various occupants, and it was the Applicant's understanding that the bedrooms would be refurbished first, with common parts to follow.

11. The renovation of the Property began in February 2018, starting with Room 9.

12. On 19th February 2018 the Applicant informed the Respondent that works to the Property were going to be minor.

13. On 21st February 2018 the Applicant informed the Respondent that she was operating as a sole trader under the name Inspiration Properties, and not as a limited company.

14. On 23rd February 2018 the Respondent served notice that it proposed to grant a HMO Licence to the Landlord.

15. It would then appear that, on or about 20th March 2018, the Landlord informed the Applicant that works would be starting in the hallways on the very next day, which prompted the Applicant to inform Mr Jandhyala that such works were not part of the agreed Schedule of Works.

16. The Applicant further states that for the first time she became aware there was to be a second contractor working on the Property.

17. It would seem that on or about 26th March 2018 the Landlord informed the Applicant that works would be starting in the kitchens that morning.

18. On the evening of the same day, tenants made emergency calls to the Applicant concerning the fire alarm not silencing. It was found on inspection at 9.30pm to be contaminated with dust from the works. The Applicant alleges she called the Landlord to inform it of the issue, whereupon 20 battery smoke alarms were purchased and fitted.

19. On 27th March 2018, the Applicant concedes, there were complaints from 2 tenants about various issues: cabling from the kitchen running into the main hall, the fire doors being wedged open, dust, and a general lack of cleanliness on the part of the contractors. The Applicant alleges she told the Landlord of these complaints and emailed it on the subject the next day.

20. Further complaints were made by tenants on 29th March 2018, 31st March 2018, 3rd April 2018, and 12th April 2018, which complaints the Applicant passed onto the Landlord orally, according to her.

21. On 19th April 2018 the Respondent issued a final HMO Licence to the Landlord.

22. The Applicant states that she then arranged a house meeting with the tenants of the Property on 19th April 2018 which they regrettably cancelled.

23. The Applicant goes on to state that she telephoned the Landlord to express her disappointment with the renovation works, in May 2018. This prompted the Landlord to send an email to the Applicant terminating her management contract from 12th July 2018, although it would appear that this decision was revoked, such that at all material times the Applicant continued to act as manager of the Property.

24. On 8th June 2018 some of the tenants in occupation emailed the Respondent to make complaints. This led to an inspection by Carolyn Arnold, EHO for the Respondent, on 18th June 2018. It was an unannounced visit.

25. The state of the Property is detailed in paragraphs 5 to 16 of her first statement dated 5th December 2018. We have also had regard to photographs taken on the day.

26. In summary, she found:

(1) In the yard:
  (a) A skip containing a considerable amount of building waste;
  (b) Some doors;
  (c) Some packaging material stacked up against the fence;
  (d) Fire extinguishers;
  (e) A cement mixer;

(2) In the ground floor kitchen:
  (a) The dining area cluttered with building materials;
  (b) The floor very dirty, with ungrouted tiles;
  (c) Dusty work surfaces;
  (d) Some wood and a new radiator leant up against the wall;
  (e) No fire door from the kitchen to the hallway;
  (f) A cable across the floor;

(3) In the stairwell/lobby area:
  (a) A number of doors stacked up;
  (b) Building materials;
  (c) The steps to the basement cluttered with building material;
  (d) A ceiling lobby smoke alarm (battery operated) which appeared working, but which could not be tested owing to its height;
  (e) Fire alarm and emergency lighting near the front entrance door hanging off;
  (f) A glass fanlight over the front entrance door broken;
  (g) The fire alarm panel was displaying no indicator lights;
  (h) Wiring in holes in the floor and ceiling;
  (i) The corridor to the front entrance door was obstructed by plasterboard, coving etc.;
  (j) No floor covering, and dust and dirt generally;

(4) In Room 1, no fire alarm was present;

(5) On the first floor landing:
  (a) Building materials and equipment;
  (b) Trailing leads across the landing, running downstairs;
  (c) Emergency lighting and fire alarm hanging off;
  (d) A battery smoke alarm was beeping, indicating a low battery supply or a fault;

(e) Holes around the cables at a number of points;
(f) Holes through the ceiling;

(6) In Room 3 on the first floor (unoccupied), the door was not fitted with any self-closer, or intumescent strips or cold smoke seals;

(7) Second floor landing:
(a) Cluttered with building materials;
(b) Doors leaning up against the wall;
(c) Buckets containing building materials;
(d) Some flooring had been removed;
(e) Lighting and fire alarm hanging off;
(f) A working battery smoke alarm;

(8) Second floor kitchen unusable owing to refurbishment;

(9) Second floor bathroom in working order and newly refurbished;

(10) Room 9 had a rolled-up towel against the base of the door;

(11) No fire door at base of the stairs to the attic;

(12) Room 10 (attic) was unoccupied, with some floorboards lifted and some heating pipes exposed.

27. Ms Arnold was unable to access any rooms on the first floor bar Room 3, and all bedrooms on the second floor were also locked.

28. Following her inspection, Ms Arnold emailed the Landlord and copied in the Applicant, indicating (in brief) her concerns abut the state of the Property, and seeking in particular assurances as to when the fire alarm was to be put in working order.

29. On the next day the Landlord emailed Ms Arnold to state the Applicant would be in touch with her.

30. On 19th June 2018 the Applicant emailed Ms Arnold to indicate a new fire alarm system would be installed early the following week. She also indicated the fire door in the kitchen had been reinstated, items had been moved to the basement, and cleaning had taken place. This email attached some photographs to show the improved condition of the Property, albeit we have not seen them in evidence.

31. Ms Arnold re-inspected the Property on 27th June 2018.

32. On 28th June 2018 a risk assessment was produced and sent by the Applicant to Ms Arnold on the next day.

33. On 17th July 2018 Ms Arnold wrote to the Applicant and the Landlord outlining the alleged breaches of the Management Regulations.

34. Ms Arnold re-inspected on 19th July 2018 when she took statements from Daniela Stefanova (Room 5) and Carne Brion (Room 9).

35. On 25th July 2018 the Applicant sent to the Respondent some information required under the Local Government (Miscellaneous Provisions) Act, in which she admitted being "employed by the owner/Landlord to manage the tenants and the building".

36. Ms Arnold re-inspected on 7th September 2018. Many matters were outstanding.

37. On 19th October 2018 the Applicant was interviewed under caution by the Respondent, and gave a number of no comment answers, although she did submit a prepared statement dated 21st September 2018.

38. On 10th December 2018 the Respondent gave notice of its intention to issue a financial penalty to the Applicant, inviting representations by 8th January 2019. The proposed penalty was £14,500.

39. The Applicant had instructed solicitors, who made representations to the Respondent on 21st January 2019, which included an admission of one breach - of regulation 9(b) - namely inadequate arrangements had not been made for building materials and waste items to be disposed of.

40. On 4th March 2019 the Respondent made a decision to impose a financial penalty in the sum of £12,500, having given a further discount to the Applicant: it was considered that she had played a lesser involvement in the problems than at first thought.

41. On 16th April 2019 the Applicant offered to mediate this matter. Only 2 days later the Respondent indicated its view that the prospects of a settlement were remote. The parties, however, did agree to a meeting on 3rd May 2019, but no settlement was reached.

ISSUES

42. The issues were agreed at the start of the hearing to be those set out in the Tribunal's directions, namely:

    (1) Whether the tribunal is satisfied, beyond reasonable doubt, that the applicant's conduct amounts to a "relevant housing offence" in respect of the Property;

    (2) Whether the local housing authority has complied with all the necessary requirements and procedures relating to the imposition of the financial penalty;

    (3) Whether the financial penalty is set at an appropriate level having regard to all relevant factors.

HEARING

43. At the commencement of the hearing we reminded the Applicant that whilst she could not be prosecuted for any offences for which as financial penalty had been imposed, she could be prosecuted for other matters admitted by her or in respect of which we made findings of fact. She was reminded that she did not have to answer any question or make any statement which might tend to incriminate her, although the Tribunal might draw an adverse inference from her failure to answer. She indicated that she wished to proceed.

44. With the agreement of the parties, we heard the Respondent's evidence first, this being a rehearing of its decision to impose a financial penalty.

45. The Respondent called:

    (1) Carolyn Arnold, EHO;
    (2) Paul France, Tenancy Relations Officer;
    (3) Daniela Stefanova, former occupant of Room 5.

46. Ms Arnold confirmed her written statements dated 5th December 2018 and 23rd April 2019. She added orally that this was the Respondent's first imposition of a financial penalty, and that it had followed the policy of Oxford City Council. In cross-examination, she stated there was no legal requirement to inspect a property before the grant of a HMO; that the fact that the Respondent had not been back to inspect the Property since 2015 was a compliment to the Applicant's management, at least up to 2018. She stated she was not aware that any intelligent fire alarm system was required, but the Respondent had followed LACORS guidance. She stated she did not give advice to any tenants regarding access. She confirmed that on 18th June 2018 she could only see 3 alarms, albeit many rooms were locked. She agreed dust would interfere with smoke alarms if they were left in place during works.

47. In answer to questions from the Tribunal, she indicated the Respondent would be revising its financial penalty matrix; and that she could not give an explanation as to why the Respondent started in the mid-point of the various brackets. She explained that the Respondent had at first taken the view that it was a case of medium culpability/high harm, but when pressed about the fact that the Respondent had taken a later view that the Applicant's involvement was less than at first thought, she was prepared to concede that the matter could be categorised as low culpability/high harm.

48. Ms Arnold was nevertheless of the view that there was a high risk of harm, given the number of tenants and the intensity of the renovation works. When asked why a Prohibition Notice had not been served, if the risk of harm was high, Ms Arnold could not provide an explanation, except that the Respondent would have the onus to rehouse the occupants.

49. As to mitigating factors, she conceded there was good co-operation with the investigation, good character, and no previous findings of guilt or formal notices.

50. Mr France confirmed his written statement. His involvement as Tenancy Relations Officer was in this case centred on advice concerning tenant's questions over leaving their tenancies early. In cross-examination, he did not recall discussing access for works with any tenants, and said he was unaware access had allegedly been refused.

51. Ms Stefanova, formerly of Room 5, confirmed her written statement. In answer to questions, she denied being obstructive or refusing access.

52. The Applicant gave evidence according to the statement of case/witness statement, and was cross-examined by Counsel.

53. The Applicant did not dispute the state of the Property as found by Miss Arnold on 18th June 2018.

54. The Applicant also did not dispute that she was the manager of the Property, but did take issue with the degree of control she could have exercised. She clarified that she was in receipt of the room rents, and enjoyed a receipt of 7.5% of the same, albeit that at the time of the alleged offence, this amounted to only £300 to £350 per month.

55. The Applicant was invited to provide some indication of her means, but declined to do so.

THE LAW

56. The law applicable to this matter is set out in the appendix attached.

FINDINGS

57. We remind ourselves that we must be satisfied beyond reasonable doubt of the matters required to be proven, in particular that a relevant housing offence had been committed on 18th June 2018.

58. Firstly, we consider the Applicant was right to concede that she was a manager of a HMO for the purposes of s.263(3) of the 2004 Act and regulation 2(c) of the Management Regulations. Not only was she in receipt of the rents as agent for the Landlord, but also she was in a position to exercise management as a matter of fact, on a day-to-day basis.

59. Secondly, we find beyond reasonable doubt that there were breaches of the Management Regulations on 18th June 2018, for which there was no reasonable excuse, as follows:

    (1) Regulation 4(1)(a): the means of escape from fire was not kept free from obstruction, in so far as there were large building materials in various locations of the common parts;

    (2) Regulation 4(1)(b): the emergency lighting was not in good order or repair;

    (3) Regulation 4(2): the mains-wire fire alarm was not in working order, the substitute battery alarms in the common parts were not adequate in number, and one had a low battery or fault causing it to emit a sound. The fact that this smoke alarm was in a high location did not constitute a reasonable excuse;

(4) Regulation 4(4)(b): there was an electrical socket hanging from the wall in the first floor kitchen accessible to tenants;

(5) Regulation 7(1)(a): the common areas were dusty and dirty throughout;

(6) Regulation 7(1)(c): there were large building materials in various locations of the common parts;

(7) Regulation 7(4)(c): the rear yard contained an unacceptable amount of building materials and waste items;

(8) Regulation 9(b): adequate arrangements had not been made for the amount of building materials and waste items to be disposed of.

60. We are conscious that in any refurbishment there will be an element of disruption, dust, dirt and inconvenience. However, the state of the Property went far beyond what was acceptable, particularly given 6-7 tenants were still in occupation. This contrasts dramatically with the state of the Property upon our inspection.

61. The reason for this sorry state of affairs lies, in the Tribunal's view, in the decisions the Applicant made. Even assuming, in her favour, that the Landlord introduced further works going beyond that which was originally scheduled, by March 2018 she was in a position to insist that her principal (the Landlord) either provide her a risk assessment and new schedule of works to enable her to manage the Property and the tenants' movements appropriately, or else walk away from her management agreement. She did neither. Indeed, at one point, she was even seeking to introduce new tenants into an unacceptable environment.

62. We reject the Applicant's contention that matters were outside of her control. Her ability to take at least a number of steps on 19th June 2018 indicates she had sufficient control over the contractors and the environment.

63. We reject the Applicant's suggestion that Ms Stefanova refused access to enable works to be done. The Applicant could provide no documentary evidence showing a request for access for specific works to Room 5 had been made and refused. Neither was Ms Stefanova obliged to move to any room without good reason. We found Ms Stefanova to be credible when cross-examined on this point. We similarly reject the argument that Mr France advised Ms Stefanova not to give access, and accept his answers on this issue.

64. We further reject the written criticism (although not advanced orally) that Ms Arnold did not operate in a fair manner, was conflicted, and attempted to cover up alleged failings.

65. The Tribunal therefore confirms the Respondent Council's decision to impose a penalty in the final notice. Several offences had been committed, and it was in the public interest to impose such a financial penalty.

66. However, we consider the financial penalty should be varied and reduced:

67. In so doing, we have had regard to the DCLG Guidance for Local Authorities issued under paragraph 12 of Schedule 13A to the 2004 Act. DCLG Guidance encourages each Local Authority to develop their own policy for determining the appropriate level of penalty. The maximum amount (£30,000) should be reserved for the worse offenders. The amount should reflect the severity of the offence as well as taking into account the landlord's previous record of offending, if any. Relevant factors include:

    - Punishment of the offender
    - Deter the offender from repeating the offence
    - Deter others from committing similar offences
    - Remove any financial benefit the offender may have obtained as a result of committing the offence
    - Severity of the offence
    - Culpability and track record of the offender
    - The harm caused to the tenant

68. As to the above, the first 3 bullet points speak for themselves. As to the 4th, the Applicant gained little or no benefit from committing the offences.

69. As to severity of the offence, we have had regard to the fact that the Respondent's imposition of a penalty was based on failings on one particular day, not over a period. Having said that, we cannot ignore the fact that there were multiple breaches on 18th June 2018, and that although the Applicant would appear to have taken some immediate steps, certain matters (including a permanent fire alarm) took a number of months to rectify. We remind ourselves that these were not found serious enough to warrant the Respondent taking other enforcement action under the 2004 Act.

70. The Applicant does not have a track record for offences. But in terms of culpability, we reflect on our findings in paragraphs 59 to 64 above. We balance this against the fact that the Landlord was absent and gave little assistance, it seems, to the Applicant, who struggled at times to control the contractors, and faced the imposition of new contractors by the Landlord. This was not a case of deliberate breaches, as the Respondent fairly accepts.

71. We conclude this was a case of low culpability, albeit at the upper end of the scale.

72. No harm was actually caused to any tenant or contractor, although we have to quantify the risk of the same happening. Those in the Property were exposed to unacceptable levels of dust, dirt and noise. There was an increased risk of fire spreading, and of obstruction to tenants/visitors in the case of evacuation.

73. We conclude that there was a medium risk of harm.

74. Cross-referencing our findings to the Respondent's table annexed to its decision, we appreciate that Ms Arnold indicated at the hearing this table was due to be revised.

We make the following observations. We do not agree that when a bracket is selected by the Respondent, the starting point should always be the middle of the same. Consideration should be given in each case as to where on the scale the facts place that starting point, takin into account both culpability and harm.

75. We consider this was more appropriately a case of low culpability/medium harm at the upper end of the scale (Band 2). At the highest it might be said to be a case of low culpability/high harm at the very bottom end of Band 3. Whether or not that is arguable, the starting point for any fine we find to be £9999/£10,000.

76. We broadly agree with the Respondent's deduction of £5000 for mitigating factors of good character, co-operation with investigation, some initial action taken, and the seeking of expert advice in relation to the fire alarm system (we have considered the letters from Diamond Fire & Security Ltd written on her behalf).

77. We have no information as to the means of the Applicant and must assume that she is able to pay the financial penalty we make.

78. In all the circumstances we consider the appropriate penalty should be varied to one of £5,000.

Judge: S J Evans

Date:18/7/19

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. 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.

APPENDIX

Housing Act 2004

S. 234 Management regulations in respect of HMOs

(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations–

(a) there are in place satisfactory management arrangements; and

(b) satisfactory standards of management are observed.

(2) The regulations may, in particular–

(a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;

(b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

(3) A person commits an offence if he fails to comply with a regulation under this section.

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

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

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

(7) 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.

S.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.

S.263 Meaning of "person having control" and "person managing" etc.

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

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

(3) In this Act *"person managing"* means, in relation to premises, the person who, being an owner or lessee of the premises–

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

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

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

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

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

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

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

Schedule 13A

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.

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").

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.

7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

8 The final notice must set out—

(a) the amount of the financial penalty,

(b) the reasons for imposing the penalty,

(c) information about how to pay the penalty,

(d) the period for payment of the penalty,

(e) information about rights of appeal, and

(f) the consequences of failure to comply with the notice.

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

(a) withdraw a notice of intent or final notice, or

(b) reduce the amount specified in a notice of intent or final notice.

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

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.

11 (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

(a) signed by the chief finance officer of the local housing authority which imposed the penalty, and

(b) states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5) In this paragraph *"chief finance officer"* has the same meaning as in section 5 of the Local Government and Housing Act 1989.

12 A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A.

Management of Houses in Multiple Occupation (England) Regulations 2006

4.— Duty of manager to take safety measures

(1) The manager must ensure that all means of escape from fire in the HMO are— (a) kept free from obstruction; and (b) maintained in good order and repair.

(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.

(3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.

(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to— (a) the design of the HMO; (b) the structural conditions in the HMO; and (c) the number of occupiers in the HMO.

(5) In performing the duty imposed by paragraph (4) the manager must in particular— (a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and (b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.

(6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.

7.— Duty of manager to maintain common parts, fixtures, fittings and appliances

(1) The manager must ensure that all common parts of the HMO are— (a) maintained in good and clean decorative repair; (b) maintained in a safe and working condition; and (c) kept reasonably clear from obstruction.

(2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—

(a) all handrails and banisters are at all times kept in good repair; (b) such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided; (c) any stair coverings are safely fixed and kept in good repair; (d) all windows and other means of ventilation within the common parts are kept in good repair; (e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and (f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.

(3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(4) The manager must ensure that— (a) outbuildings, yards and forecourts which are used in common by two or more households living within the HMO are maintained in repair, clean condition and good order; (b) any garden belonging to the HMO is kept in a safe and tidy condition; and (c) boundary walls, fences and railings (including any basement area railings), in so far as they belong to the HMO, are kept and maintained in good and safe repair so as not to constitute a danger to occupiers.

(5) If any part of the HMO is not in use the manager shall ensure that such part, including any passage and staircase directly giving access to it, is kept reasonably clean and free from refuse and litter.

(6) In this regulation— (a) "common parts" means— (i) the entrance door to the HMO and the entrance doors leading to each unit of living accommodation within the HMO; (ii) all such parts of the HMO as comprise staircases, passageways, corridors, halls, lobbies, entrances, balconies, porches and steps that are used by the occupiers of the units of living accommodation within the HMO to gain access to the entrance doors of their respective unit of living accommodation; and (iii) any other part of an HMO the

use of which is shared by two or more households living in the HMO, with the knowledge of the landlord.