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

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| **Case Reference** | **:** | **MAN/00BR/HNA/2018/0037**<br>**MAN/00BR/HNA/2018/0039** |
| **Premises** | **:** | **8 Irwell Avenue**<br>**Eccles**<br>**Manchester**<br>**M30 0FA** |
| **Appellants** | **:** | **(1) IR Management Services Ltd**<br>**(2) Mr Leszek Bochenek** |
| **Representatives** | **:** | **(1) Mr M Levy, Counsel**<br>**(2) Mr Bochenek in person** |
| **Respondent** | **:** | **Salford City Council** |
| **Representative** | **:** | **Mr P Whatley, Counsel** |
| **Type of Application** | **:** | **Housing Act 2004 – Schedule 13A, paragraph 10** |
| **Tribunal Members** | **:** | **Judge J Holbrook**<br>**Deputy Regional Valuer N Walsh** |
| **Date and venue of Hearing** | **:** | **10 and 11 July 2019**<br>**Manchester** |
| **Date of Decision** | **:** | **12 August 2019** |

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**DECISION**

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## DECISION

**Each of the Final Notices which are the subject of these appeals is varied, so that:**

**a) the amount of the financial penalty imposed on IR Management Services Limited shall be £27,500; and**

**b) the amount of the financial penalty imposed on Leszek Bochenek shall be £15,000.**

## REASONS

## INTRODUCTION

### The appeals

1. On 18 December 2018, IR Management Services Limited ("IRMS") appealed to the Tribunal against a financial penalty imposed on it by Salford City Council under section 249A(1) of the Housing Act 2004 ("the 2004 Act"). The financial penalty related to an alleged housing offence in respect of premises known as 8 Irwell Avenue, Eccles, Manchester M30 0FA ("the Premises").

2. On the same day, Mr Leszek Bochenek appealed to the Tribunal against a separate financial penalty imposed on him by Salford Council. That penalty was also imposed under section 249A(1) of the 2004 Act, and it too related to an alleged housing offence in respect of the Premises.

3. To be more precise, the appellants appealed against final notices ("the Final Notices") given to them by Salford Council under paragraph 6 of Schedule 13A to the 2004 Act. They comprise:

   - a final notice dated 20 November 2018, imposing a financial penalty of £25,000 on IRMS for conduct amounting to an offence under section 234(3) of the 2004 Act; and

   - a final notice of the same date, imposing a financial penalty of £27,500 on Mr Bochenek for conduct amounting to the same offence.

### The Premises

4. The Tribunal inspected the Premises prior to the hearing on the morning of 10 July 2019. They comprise a modest mid-terraced house of traditional design and construction dating from the late nineteenth or early twentieth centuries and located in an area of (what is now) mixed residential and industrial use.

5. No access was afforded to inspect the interior of the Premises. Upon an external inspection, however, it was noted that the Premises appeared to be unoccupied and unfurnished. There were also indications that works or repair and/or refurbishment had been carried out recently.

## The hearing

6. Following the inspection, a combined hearing of these appeals was held at Piccadilly Exchange in Manchester. IRMS was represented at the hearing by Mr Michael Levy of counsel. Mr Bochenek represented himself (and was assisted throughout the hearing by a Polish language interpreter). Salford Council were represented by Mr Paul Whatley of counsel.

7. The Tribunal heard oral evidence given on oath by three witnesses for Salford Council: Christopher Gleave, Gemma Chilton and Sarah Hughes (all Housing Standards Officers employed by Salford Council). Oral evidence was also given on oath by Mr Bochenek and by Isaac Roberts (a director of IRMS). The parties had each submitted bundles of documentary evidence in support of their respective cases, including witness statements, and the Tribunal also heard oral submissions.

8. Judgment was reserved.

# LAW AND GUIDANCE

## Power to impose financial penalties

9. New provisions were inserted into the 2004 Act by section 126 and Schedule 9 of the Housing and Planning Act 2016. One of those provisions was section 249A, which came into force on 6 April 2017. It enables a local housing authority to 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.

10. Relevant housing offences are listed in section 249A(2). They include the offence (under section 234) of failing to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the HMO Management Regulations").

11. Only one financial penalty under section 249A may be imposed on a person in respect of the same conduct. The amount of that penalty is determined by the local housing authority (but it may not exceed £30,000), and its imposition is an alternative to instituting criminal proceedings for the offence in question.

## Procedural requirements

12. Schedule 13A to the 2004 Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under

section 249A. Before imposing such a penalty on a person, the local housing authority must give him or her a notice of intent setting out:

- the amount of the proposed financial penalty;
- the reasons for proposing to impose it; and
- information about the right to make representations.

13. Unless the conduct to which the financial penalty relates is continuing, that notice must be given before the end of the period of six months beginning on the first day on which the local housing authority has sufficient evidence of that conduct.

14. A person who is given a notice of intent has the right to make written representations to the local housing authority about the proposal to impose a financial penalty. Any such representations must be made within the period of 28 days beginning with the day after that on which the notice of intent was given. After the end of that period, the local housing authority must decide whether to impose a financial penalty and, if a penalty is to be imposed, its amount.

15. If the local housing authority decides to impose a financial penalty on a person, it must give that person a final notice setting out:

- the amount of the financial penalty;
- the reasons for imposing it;
- information about how to pay the penalty;
- the period for payment of the penalty;
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

**Relevant guidance**

16. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance ("the HCLG Guidance") was issued by the Ministry of Housing, Communities and Local Government in April 2018: *Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities*. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case by case basis. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state:

> "Generally, we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending."

17. The HCLG Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:

    a. Severity of the offence.
    b. Culpability and track record of the offender.
    c. The harm caused to the tenant.
    d. Punishment of the offender.
    e. Deterrence of the offender from repeating the offence.
    f. Deterrence of others from committing similar offences.
    g. Removal of any financial benefit the offender may have obtained as a result of committing the offence.

18. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, Salford Council have adopted the policy devised by the Association of Greater Manchester Authorities on *Civil Penalties as an alternative to prosecution under the Housing and Planning Act 2016* ("the AGMA Policy"). We make further reference to this policy later in these reasons.

## Appeals

19. A final notice given under Schedule 13A to the 2004 Act 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. However, this is subject to the right of the person to whom a final notice is given to appeal to the Tribunal (under paragraph 10 of Schedule 13A).

20. Such an appeal may be made against the decision to impose the penalty, or the amount of the penalty. It must be made within 28 days after the date on which the final notice was sent to the appellant. The final notice is then suspended until the appeal is finally determined or withdrawn.

21. The appeal is by way of a re-hearing of the local housing authority's decision, but may be determined by the Tribunal having regard to matters of which the authority was unaware. The Tribunal may confirm, vary or cancel the final notice. However, the Tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed.

## BACKGROUND FACTS

23. On 27 March 2018, following a complaint by a neighbour, officers from Salford Council's private sector housing team executed a warrant to enter and inspect the Premises. During the inspection it was discovered that the Premises were being used as a house in multiple occupation ("HMO") as it was being lived in by five individuals who formed three separate households. Each of the Premises' two upstairs bedrooms was being occupied by a couple and the downstairs front room was also being occupied as a bedroom by a single person. All of the occupants were

Polish adults and, between them, they paid £220 each week in rent, which was collected from them in cash.

24. Salford Council's officers formed the view that the manager(s) of the Premises had failed to take such measures as were reasonably required to protect the occupiers of the Premises from injury, because:

- The Premises were not fitted with a fire alarm system of suitable design (or, indeed, with any fire alarm system at all);
- No internal fire doors were fitted and so the Premises had no protected escape route; and
- The electricity meter showed signs of having been tampered with and consequently the supply was immediately disconnected for safety reasons by Electricity Northwest.

25. The curtilage of the Premises was littered with rubbish, including discarded fridges, and the glass in some of the windows was broken. Indeed, the condition of the Premises was of such concern that, on 29 March, Salford Council served an emergency prohibition order in respect of them. We understand that the occupiers of the Premises moved out a couple of days later, but that the emergency prohibition order still remains in force.

26. On 28 and 29 March 2018, Salford Council was contacted by Isaac Roberts, who identified himself as the manager of the Premises. However, Mr Roberts apparently stated that he had hitherto had little to do with the Premises as he had another agent looking after them. Although Mr Roberts did not say so at the time, the other person he was referring to turned out to be Leszek Bochenek.

27. Information subsequently obtained by Salford Council from one of the then owners of the Premises (none of the owners participated in these proceedings) indicated that Mr Roberts had been appointed to manage the Premises. Mr Roberts was therefore invited to attend an interview under caution with officers of the Council, which he did on 14 May 2018. During that interview, Mr Roberts confirmed that he worked for his own management company (IRMS), and stated that he had taken over management of the Premises at the end of March 2018. He also stated that his previous involvement with the Premises had been limited to issuing tenancies to tenants introduced to him by Mr Bochenek, and he produced a letter signed by Mr Bochenek, which was dated 30 April 2018, in which Mr Bochenek appeared to confirm that he had managed the Premises for at least the last five years.

28. Mr Bochenek was subsequently invited to attend an interview under caution himself, but he did not respond to the letters sent to him by Salford Council.

29. On 25 September 2018, Salford Council gave both IRMS and Mr Bochenek notices of intent under paragraph 1 of Schedule 13A to the 2004 Act. Each of those notices stated that Salford Council intended to impose a financial penalty of £27,500 in respect of an alleged breach of regulation 4(4) of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the HMO Management Regulations"). Mr Bochenek made no representations in response to the notice of intent, but IRMS did, via its solicitors. In essence, it was argued that IRMS was not a person managing the Premises; that it had been unaware that they were being used as an HMO; and that, alternatively, it had a reasonable excuse for its failure to comply with the regulation in question. IRMS's representations also argued that the notice of intent was invalid and, further, that the amount of the proposed financial penalty was excessive – both as a matter of the correct application generally of the relevant guidance and, more specifically, in the light of IRMS's modest financial standing.

30. On 20 November 2018, Salford Council issued the Final Notices which are the subject of these appeals. The amount of the financial penalty imposed on Mr Bochenek remained unchanged from the amount proposed in the notice of intent. However, the amount of the financial penalty imposed on IRMS was reduced to £25,000, Salford Council having "taken into account the defendant's financial means".

## ALLEGED OFFENCES

31. Salford Council asserts that IRMS's conduct (and, separately, Mr Bochenek's conduct) amounts to a relevant housing offence in respect of the Premises; namely, to breach of regulation 4(4) of the HMO Management Regulations and thus to the offence (under section 234(3) of the 2004 Act) of failing to comply with those Regulations.

32. Regulation 4(4) of the HMO Management Regulations provides:

> *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.*

33. For these purposes, the "manager" means the person managing the HMO, as defined by section 263(3) of the 2004 Act as follows:

> *"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) ...*

*(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.*

34. As already noted, section 234(3) of the 2004 Act makes it an offence to fail to comply with the HMO Management Regulations. However, by virtue of section 234(4), a defence is available to a person accused of this offence: a person does not commit the offence if he had a reasonable excuse for not complying with the regulation in question.

**GROUNDS OF APPEAL**

35. Both IRMS and Mr Bochenek deny that their conduct amounts to the offence of failing to comply with regulation 4(4) of the HMO Management Regulations. Although both accept that the Premises were an HMO and, indeed, that regulation 4(4) had not been complied with, they point out – quite rightly – that only a 'person managing' the Premises can commit the criminal offence in question. Put simply, each of them argues that it was the other who was the person managing the Premises at the relevant time.

36. In the alternative, each appellant argues that they had a reasonable excuse for not complying with regulation 4(4). IRMS argues that it had such an excuse because it had been unaware that Mr Bochenek had converted the Premises into an HMO. For his part, Mr Bochenek also claims not to have known about the manner in which the Premises were being occupied, but he also says that he had no control over the provision of fire safety measures anyway, so could not have ensured that regulation 4(4) was complied with.

37. The appellants also challenge the amounts of the financial penalties that have been imposed on them as being excessive. IRMS argues that Salford Council made an incorrect assessment of the severity of the offence and that it failed to take relevant factors into account, such as the lack of any previous offending and the level of financial gain from any offending. Mr Bochenek argues that the penalty imposed on him fails to reflect the fact that, he claims, he received no remuneration or other financial benefit in respect of his involvement with the Premises.

38. Finally, IRMS argues that the notice of intent given to it by Salford Council was invalid because it was out of time.

## DISCUSSION AND CONCLUSIONS

### Procedural compliance

39. It is convenient to begin with a consideration of IRMS's argument that the Final Notice issued to it is invalid because the preceding notice of intent was given out of time. The point can be dealt with relatively shortly because it clearly has no merit whatsoever.

40. Paragraph 2(1) of Schedule 13A to the 2004 Act requires that, before imposing a financial penalty on a person, a local housing authority must give them a notice of intent. Assuming the conduct to which the financial penalty relates is not then continuing, that notice must be given before the end of the period of six months beginning with the first day on which the authority has sufficient evidence of that conduct.

41. In the present case, it is accepted that the 'first day' cannot have been earlier than 27 March 2018 (when Salford Council inspected the Premises). Ignoring the obvious possibility that any offending conduct may have continued for several days after that, the last day for Salford Council to give a notice of intent was 26 September 2018. The notice was actually posted to IRMS on 25 September and it was received on 26 September (as later confirmed in a letter from IRMS's solicitors). As a matter of fact, therefore, the notice of intent was given in time and it is unnecessary to have any regard to the provisions about deemed service in the Interpretation Act.

### Relevant housing offences

42. In respect of each of the two Final Notices which are the subject of these appeals, Salford Council's decision to impose a financial penalty can only be upheld if the Tribunal is itself satisfied, beyond reasonable doubt, that the conduct of the appellant concerned amounts to the relevant housing offence specified in that notice.

43. As noted at paragraph 35 above, the argument in each of these appeals concerns the question whether the appellant was a 'person managing' the Premises and, if so, whether they had a reasonable excuse for failing to comply with regulation 4(4) of the HMO Management Regulations. With this in mind, we turn to examine the relevant circumstances and conduct of each appellant in turn.

*IRMS's circumstances and conduct*

44. In actual fact, it is the relevant conduct of Mr Roberts which requires examination in relation to IRMS's appeal: his conduct being inseparable from that of IRMS, a property management company run solely by him.

45. Mr Roberts admits that he was in receipt of rent paid in respect of the Premises. Whilst he strenuously denies having collected rent personally from occupiers of the Premises, Mr Roberts says that Mr Bochenek

(having himself collected the rent) would deliver it in cash to Mr Roberts each week at his office. Mr Roberts would then account for the rent to his client, the owner of the Premises. This arrangement was clearly sufficient to bring IRMS within the statutory definition of a 'person managing' the Premises. That definition (which is set out at paragraph 33 above) is drafted in broad terms and, whilst it is primarily aimed at property owners who are in receipt of rent from premises, it also catches others who receive rent on their behalf as agents or trustees. IRMS was clearly doing this.

46. The question, then, is whether IRMS/Mr Roberts had a reasonable excuse for not complying with regulation 4(4) of the HMO Management Regulations – and it is for the appellant to establish that the statutory defence is made out: whilst the Tribunal must be satisfied, beyond reasonable doubt, that each element of the relevant offence has been established on the facts, an appellant who pleads a statutory defence must then prove, on the balance of probabilities, that the defence applies.

47. Mr Roberts argued that he did not know, and could not have known, that the Premises were being used as an HMO and that he/IRMS therefore had a reasonable excuse for failing to comply with regulation 4(4) – because he did not know that that regulation was applicable to the Premises.

48. This argument is based on the assertion that the Premises were actually being managed by Mr Bochenek prior to their inspection by Salford Council and that he had concealed the true nature of the Premises' use and occupation from Mr Roberts. Mr Roberts' evidence was that he had managed a portfolio of about 70 residential properties for the owners of the Premises since 2012. Initially, about 20 of those properties (including the Premises) were in reality being managed by Mr Bochenek. As far as those properties were concerned, Mr Roberts would be responsible for setting rents and attending to the necessary formalities when new tenancies were granted. However, Mr Bochenek was the person who found the tenants to begin with and who then liaised with them throughout the tenancy. Mr Roberts said that, as a consequence of concern about Mr Bochenek's standards of management, his involvement with the management of the portfolio had been deliberately reduced over a period of several years so that, by May 2017, Mr Bochenek's only involvement was in respect of the Premises.

49. Mr Roberts says that his first involvement with the Premises occurred in January 2017 when the owner instructed him to market it to let as a single dwelling. Mr Roberts delegated this task to Mr Bochenek (although he could not explain why, given his apparent policy of managing Mr Bochenek out of the business). In any event, he says that Mr Bochenek located a tenant (a Polish woman who we shall refer to as "WZ") and that, on 29 May, he brought her to Mr Roberts' office whereupon Mr Roberts presided over the grant to WZ of an assured shorthold tenancy of the Premises at a rent of £550 per calendar month.

Mr Roberts says that Mr Bochenek dealt with the tenant thereafter and that he collected the rent. Mr Bochenek would attend Mr Roberts' office each week to account for it. However, according to Mr Roberts, the arrangement was that Mr Bochenek was only required to account for £120 each week: he retained the balance of the rent by way of payment for his services. Mr Roberts says that his own remuneration for management services in respect of the Premises was charged to the owner at an hourly rate.

50. It is thus Mr Roberts' case that, prior to Salford Council's intervention, he had no idea that WZ was not the only tenant of the Premises, or that the Premises were actually being occupied as an HMO by five individuals who, between them, were paying significantly more than £550 in rent each month. He says that responsibility for this state of affairs rests with Mr Bochenek alone and that he (Mr Roberts) had no knowledge of it.

51. Having considered all the available evidence, however, we are not persuaded that Mr Roberts can reasonably claim to have been ignorant about the true position concerning the Premises prior to late March 2018. We conclude that he either knew, or ought to have known, that the Premises were being occupied as an HMO prior to then. Taken together, the following factors are a strong indication of this:

- Mr Roberts' account of the practical arrangements for letting the Premises, and for ensuring their proper management, causes us some considerable concern. He was unable to explain in cross-examination why he was apparently willing to entrust the management of the Premises to Mr Bochenek who, by his own evidence, was a person who could not be trusted to do the job properly. Yet not only did Mr Roberts engage Mr Bochenek to find a new tenant for the Premises early in 2017, but he permitted Mr Bochenek to manage the Premises thereafter without any oversight of his activities.

- The circumstances in which the letting to WZ is said to have been concluded are also a matter of concern. Salford Council pointed out that WZ was not one of the five individuals who were living at the Premises at the end of March 2018. Indeed, the Council argued that Mr Roberts' assertion that the Premises had ever been let to her was unsatisfactory, (because it was supported by nothing more than a copy of a tenancy agreement bearing her name), and suggested that that agreement had been produced by Mr Roberts, following the Council's intervention, in a deliberate attempt to misrepresent the true position. Although we stop short of making such a finding, it is undoubtedly the case that Mr Roberts' claim that the Premises were let to WZ lacks the supporting documentary evidence which one would reasonably expect to see: there is no evidence of references having been obtained (or even sought) for WZ; of credit checks being undertaken; of consideration being given to WZ's 'right to rent'; of any other documentation being issued to her; of rent payments being made (or receipts for rent issued); or, indeed, of any other

correspondence whatsoever passing between the parties to the tenancy. We therefore attach very little, if any, probative value to the assertion that the Premises were let to a single tenant.

- We also decline to attach any weight to the letter signed by Mr Bochenek and produced by Mr Roberts during his interview under caution (see paragraph 27 above). It is clear that that document is a piece of self-serving evidence produced by Mr Roberts for the sole purpose of supporting the case he intended to put to the Council's officers. Mr Roberts did not explain this to Mr Bochenek when he asked him to sign the letter and we accept that Mr Bochenek did not fully appreciate its import.

- Although Mr Roberts claims not to have been involved in the day-to-day management of the Premises prior to Salford Council's inspection on 27 March 2018, he admits that he had visited the Premises earlier that month. Mr Roberts says that he did so because Mr Bochenek had told him that the central heating boiler was not working and he therefore needed to inspect it before authorising a repair or replacement. It is not disputed that the Premises were in multi-occupation at the time of Mr Roberts' inspection and were in poor condition (see paragraph 25 above). However, Mr Roberts says that his inspection was limited to the boiler and that he did not notice aspects of the condition of the Premises which concerned him, or any obvious signs of multi-occupation (such as the presence of Yale locks on several of the internal doors). We accept Salford Council's argument that these signs would have been obvious – particularly to a professional managing agent, such as Mr Roberts. Regrettably, we cannot accept as truthful Mr Roberts' assurance that he did not know the Premises were being occupied as an HMO. We find that – by mid-March 2018 at the latest – Mr Roberts did know this, and he also knew that the Premises were in poor condition, but he took no steps to address the matter.

- Finally, evidence that, in May 2017, Mr Roberts reported a burglary at the Premises to the police (and was then noted to be the property manager) also suggests that the extent of his involvement in the day-to-day management of the Premises had, for some time prior to March 2018, been greater than he cares to admit.

52. For these reasons, we are not persuaded that Mr Roberts/IRMS had a reasonable excuse for failing to comply with regulation 4(4) of the HMO Management Regulations. It follows that we are satisfied, beyond reasonable doubt, that the conduct of IRMS amounts to the offence of failing to comply with that regulation.

*Mr Bochenek's circumstances and conduct*

53. Mr Bochenek admits that he collected rent from occupiers of the Premises and that he passed on that rent to Mr Roberts. He denies that

he was permitted to keep a proportion of the rent he collected, however, or that he received any payment whatsoever in reward for the services he provided. Whether Mr Bochenek was financially rewarded for his efforts or not, however, we are satisfied that his rent collection activities were sufficient to bring him too within the statutory definition of a 'person managing' the Premises. As occurred in this case, more than one person may qualify simultaneously as a 'person managing' in respect of the same premises. Again, therefore, the question is whether the appellant – in this case Mr Bochenek – had a reasonable excuse for not complying with regulation 4(4) of the HMO Management Regulations.

54. Mr Bochenek's case is that he was not acting as an agent (whether of the owner of the Premises or of IRMS) in his dealings with the Premises, but that he was merely acting as an unpaid go-between in order to help both parties. He says that he was not involved with the management of the Premises and that he had been unaware of the fact that they were being occupied as an HMO because he rarely went inside when he visited to collect the rent. He says that Mr Roberts should have ensured that the Premises complied with the HMO Management Regulations and that he had no control over such matters.

55. We found aspects of Mr Bochenek's oral evidence concerning his involvement with the Premises to be unsatisfactory and, at times, contradictory and even evasive. For example, we were unpersuaded by Mr Bochenek's assertion that he did not know who the occupants of the Premises were or that he paid no attention to the identity, or number, of individuals from whom he collected rent. Given that he visited the Premises regularly, and has close links with the local Polish community, this seems unlikely. Nor were we persuaded that Mr Bochenek's work for IRMS went unpaid – this seems very improbable given Mr Bochenek's own evidence that, on average, he spent at least one day each week collecting rent from various properties. In addition, Mr Bochenek clearly had a long-standing involvement in IRMS's property management activities and had sourced a number of tenants from the local Polish community for properties managed by IRMS, including the Premises.

56. Mr Bochenek was the tenants' first point of contact when it came to reporting repairs and we were equally unpersuaded that he had no knowledge of the fact that the Premises were in a poor state of repair and lacked adequate fire safety measures. Irrespective of whether Mr Bochenek had the necessary power to remedy such matters, it is clear that he made no attempt to do so, whether by raising concerns with Mr Roberts or otherwise. We therefore find that Mr Bochenek had no reasonable excuse for his failure to comply with regulation 4(4) of the HMO Management Regulations. It follows that we are satisfied, beyond reasonable doubt, that his amounts to the offence of failing to comply with that regulation.

## Quantification of the financial penalties

57. We are satisfied that it is appropriate to impose a financial penalty on IRMS, and also on Mr Bochenek, in respect of their respective offending conduct. We must therefore determine the amount of those penalties.

*Guiding principles*

58. The Tribunal's task is not simply a matter of reviewing whether the penalties imposed by the Final Notices were reasonable: the Tribunal must make its own determination as to the appropriate amount of the financial penalties to impose having regard to all the available evidence. In doing so, the Tribunal should have particular regard to the seven factors specified in the HCLG Guidance as being relevant to the level at which a financial penalty should be set (see paragraph 17 above).

59. We also consider it appropriate to have regard to the AGMA Policy which guided Salford Council's decision-making process in this case (see paragraph 18 above). Although we do not consider ourselves bound to adopt the AGMA Policy for the purposes of these appeals, we consider it to provide a sound basis for quantifying financial penalties on a reasonable, objective and consistent basis. We are therefore content to use the Policy as a tool to assist in our own decision-making.

60. In fact, the AGMA Policy is itself based on the relevant factors specified in the HCLG Guidance. However, it places particular emphasis – rightly, in our view – on an assessment of the seriousness of the relevant conduct in terms, firstly, of the harm it caused (or its potential for harm) and, secondly, on the culpability of the offender. Both harm and culpability are given a rating of low, medium or high. The interrelation between harm and culpability then feeds in to a matrix which determines which of six bands the penalty should fall into. The amount of the penalty is taken to be the mid-point of the relevant band, subject to further adjustment to take account of additional aggravating or mitigating factors. The six penalty bands are as follows:

| | |
|---|---|
| Band 1 | £0 - £4,999 |
| Band 2 | £5,000 - £9,999 |
| Band 3 | £10,000 - £14,999 |
| Band 4 | £15,000 - £19,999 |
| Band 5 | £20,000 - £24,999 |
| Band 6 | £25,000 - £30,000 |

*Penalty to be imposed on IRMS*

61. Salford Council assessed the seriousness of the relevant conduct of IRMS as high; both in terms of its potential to cause harm and also in terms of IRMS's culpability. We agree with that assessment.

62. In effect, the conduct in question amounted to a complete disregard for the need to ensure that the occupants of the Premises had the minimum

acceptable level of protection against the risk of fire. The potential for harm which arises from such disregard in circumstances such as these is difficult to overstate. As Mr Gleave explained in his oral evidence, the Premises were being used as a bedsit-style HMO, which poses the highest risk in terms of fire safety. In addition, the obvious safety risks which arise from the absence of things like self-closing fire doors, or fire detection and alarm systems in an HMO were compounded in this case by an unsafe electricity supply, caused by tampering with the meter.

63. Turning to the question of culpability, the findings we make at paragraph 51 above lead us to conclude that the level of IRMS's culpability for the conduct in question is high – indeed, it is very high. We find that Mr Roberts knew (or certainly ought to have known) that the Premises were being occupied as a bedsit-style HMO; that they were in poor condition; and that they lacked the minimum acceptable level of fire safety measures. Mr Roberts took no steps to rectify these deficiencies and thereby demonstrated a disregard for the wellbeing of the occupants of the Premises. Notwithstanding the role played by Mr Bochenek, we are satisfied that Mr Roberts was in a position of control in respect of the management of the Premises, and we do not accept his assertions to the contrary.

64. An assessment of high harm and high culpability places the appropriate financial penalty within Band 6 for the purposes of the AGMA Policy. The mid-point of Band 6 is £27,500 and we consider that to be the appropriate amount of the financial penalty to impose on IRMS. Not only does it reflect the seriousness of the offending conduct, but it should also have an appropriate punitive and deterrent effect.

65. £27,500 was the amount proposed for the penalty in the notice of intent issued by Salford Council in September 2018. However, that figure was subsequently reduced in response to representations made about IRMS's financial means. We have considered whether to take a similar approach but have concluded that it is not warranted on the basis of the available evidence.

66. Neither the HCLG Guidance nor the AGMA Policy specifically mentions the means of the offender as a relevant factor to be taken into account when setting the amount of a financial penalty. However, it is obviously relevant to have regard to any reliable information about an offender's means in order to set a penalty at a level which will be appropriately punitive; which will have the right deterrent effect; and which will remove any financial benefit obtained from committing the offence. Indeed, the HCLG Guidance states that local housing authorities should, where possible, use their existing powers to make an assessment of a landlord's assets and income. The AGMA Policy states that an offender should be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

67. In support of its contention that a financial penalty of £27,500 would be disproportionate and unreasonable given IRMS's financial position,

abbreviated accounts and financial statements for the company covering several years were produced in evidence. We have taken note of that evidence, but we are not satisfied that it provides a reliable view of the true net worth of the company or that it justifies a reduction in the amount of the financial penalty imposed. In particular, the present value of a number of residential properties which IRMS owns in its own right is not reflected in that evidence.

*Penalty to be imposed on Mr Bochenek*

68. Salford Council assessed Mr Bochenek's conduct as being equally serious to that of IRMS. In terms of its potential for harm, we agree: the dire consequences which could have flowed from Mr Bochenek's disregard of the fire risks posed by the Premises are just the same as those which could have flowed from the similar disregard of IRMS.

69. However, we disagree with Salford Council's assessment of Mr Bochenek's level of culpability: this is because we accept that, in practice, Mr Bochenek probably had little control over the condition of the Premises and that he would not have been in a position to effect the necessary upgrades to the fire safety measures at the Premises without Mr Roberts' agreement. We therefore assess his level of culpability for the failure to comply with regulation 4(4) of the HMO Management Regulations as low.

70. An assessment of high harm, but low culpability, places the appropriate financial penalty within Band 4 for the purposes of the AGMA Policy. On this occasion, however, we consider it appropriate to depart from the policy of setting the penalty at the mid-point of the relevant penalty band. Whilst Mr Bochenek has not asked for any particular mitigating factors to be taken into account, we are satisfied – having taken all relevant circumstances into account – that a financial penalty set at the lowest point on Band 4 (£15,000) is both just and proportionate.

## OUTCOME

71. We uphold the decision of Salford Council to impose a financial penalty on each of the appellants. However, the findings we have set out above lead us to vary each of the Final Notices, so that the amount of the financial penalty imposed on IRMS shall be £27,500; and the amount of the financial penalty imposed on Mr Bochenek shall be £15,000.