FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case References	**:**	**MAN/00DA/HNA/2019/0117 - 0121 V**
Properties	**:**	**9 and 11 Foxglove Avenue, Leeds, LS8 2QR** **2 Oakwood Place, Leeds, LS8 2QR** **25 Jackson Avenue, Leeds, LS8 1NP** **17 Norman Terrace, Leeds, LS8 2AP**
Applicant	**:**	**Mr Patrick D Henry**
Represented by	**:**	**Mr Alfred Weiss**
Respondent	**:**	**Leeds City Council**
Represented by	**:**	**Mr Brynmor Adams**
Type of Application	**:**	**Under paragraph 10 of Schedule 13A to the Housing Act 2004 – appeal against financial penalties**
Tribunal Members	**:**	**Judge P Forster** **Mr P Mountain**
Date of Decision	**:**	**9th June 2021**

DECISION

Decision

The each of the five final notices dated 11 November 2019 are varied.

The Appellant must pay a financial penalty of £30,000.00 to the Respondent. This is an aggregate sum in respect of the Appellants failure to provide self-closers in each of the five properties, 9 and 11 Foxglove Avenue, 2 Oakwood Place, 25 Jackson Avenue and 17 Norman Terrace.

The Appellant must pay a financial penalty of £17,250.00 to the Respondent in respect of 17 Norman Terrace.

Introduction

1. The Appellant, Mr Patrick D Henry, appeals pursuant to paragraph 10 of Schedule 13A to the Housing Act 2004 ("the Act") against the imposition of a civil penalty in respect of each of five properties: 9 and 11 Foxglove Avenue, Leeds, LS8 2QR; 2 Oakwood Place, Leeds, LS8 2QR; 25 Jackson Avenue, Leeds, LS8 1NP and 17 Norman Terrace, Leeds, LS8 2AP.

2. On 12/07/19, the Respondent, Leeds City Council, served the Appellant with notices of intent to impose a monetary penalty in respect of each of the properties. This was followed on 11/11/19 by the service of final notices imposing penalties:

• 9 Foxglove Avenue	£18,000
• 11 Foxglove Avenue	£8,625
• 2 Oakwood Place	£17,250
• 25 Jackson Avenue	£18,000
• 17 Norman Terrace,	£30,000
	£91,875

3. The appeal was listed for hearing on 18 January 2021 but had to be adjourned because of problems with the video link. The hearing was resumed on 21 and 22 April 2021. The Appellant was represented by Mr Weiss and the Respondent by Mr Adams. The Tribunal heard oral evidence from the Appellant and from Conrad Dore on behalf of the Respondent.

The Appellant's case

4. The Appellant appeals against the Respondent's decisions to impose financial penalties on him for alleged breaches of the management regulations that apply to houses in multiple occupation ("HMOs"). His position is that the final notices should be cancelled or alternatively varied because properly analysed on the correct version of the facts, and the law: no relevant housing offences were committed or alternatively, the penalties levied are excessive.

The Respondent's case

5. On 17 January 2019, Mr Dore, a principal housing officer employed by the Respondent, inspected five properties owned by the Appellant. He found various breaches of the relevant HMO Regulations, summarised below:

9 Foxglove Avenue

a) There were no self-closers for the doors to the ground floor kitchen, ground floor front living room, ground floor rear dining room – reg. 4(1)(b).

b) The door to the ground floor rear dining room was not of sound and solid construction affording 30 minute fire protection - reg. 4(1)(b).

c) The fire detectors in the ground floor rear dining room, the ground floor front living room and the ground floor hallway were broken - reg. 4(1)(b) and 4(2).

d) The sash cords to the kitchen and second floor landing windows were broken – reg. 7(1)(d).

11 Foxglove Avenue

a) The means of escape from fire was obstructed because the gable entrance/exit door required a key to open its mortice lock from the inside - reg. 4(1)(a).

b) The doors to the risk rooms (ground-floor kitchen and living room) did not have self-closers - reg. 4(1)(b).

2 Oakwood Place

a) The exit door to the ground-floor rear kitchen was key-operated from the inside - reg. 4(1)(a).

b) The doors to the doors to the risk rooms (ground-floor rear kitchen, the front living room and the rear dining room) did not have self-closers - reg. 4(1)(b).

c) The door to the ground-floor kitchen was not of sound and solid construction - reg. 4(1)(a) and (b).

25 Jackson Avenue

a) The ground floor rear dining room door was not of sound and solid

construction in that it was a half-glazed door - reg. 4(1)(b).

b) The rear exit doors, (two in number) were both operated from the inside with the use of keys - reg. 4(1)(b).

c) The kitchen exit door was obstructed by a fridge - reg. 4(1)(a).

d) There was no internal kitchen door leading onto the means of escape route - reg. 4(1)(b).

17 Norman Terrace

a) The exit door to the rear kitchen was operated with the use of a key - reg. 4(1)(a).

b) The doors to the risk rooms (ground-floor kitchen, living room and dining room) did not have self-closers - reg. 4(1)(b).

c) There was no Automatic Fire Detection system - reg. 4(2) and 4(4)(a).

d) The bayonet light fitting to the ground-floor rear dining room was broken and not operational - reg. 7(1)(b).

e) The mechanical ventilation unit to the second-floor bathroom was not working and the window was not openable - reg. 7(2)(d).

6. The Respondent served notices of intent to impose a financial penalty in respect of each property. The Appellant responded to each allegation in a letter prepared by his solicitors which the Respondent considered but nevertheless served final notices.

The Law

7. The law relevant to the commission of offences and to the amount of the penalties is set out in the annex to the decision.

Reasons for the decision

8. The Appellant has been a professional landlord since 1988. He has a portfolio of properties which he owns and manages. He rents his properties to tenants living on a shared basis in large Victorian houses. In 2011, the Appellant had 10 HMOs for which licences were required and in place. He was prosecuted in 2O13 for a number of offences when the court found that he had not carried out improvement works sufficiently quickly. He was fined a total of £8,000. As a consequence, the Appellant

withdraw from the licencing system by reducing the occupancy in his properties. The properties were still classified as HMOs, but they were taken outside the compulsory licensing scheme.

9. In 2017, the Appellant was contacted by Conrad Dore who asked to inspect 11 Foxglove Avenue. Mr Dore said that he was required to visit all licenced HMOs during the 5-year course of the licence. The Appellant told him that he was no longer operating licensable HMOs. Mr Dore carried out an inspection and found only four occupants in No.11. He subsequently requested the relevant gas and electrical certificates for all of the Appellant's properties. The Appellant was able to provide the gas certificates, but he did not have the electrical certificates believing that it was not required in an unlicenced HMO.

10. In April 2018, the Appellant was prosecuted in respect of 11 Foxglove Avenue for three breaches of the Regulations namely: no electrical certificate; mortice locks to the front door and bedrooms and the failure to display the landlord's details in the property. The Appellant was fined £1,700.

11. In January 2019, Mr Dore inspected five of the Appellant's properties. The Appellant was present and believed that Mr Dore had found all works relating to the previous offences had been dealt with.

12. During 2018, and prior to the visits made in January 2019, the Appellant sent several emails to Mr Dore seeking clarification on the Regulations, but he received no response. After Mr Dore's inspections in January 2019, the Appellant received a set of questions served on him under the Police and Criminal Evidence Act 1984 to which he responded. The Appellant heard nothing further from the Council until he received the notices of intent to impose financial penalties dated 12 July 2019 which were followed by the final notices dated 11 November 2019.

<u>The notices</u>

13. In the course of the hearing an issue arose about the validity of the notices. On 12 July 2019, the Respondent sent separate letters to the Appellant in respect of each property. Mr Dore explained at the hearing that these are proforma letters. In each case, the only addition is the amount of the proposed penalty. A notice of intent was enclosed with each letter, specifying the alleged breach and giving the reasons for imposing a penalty. The notices were in a common form and read:

> *"[you] failed to ensure there are in place satisfactory management arrangements and that satisfactory standards of management are observed; and failed in your duties as the person in control, person managing, owner, person who ought to*
> *take action a house [sic] in respect of the repair, maintenance, cleanliness and good order of the house and facilities of the equipment within it*."

14. The Appellant's solicitors responded on 2 August 2019 to request further information, pointing out that it is incumbent on the Respondent to particularise the alleged breaches so that their client could know the case against him and be in a position to make representations. Only after an exchange of correspondence did the Respondent provide the necessary particulars on 4 September 2019, extending the time for the Appellant to make representations. The Appellant's solicitors responded in respect of each property on 1 October 2019.

15. The Respondent now accepts that there were deficiencies in the notices and the subsequent additional information relating to three of the properties because they failed to identify certain alleged defects:

9 Foxglove Avenue	(i) the door to the dining room was not of sound and solid construction and (ii) the sash cords to the kitchen and second floor landing windows were broken.
25 Jackson Avenue	the door to the dining room was not of sound and solid construction.
17 Norman Terrace	the light fitting in the ground floor dining room was broken and not operational.

16. In Waltham Forest LBC v Younis [2019] UKUT 0362 (LC) the Upper Tribunal considered the validity of a notice with deficiencies. In that case the Upper Tribunal was satisfied that because, unusually, additional documents including witness statements had been served by the local housing authority with the notice of intent, the deficiencies on the unsatisfactory notice could be ignored. The test was whether the notice of intent "*stated the authority's reasons for proposing to impose a penalty in such a way that they could be understood and responded to*".

17. The purpose of a notice of intent is to inform the recipient of the reasons why the local housing authority is contemplating the imposition of a financial penalty. The recipient then has the opportunity to respond to it and the authority is obliged to reconsider matters before making a final decision. Once a final notice has been served, the recipient has the right to appeal to the First-tier Tribunal, where they may rely on matters which were not known to the authority. It was stated in Waltham Forest that the reasons given in the notice of intent should be clear enough to enable the recipient to respond. If the reasons are unclear or ambiguous Parliament would not have intended that the notice of intent should invariably be treated as a nullity. The seriousness of the offences for which civil penalties can be imposed and that availability of a right of appeal on the merits before an independent tribunal militate against an excessively technical approach to procedural compliance.

18. Paragraph 3(b) of Schedule 13A to the Act specifies that the notice of intent must set out the reasons for proposing to impose a financial penalty. Paragraph 8(b) includes

the same provision in respect of the final notice. The Respondent provided its reasons in Schedule 1 to each of the initial notices, supplemented later by additional information. Without the further particulars the notices would have been a complete nullity because they lacked sufficient detail to enable the Appellant to know the case he had to answer. The particulars were still incomplete in respect of 5 Foxglove Avenue, 25 Jackson Avenue and 17 Norman Terrace because they omit any reference to some of the alleged breaches.

19. It would not be right to adopt too technical an approach and would produce an absurd outcome if the Tribunal were to rule that the notices were invalid in their entirety. The Tribunal concludes that only the allegations omitted from the notices should be struck out because the Respondent did not comply with paragraphs 3(b) and 8(d) and the Appellant did not have the opportunity to respond.

The five properties

20. The Tribunal looked at each of the five properties in turn and considered the specific allegations made by the Respondent. Some of the allegations are common to a number of the properties.

11 Foxglove Avenue

21. It is convenient to deal with 11 Foxglove Avenue first because it requires the Tribunal to consider submissions made about the proper construction of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Regulations"). The Respondent alleges breaches of regulations 4(1)(a) and 4(1)(b) of the Regulations.

22. Regulation 4(1) provides that 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.

23. Key required to open exit door: during his inspection Mr Dore noted that the "gable entrance/exit door" required a key to open the mortice lock from inside. He said that in the event of a fire, the occupants would have to locate a key to open the door. The Respondent alleges that this breaches regulation 4(1)(a). The Appellant admits the absence of a Yale-type lock but denies that he was in breach of the regulation. He says that that the gable door was not a means of escape and did not need to be kept free of obstruction. The means of escape from No.11 was provided by the front door which was fitted with a Yale-type lock.

24. The Appellant makes the point that No.11 was previously inspected in 2018 and one of the things he was prosecuted for was the failure to have mortice locks on the front door and bedroom doors. The current issue, the mortice lock on the gable door was not identified as a problem in 2018.

25. The Appellant states that he repeatedly sought advice from Mr Dore and never received a response or assistance. After the hearing in April 2018, the Appellant sent an email on 29 April 2018 to Mr Dore. He stated that he intended to carry out the necessary works which included replacing mortice locks with Yale locks. He wanted Mr Dore to return to No.11 to carry out an inspection so that he could "confidently proceed to do the same work to all my other houses". He asked for advice about door locks: "Is it necessary for all external and internal doors not to have mortise locks. There are three doors to outside. I thought from the regs that only one exit route had to be Yale locked – the designated escape route…Please advise if this is right?

26. The Appellant wrote again on 4 May 2018 and in Mr Dore's absence received a reply from one of his colleagues, Mr Pearson, who stated that "In all HMO's every lock in the fire escape route from sleeping rooms needs to be openable from the inside without the use of a key, therefore this includes bedrooms and the final exit door (i.e. the front door at 11 Foxglove)". The Appellant interpreted this to mean the front door to No.11 and not the gable door. He fitted a Yale lock to the front door but not to the gable door which he considered was not a means of escape. The Appellant says that he acted in accordance with the advice he was given by Mr Pearson. Mr Pearson provided links to the Council's document: "Fire Safety Principles for Residential Accommodation" and to the HMO Regulations, stating that these apply to licensable and non-licensable HMOs. The Appellant applied the advice to all of his properties.

27. The email of 29 April 2018 demonstrates the Appellant's approach to matters. After being prosecuted in 2018 but before carrying out the necessary works, he wanted Mr Dore to inspect the property again and tell him what he needed to do in order to comply with the Regulations. Throughout, the Tribunal found the Appellant's approach to be reactive rather than proactive. Mr Dore did not see it as his role to advise the Appellant about his responsibilities as a landlord. Mr Dore stated that if he had visited the property again, he would have been obliged to instigate a further prosecution and instead he gave the Appellant time to carry out the works. It is clear from the evidence that the Appellant did not have a good relationship with Mr Dore who he regards as obstructive and indeed, he said that he believed Mr Dore was out to get him. For his part, Mr Dore did not take a constructive role.

28. The general principles of fire risk reduction are set out in Part C of the LACORS guidance. It states at paragraph 16.1 that ideally, final exit doors from all premises should be fitted with locks which are openable by the occupiers from the inside without the use of a key and that this should always be the case in HMOs, including shared houses. Where security locks are fitted, they should be of a type with a suitable internal thumb-turn to facilitate this.

29. The guidance applies to final exit doors, and this covers both the front door and the gable door to No.11. Both doors provided a means of escape from the premises. The Tribunal does not accept the Appellant's response that the absence of a Yale-type

lock on the gable door was not required because one was fitted on the front door. An escape route, from the bedroom may lead to more than one exit door.

30. The Appellant submits that he has a reasonable excuse for not complying with the regulation within the meaning of s.234(4) of Housing Act 2004. His excuse is that he followed Mr Pearson's advice, to the effect that it was not necessary to remove the mortice lock from the gable door and replace it with a Yale-type lock because there was a Yale-type lock on the front door. In his email of 29 April 2018, the Appellant asked if it was necessary for all external and internal doors not to have mortise locks and he pointed out that No.11 has three doors to the outside. Mr Pearson's response was that "this includes bedrooms and the final exit door, (i.e., the front door at 11 Foxglove)". Mr Pearson copied his email to Mr Dore.

31. Mr Pearson's advice appeared to confirm the Appellant's view that not all the exit doors required a yale-type lock. The Appellant was entitled to interpret Mr Pearson's advice in that way. Mr Dore disagrees with the advice given by Mr Pearson, but he did not seek to correct it when he returned to work. It appears that Mr Dore did not review the email exchange between the Appellant and Mr Pearson.

32. In these particular circumstances, the Tribunal finds that the Appellant has a reasonable excuse under s.234(4) of 2004 Act.

33. Self-closers: Mr Dore noted when he inspected No.11 that the doors to the ground floor kitchen, front living room and rear dining did not have self-closers. The Respondent alleges that this breached regulation 4(1)(b) of the Regulations. The Appellant does not deny the absence of self-closures but submits this did not breach the Regulation.

34. The Appellant submits that the Regulations only obliged him to maintain such means of escape as were originally provided and therefore there was no breach for failing to provide door closers, fire doors and fire detection. The Appellant relies on Jaguar Cars Ltd. v Coates EWCA Civ 337 to support this argument. This was a personal injury claim where the employer was found to be negligent for not providing a handrail in its factory. There were regulations providing for the maintenance of safety equipment – a handrail. The judge held that there was no breach of the regulations because they did not require the handrail to be provided only to be maintained.

35. The Appellant applies this argument to regulation 4(1)(b) which imposes an obligation to maintain in good order such means of escape as is provided.

36. The heading to regulation 4 is "duty of manager to take safety measures" and is described in the explanatory note as imposing a duty to "take safety measures, including fire safety measures". Regulation 4(4) imposes a general and positive duty on the manager to "take all such measures as are reasonably required to protect the

occupiers of the HMO from injury…". It does not simply impose a duty to maintain or repair the HMO in its original state. It imposes a duty to improve an HMO if the particular improvement was a measure reasonably required to protect the occupiers. It therefore requires the installation of self-closers and fire detectors where reasonably required. Regulation 4(1) imposes an obligation in relation to the means of escape.

37. Reg. 4(1)(b) requires that "the manager… ensure that all means of escape from fire in the HMO are … maintained in good order…". The LACORS Guidance relevantly states: "In most multi-occupancy situations, fire-resisting doors should be fitted with approved self-closing devices. This may be relaxed for doors within houses or flats occupied by a single household and doors within low-risk, shared houses. Doors to rooms within larger flats in multiple occupation and in larger or higher risk shared houses may require self-closers within the context of an overall fire risk assessment."
38. The Management Regulations do not themselves state that self-closing devices are necessary. However, given the nature of the property, self-closers were necessary to secure compliance with the Regulations. The Tribunal finds beyond reasonable doubt that the absence of self-closers as alleged breached regulation 4(1)(b) of the Regulations.

39. The Appellant submits that he has a reasonable excuse for not complying with the regulation. His excuse is that he repeatedly asked Mr Dore for his advice on whether it was necessary to install self-closing devices, and he received no response.

40. The Appellant sent an email to Mr Dore on 15 June 2018 saying that he was ready for his visit and that he would "like to have your advice on self- closers when we meet". Mr Dore replied, the same day, stating "as pointed out in court, all your houses in multiple occupation are to be brought up to the prescribed minimum standards". The Appellant was asked to provide electrical certificates for his other houses. The response from the Appellant was that he did not have the certificates and that he had been waiting for Mr Dore to inspect before rolling out the works. Mr Dore replied that "the instruction is that you do the works then I inspect…if I inspect before works are carried out it will lead to you being prosecuted again". That was not the final word because the Appellant sent an email back to Mr Dore saying that his plan was to get No.11 up to standard and then roll work out across other houses. He stated that "I think all works complete [to No.11] except self-closers which I ask for your guidance on".

41. The exchange of correspondence evidences the Appellant's insistence that Mr Dore inspect No.11 before he carries out further works. Mr Dore maintained his stance that it was for the Appellant to comply with the Regulations and do the necessary works and not for him to provide advice. The emails characterise the fractious relationship between the Appellant and Mr Dore.

42. The Appellant received a very clear response from Mr Dore when he asked him

about the self-closers. He is a professional landlord of many years standing, and he can have been in no doubt about his need to comply with the Regulations. The duty was on the Appellant, and he cannot simply pass it back to the Respondent. The Tribunal finds that the Appellant did not have a reasonable excuse.

43. The Tribunal finds beyond reasonable doubt that the absence of self-closers as alleged breached regulation 4(1)(a).

9 Foxglove Avenue

44. The Respondent alleges 4 breaches of the Regulations in respect of 9 Foxglove Avenue, all of which are denied by the Appellant.

45. Self-closers: this mirrors the allegation made in respect of No.11 and rehearses the same arguments. The Tribunal's finds that the Appellant had no reasonable excuse and the to the criminal standard there was a breach of regulation 4(1)(b).

46. Door construction: this allegation is struck out for lack of particulars in the notice of intent.

47. Fire detectors: Mr Dore found when he inspected No.9 that the detectors, forming part of the interlinked automatic fire detection system were broken off, meaning that there was only the base detector. The Respondent alleges this was a breach of regulations 4(1)(b) and 4(2). It is not in dispute that the detector heads were missing. The Appellant's case is that the detectors were not broken but had been removed by the tenants. The Appellant's evidence was that he inspected No.9 on a yearly basis and that on the date of the last inspection in July 2018 the detector heads were in situ. In these circumstances, the Appellant says that he has a reasonable excuse because he provided an automatic fire detection system, he carried out an annual inspection and the problem was not reported to him by the tenants as they are obliged to do under the terms of the tenancy agreement.

48. The discussion above about regulation 4(1)(b) is relevant here. The Appellant had provided an automatic fire detection system which was inoperable because the tenants had removed the detector heads.

49. Regulation 4(2) expressly provides that "the manager must ensure that any … fire alarms are maintained in good working order". The allegation is that the fire detection system was broken. The Appellant does not dispute the absence of detector heads but raises the defence of reasonable excuse. The duty was on the Appellant to provide and maintain a fire safety system. The removal of the detector heads by the tenants does not shift the responsibility to comply with the Regulations away from the Appellant but the Tribunal finds that it the Appellant has a reasonable excuse under s.234(4) of the 2004 Act. On the evidence, he carried out annual inspections and the tenancy agreement requires the tenants to notify him of any defects.

50. Sash cords: this allegation is struck out for lack of particulars in the notice of intent.

2 Oakwood Place

51. The Respondent alleges 3 breaches all of which are denied the Appellant:

52. Key required to open exit door: this mirrors the allegation made in respect of 11 Foxglove and rehearses the same arguments. The Tribunal's finds that the Appellant had a reasonable excuse and that there was no breach of regulation 4(1)(b), assessed to the criminal standard.

53. Self-closers: this mirrors the allegation made in respect of No.11 Foxglove and rehearses the same arguments. The Tribunal's finds that the Appellant had no reasonable excuse and the to the criminal standard there was a breach of regulation 4(1)(b).

54. Kitchen door: Mr Dore noted that ground floor kitchen door was not of sound and solid construction being a four panelled half glazed internal door. The Respondent alleges that this breached regulation 4(1)(a) and (b). The Appellant states that this is a 1901 pitch pine door with 2 original glass panels and says this was not picked up by the Respondent in any previous inspections. He denies that the door constitutes a breach of the Regulations. The Tribunal finds that the door did not comply with the Respondent's published guidance which is based on the LACORS guidance. The door would not afford a half hour protection from fire and as such breaches regulations 4(1)(a) and (b).

25 Jackson Avenue

55. The Respondent alleges 5 breaches all of which are denied the Appellant:

56. The construction of the ground floor rear dining room door: this allegation is struck out for lack of particulars in the notice of intent.

57. Key required to open 2 rear exit doors: this mirrors the allegation made in respect of 11 Foxglove and rehearses the same arguments. The Tribunal's finds that the Appellant had a reasonable excuse and that there was no breach of regulation 4(1)(b), assessed to the criminal standard.

58. Kitchen exit door obstructed by a fridge: it is not in dispute that there was a fridge in front of the door. On the Appellant's evidence, the door has been blocked up since 1995. This is clear from the outside of the building. On the inside, the door looks like a door, but it is obviously not in use. It is immediately adjacent to a second door which provides an exit. The Tribunal finds that there is no breach of regulation 4(1)(a)

as alleged. that exits the building.

59. No internal kitchen door: Mr Dore noted that there was no internal door between the kitchen and the adjacent dining room. The two rooms have been converted into a combined kitchen/dining room. The Respondent submits that the design choice of an "open plan" kitchen area does not excuse the failure to adequately to protect the means of escape. The Tribunal does not accept that the absence of door constitutes a breach or regulation 4(1)(a).

17 Norman Terrace

60. The Respondent alleges 5 breaches all of which are denied the Appellant.

61. Exit door to the kitchen required the use of a key: this mirrors the allegation made in respect of 11 Foxglove and rehearses the same arguments. The Tribunal's finds that the Appellant had a reasonable excuse and that there was no breach of regulation 4(1)(b), assessed to the criminal standard.

62. Self-closers: this mirrors the allegation made in respect of No.11 Foxglove and rehearses the same arguments. The Tribunal's finds that the Appellant had no reasonable excuse and the to the criminal standard there was a breach of regulation 4(1)(b).

63. Automatic Fire Detection Mr Dore found when he inspected 17 Norman Terrace that there was no automatic fire detection system. The Respondent alleges that this breaches regulation 4(4)(a) of the Regulations. The Appellant accepts that there was no automatic system. He says that there were smoke detectors and fire extinguishers in place. He also accepts that LACORS guidance recommends that three story HMOs be fitted with interlinked smoke alarms and a heat alarm in the kitchen but submits this is not a prescriptive standard and that the minimum recommendation is that "virtually all residential premises where people are sleeping will require some form of automatic fire direction and warning system. The Appellant states this is met by the smoke detectors.

64. The LACORS Guidance relevantly states that: 'The type of system to be provided in particular premises is dependent upon risk. … Larger properties will require greater coverage, and large HMOs with a number of detectors will require a more sophisticated system including an integrated control panel and alarm sounders." The LACORS Guidance further recommends that a: "shared house HMO of up to two storeys such as No.9 have "Grade D. LD3 coverage + additional detection to the kitchen, lounge and any cellar containing a risk (interlinked)". "Grade D" refers to BS 5839 and means: "a system of one or more mains-powered smoke (or heat) alarms each with integral battery standby supply". "LD3" also refers to BS 5839 and comprises: "a system incorporating detectors in all circulation spaces that form part of the escape routes from the dwelling only".

65. The Respondent's Guidance recommends "LD2 Grade D". LD2 means "LD2 coverage: a system incorporating detectors in all circulation spaces that form part of the escape routes from the dwelling and in all rooms or areas that present a high fire risk to occupants i.e. risk rooms".

66. The Tribunal finds that the lack of an automatic fire breaches regulation 4(4)(a) of the Regulations. As stated by Mr Dore a secondary system of fire detectors, battery operated detectors, are not acceptable in HMOs. They are the type of system that would be put in by the fire service as a temporary measure if the primary system was not working. The Appellant has fitted automatic systems in his other properties but has failed to explain why he considers that it is not required in 17 Norman Terrace. He has not sought to explain why No.17 is an exception to "virtually all residential premises" as stated in the LACORS guidance.

67. The Tribunal finds that the lack of an automatic fire detection system breaches regulation 4(4)(a). The Appellant's belief that he did not require an automatic fire detection system because No.17 is not a licensed HMO does not afford him a reasonable excuse. Ignorance of the law is no excuse, particularly when the Appellant is a very experienced professional landlord.

68. The bayonet light fitting: this allegation is struck out for lack of particulars in the notice of intent.

69. Ventilation unit: Mr Dore noted that the mechanical ventilation system in the second-floor bathroom was not working. This was disputed by the Appellant who explained that there is delay between turning on the light in the bathroom and the ventilator starting to work. This is a common type of system. The Tribunal accepted the Appellant's evidence and found that there was no breach of regulation 7(2)(d) as alleged.

Summary of offences committed

70. The Tribunal found the following offences proved beyond reasonable doubt:

9 Foxglove Avenue	no self-closers
11 Foxglove Avenue	no self-closers
2 Oakwood Place	no self-closers
25 Jackson Avenue	no self-closers
17 Norman Terrace	no self-closers no automatic fire detection system

Penalties

71. Paragraph 12 of Schedule 13A to the 2004 Act requires a local housing authority to have regard to any guidance given by the Secretary of State about the exercise of its functions under Schedule 13A or section 249A. Such guidance is to be found in "Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities", which was re-issued in April 2018. Paragraph 3.5 of this document says that local housing authorities "should develop their own policy on determining the appropriate level of civil penalty in a particular case". In accordance with this guidance, the Respondent adopted a "Civil Penalty Policy". The Policy lists the factors identified in paragraph 3.5 of the Secretary of State's guidance and provides a matrix allocating offences to bands by reference to harm and culpability. In respect of each band, the policy then gives a range of financial penalties, an assumed starting point and an adjustment increment. The policy further explains that the Council will apply the “totality principle” in cases where more than one penalty has been imposed, with a view to ensuring that the total penalty or penalties properly reflect all the offending behaviour and are just and proportionate in all the circumstances.

72. The Upper Tribunal considered the way in which a tribunal should approach the assessment of penalties in Marshall v Waltham Forest LBC [2020] UKUT 35 (LC) endorsed by the Court of Appeal in Sutton v Norwich City Council [2021] EWCA Civ 20. The tribunal is to start from the policy, and it must give proper consideration to arguments that it should depart from it. It is the Appellant who has the burden of persuading it to do so. In considering reasons for doing so, it must look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed.

73. The Respondent assessed the level of penalties as follows:

property	culpability	harm	starting point	adjustment	Result
9 Foxglove Av	high	medium	£15,000	£3,000	£18,000
11 Foxglove Av	high	low	£7,500	£1,125	£8,625
2 Oakwood Pl	high	medium	£15,000	£2,250	£17,250
25 Jackson Av	high	medium	£15,000	£3,000	£18,000
17 Norman Tr	high	high	£25,000	£5,000	£30,000
total					£91,875

Culpability

74. In respect of all five properties, the Respondent assessed the level of culpability as high giving the same reason in each case:

"Landlord was instructed to have all his HMOs in full compliance with Management of Houses in Multiple Occupation (England) Regulations 2006, as a part of the ruling arising from the prosecution (on the 23 April 2018). On inspection there was found to be a number of contraventions of the regs. It took a long time to arrange the inspection as I [Mr Dore] did not have a phone contact for Mr Henry and he did not always respond to mails in a timely fashion".

75. The Appellant submits that the Respondent's justification is flawed. It is said that no instruction was given at the Magistrates' Court on 23 April 2018. The Tribunal notes that the prosecution only related to 11 Foxglove Avenue. The Respondent has only produced an attendance note for the hearing and not the memorandum of conviction. The conviction was for failing to provide an electrical certificate, having mortice locks to the front door and bedrooms, and for not displaying the landlord's name in the property. The current proceedings include an allegation about a mortice lock on the gable entrance/exit door of No.11. The Tribunal has found that no offence was committed because the Appellant had a reasonable excuse.

76. The Appellant accepts that there was some discussion with the magistrates but that was about the failings for which he was convicted, which were to be corrected at all of his properties as soon as he was able to do so. The Appellant states that this is what he tried to do. It is not clear who the Respondent says "instructed" the Appellant. The Magistrates had no power to do so because they were only concerned with the allegations before them. The Tribunal heard evidence that a discussion took place at the Magistrates Court between the Appellant and the Respondent's counsel. Mr Dore's evidence was that he was not present at the meeting and counsel's note does not include reference to the discussion. The Respondent's use of the term "instruction" is imprecise and can more accurately be described as "advice". The Tribunal concludes that this can only have related to the allegations before the Magistrates and cannot be extended to cover all possible breaches of the 2006 Regulations.

77. This takes matters on to the contact the Appellant had with the Respondent after the Magistrates' hearing in April 2018 and Mr Dore's inspections on 17 January 2019. In his witness statements, Mr Dore states that he had been trying to carry out inspections since May 2018, but this calls for closer examination.

78. Reference has already been made to the Appellant's email to Mr Dore on 29 April 2018 [paragraph 25 above] to which Mr Pearson replied on 4 May 2018. This focused on the

need for a Yale-type lock on all exit doors to 11 Foxglove Avenue and by extension to the exit doors on the Appellant's other HMOs. Mr Dore was off work at the time and for other periods during the year. The Appellant sent an email to Mr Dore on 15 June 2018 stating that he was ready for him to carry out an inspection and that he would like advice about self-closers [paragraph 40 above]. The Appellant wanted Mr Dore to provide advice before he incurred the expense of carrying out any works, but Mr Dore did not see that as his role. This led to an impasse.

79. M
r Dore has not evidenced his statement to have been trying to carry out inspections from May 2018. His claim that he did not have a phone contact for the Appellant and that Mr Henry did not always respond to mail in a timely fashion is not supported by the documents seen by the Tribunal.

80. T
he Tribunal is focused on the offences which it has found were committed by the Appellant.

81. T
he Respondent's Civil Penalty Policy provides that a landlord will be deemed to be highly culpable when they intentionally or recklessly breach or wilfully disregard the law. Instances of this are set out in the Policy and include: "they have a history of non-compliance", "despite a number of opportunities to comply have failed to do so" "are an experienced landlord with portfolio of properties failing to comply with their obligations".

82. T
he Tribunal notes that the Appellant was prosecuted and convicted in 2013 of 6 counts of failing to provide self-closing doors for which he was fined a total of £2,400. The 2018 prosecution in respect of No.11 did not include any allegations about self-closers. The Appellant relies on this omission as justification for his failure to instal the devices. The Tribunal does not accept that this justifies the Appellant's failure to remedy the situation. In the current proceedings, the Tribunal has found that offences were committed because of the absence of self-closers. On the evidence, the Tribunal finds that the Appellant has intentionally disregarded the law. There is a history of non-compliance, and he has not taken action in the intervening time to fit self-closers. The Appellant is an experienced landlord with several properties and is or should have been aware of his legal obligations.

83. I
t is submitted on behalf of the Appellant that culpability should be reduced because he was proactive in seeking advice from the Respondent. The Tribunal takes a different view of the Appellant's actions, concluding that he was reactive and unwilling or reluctant to carry out works and incur costs, failing to obtain independent advice if that was thought necessary and seeking to shift the responsibility for compliance to the Respondent. The Tribunal accepts that Mr Dore did not agree to

provide the Appellant with reports as claimed by the Appellant. That is consistent with Mr Dore's clearly expressed view that it was not his role to do so, however much the Appellant pressed him for advice.

84. The Tribunal has also found that the Appellant committed a second offence in respect of 17 Norman Terrace by failing to install an automatic fire detection system. This meets the criteria for high level culpability. As an experienced landlord who had fitted automatic systems in his other HMOs, he acted intentionally and disregarded the need for such a system in No.17.

85. The Tribunal finds that the Appellant meets the criteria for high level culpability within the Council's Policy. He is outside the criteria for medium level culpability because this is not his first offence, and he satisfies the criteria for high level culpability. The Appellant's submission that level of culpability should be low falls far short of the Policy which provides that low level of culpability will apply where a landlord fails to comply or commit an offence with little fault. Instances of this include: "no or minimal warning of circumstances/risk", "isolated occurrence" or "a significant effort has been made to comply but was inadequate in achieving compliance". Clearly, none of these apply to the Appellant.

86. The Tribunal assess the level of culpability as high in respect of all five of the properties.

Harm

87. The Respondent assessed the level of harm as medium in respect of 9 Foxglove Avenue, 2 Oakwood Place and 25 Jackson Avenue.

88. The reasons given by the Respondent in respect of 9 Foxglove Avenue were that "the automatic fire detection system had smoke detector heads missing to the living room, dining room and the ground floor living room. The doors to the risk rooms leading onto the route of escape had no self-closers. The door to the dining room and lounge leading onto the route of escape, was not of sound and solid construction being glazed". The last of these allegations was struck out.

89. The reasons in respect of 2 Oakwood Place were that "the rear exit door was operated with the use of a key. The doors to the risk rooms leading onto the route of escape had no self-closers. The door to the kitchen leading onto the route of escape, was not of sound and solid construction being half glass".

90. The respondent's reasons in respect of 25 Jackson Avenue were that "the two rear exit doors (dining & kitchen) were operated with the use of a key. The rear kitchen exit door was obstructed by a fridge. The doors to the risk rooms leading onto the

route of escape had no self-closers. There was no kitchen door leading onto the ground floor route of escape". The Tribunal found that the allegations in respect of the door obstructed by the fridge and the absence of a kitchen door did not breach the Regulations.

91. The Respondent assessed the level of harm in respect of 11 Foxglove Avenue as low because "the gable external door was operated by use of a key. The doors to the risk rooms leading onto the route of escape had no self-closers.

92. The Respondent assessed the level of harm as high in respect of 17 Norman Avenue because "there was no automatic fire detection system. The rear exit door was operated with the use of a key. The doors to the risk rooms leading onto the route of escape had no self- closers".

93. The Appellant submitted that the level of harm in all five cases should be low because of the absence of any complaints from tenants or evidence of any actual harm to tenants, particularly given that each property had an escape route fitted with a Yale lock and a form of automated smoke/fire alarm.

94. The Respondent's Civil Penalty Policy provides that when considering the level of harm both the actual, potential and likelihood of harm will be considered.

95. The list of factors set out in the Council's Policy that could provide for a high level of harm includes: "serious effect on individual(s) or widespread impact" and "a high risk of an adverse effect on an individual". The Policy states that a medium level of harm could constitute one or more of the following factors: "adverse effect on an individual – not high level of harm", "medium risk of harm to an individual", "low risk of a serious effect".

96. The offences found by the Tribunal to have been committed by the Appellant relate to the safety of occupants in the event of a fire. The risk to occupants in these circumstances is high. It is a matter of judgment to balance the degree of risk and the likelihood of fire. The Respondent's assessment in respect of three of the properties is medium level harm. The Tribunal finds that the Appellant's submission that the level of harm is low is not sustainable when both the actual, potential and likelihood of harm is considered. Relying on its own expert experience and knowledge, the Tribunal confirms the Respondent's assessment of medium level of harm in respect of 9 Foxglove Avenue, 2 Oakwood Place and 25 Jackson Avenue.

97. The Respondent has assessed the level of harm in respect of 11 Foxglove Avenue as low and there is no adequate explanation why this property is considered to be different from the three properties assessed as medium level harm. The Tribunal does not find any distinction between the properties. A low level of harm as described in the Policy could constitute one or more of the following: "low risk of harm or potential harm or, little risk of an adverse effect on individual(s)". That does not meet

the situation of a fire nor recognise the degree of risk to the occupants. The Tribunal finds that the level of harm in respect of No.11 is medium level.

98. That leaves the Tribunal to consider 17 Norman Terrace. The regulatory guidance is clear about the desirability of an automatic fire detection system in "virtually all residential premises where people are sleeping". The Appellant seeks to say that a battery-operated system is adequate but he has not explained why No.17 should be the exception – see paragraphs 65 to 68 above. The absence of an automatic detection system has potentially a very serious effect on the outcome for the occupants in the event of a fire. Balancing risk and likelihood of a fire, in the Tribunal's expert judgement, the level of harm should be assessed as high.

99. Tribunal assessed the level of harm in respect of 9 and 11 Foxglove Avenue, 2 Oakwood Place and 25 Jackson Avenue to be medium and in respect of 17 Norman Terrace to be high.

100. The statutory guidance makes it clear that it is for each Council to determine the level of fine imposed under the 2016 Act. The Respondent's Civil Penalty Policy includes a table showing the initial level of fine for each level of culpability and harm, including the minimum level of fine which will be imposed for each classification. Applying this to the Tribunal's findings produced the following result:

	culpability	Harm	penalty
9 Foxglove Avenue	high	medium	£15,000.00
11 Foxglove Avenue	high	medium	£15,000.00
2 Oakwood Place	high	medium	£15,000.00
25 Jackson Avenue	high	medium	£15,000.00
17 Norman Terrace	high	high	£25,000.00

Adjustments

101. In order to determine the final penalty, the Civil Penalty Policy provides that the Council will consider both aggravating and mitigating factors in each case. These will adjust the initial level of the penalty based on these factors.

Aggravating factors

102. The Policy provides that "for each aggravation or migrating factor which applies to each specific case the level of fine will be adjusted by 5% of the initial fine, up to the maximum £30,000 or to the minimum fine for each determined level of culpability and harm…The only exception to this principle will be for the number of items of none compliance which will be 5% for the first 5 items and 10% for any number of items greater than this level of non-compliance with items on any notice which has not been complied with".

103. In respect of all five properties, the Respondent has increased the penalty by 10% because of the number of alleged non-compliances, in each case that is said to exceed 5 items. The Tribunal has found in respect of four of the five properties that there was only one item of non-compliance and in respect of the fifth property, two items of non-compliance. A single offence gives rise to the penalty and by definition a single offence should not be considered to be an "aggravating factor". The Tribunal finds that the penalty should only be increased where there are two or more items of non-compliance.

104. Accordingly, it is not appropriate to increase the penalty in respect of 9 and 11 Foxglove Avenue, 2 Oakwood Place and 25 Jackson Avenue and to limit the additional penalty in respect of 17 Norman Terrace to 5%.

105. The Appellant has previous convictions relative to the offences and therefore it is appropriate to increase the penalty by a further 5%.

106. The Respondent has added 5% because of the Appellant's "record of non-compliance" and a further 5% because of his "record of poor management". This is to penalise the Appellant twice more for what is in essence the same thing, his previous convictions for which 5% has already been added. The Tribunal does not increase the penalties in this respect for any of the five properties.

107. The Tribunal concludes that in all five cases, the total addition to the penalty is limited to 5% for the previous convictions.

Mitigating factors

108. The Policy provides that for each mitigating factor the penalty should be adjusted by 5%.

109. The Respondent accepts that the Appellant has co-operated with the investigation and for this makes a reduction of 5%. The Tribunal finds that it is appropriate to apply the same 5% reduction.

110. The Appellant submits that the Respondent has failed to apply obvious mitigating factors. As regards to any items of disrepair, it is said that the "element of tenant responsibility" should be taken into account given there were no reports made to the Appellant of items being broken or in disrepair. Further, it is said that the voluntary steps taken by the Appellant to address the issues, including his repeated requests for guidance from Mr Dore and Mr Pearson should be considered as mitigating factors.

111. The Tribunal has found against the Appellant in respect of the absence of self-closers and the lack of an automated fire detection system. These are matters for the Appellant as landlord and not items of disrepair for which there might be a degree of tenant responsibility. The Appellant did not take any voluntary steps to address these

issues and his requests for guidance to the Council do not in the view of the Tribunal mitigate his failure to install the required devices.

The Tribunal's calculation of the penalties

112. The Tribunal assess the penalty in respect of each property as follows:

property	culpability	harm	starting point	adjustment	Result
9 Foxglove Av	high	medium	£15,000	£0	£15,000
11 Foxglove Av	high	medium	£15,000	£0	£15,000
2 Oakwood Pl	high	medium	£15,000	£0	£15,000
25 Jackson Av	high	medium	£15,000	£0	£15,000
17 Norman Tr	high	high	£25,000	£1,250	£26,250
total					£86,250

113. The Tribunal's assessment of each of the five properties applying the Respondent's Civil Penalty Policy is set out in Annex B below.

The totality principle

114. The Respondent's Civil Penalty Policy provides that "if issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, consider whether the total penalties are just and proportionate to the offending behaviour". The Policy goes on to state that "the total financial penalty is inevitably cumulative" and that "the Council should add up the financial penalties for each offence and consider if they are just and proportionate" and "if the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalty".

115. It is clear that Mr Dore did not consider the totality principle. He did not stand back and consider whether the total penalties were just and proportionate. One explanation for this is that the Council's computer programme does not make any provision for it. The programme designed by the Council for calculating penalties automatically populates sections of the spreadsheet and provides no opportunity for the decision maker to apply discretion. When Mr Dore was asked about the totality principle, he did not accept that it has any application to the present proceedings. He saw it as merely co-incidental that the five cases where being heard together regardless of the fact that they stemmed from inspections made and notices issued on the same dates based on many common allegations against the same landlord. The computerised system is no doubt a useful tool, but it should not be allowed to

make the ultimate decision. Mr Dore did what the computer told him to do, and the Respondent's system did not allow for the exercise of any discretion or for the decisions to be checked and confirmed by his supervisor.

116. The Appellant submits that the Council has failed to stand back and look at the totality of the penalties, to consider whether the total is just and proportionate which is contrary to its own guidance. The Appellant says that the total is not just and proportionate, particularly given there is no suggestion that he was offending for financial gain.

117. The Civil Penalty Policy provides that:

> "Where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty. This should reflect the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences".

118. The Sutton v Norwich City Council [2021] EWCA Civ 20 looked at breaches of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 and non-compliance with improvement notices relating to hazards in a block of flats. Financial penalties of £236,600 each imposed on the building's owner and its director were reduced to £75,000 and £99,000, respectively. It was held that the local authority had applied its policy in a way that had imposed disproportionate penalties without proper consideration of the facts.

119. As stated in Sutton, a tribunal's decision as to what civil penalty it should impose involves both evaluation and discretion. Accordingly, a tribunal is not entitled to overturn a penalty just because it thinks it would have imposed a different one. To interfere, the tribunal must conclude that the decision under appeal was an unreasonable one or is wrong because of an identifiable flaw in the Council's reasoning. In the present case, the Respondent failed to consider the totality principle set out in the Civil Penalty Policy. This failure undermines the cogency of its decision.

120. The question for the Tribunal is what financial penalty do the offences merit? The Tribunal bears in mind the public need for effective sanctions in an area where the health and safety of the public is at risk.

121. The Appellant committed the same offence – the failure to provide self-closers - in respect of each of the 5 properties. These were multiple offences of a repetitive kind. Applying the Civil Penalty Policy, it is appropriate to impose a single financial penalty that reflects the totality of the offending, and which is within the maximum penalty for that offence. The maximum penalty is £30,000. No separate penalty should be

imposed for the other offences. The penalty for the offence committed in respect of one of the properties, calculated in accordance with the Policy Matrix, is £15,000. That would not properly reflect the totality of the offending across 5 properties.

122. The Tribunal therefore varies the Respondent's final notices in respect of 9 and Foxglove Avenue, 2 Oakwood Place and 25 Jackson Avenue to impose an aggregate penalty of £30,000 which it considers to be fair and proportionate and which is sufficient to act as a deterrent and remove any gain as a result of the offences. This incorporates the Appellant's failure to provide self-closers in 17 Norman Terrace.

123. 17 Norman Terrace stands apart from the other 4 properties because the Appellant committed 2 different offences – the failure to provide self-closers and the lack of an automatic fire detection system. These offences arose out of the same incident. The Tribunal has already imposed an aggregate penalty of £30,000 in respect of the absence of self-closers and therefore it would not be appropriate to include that in the calculation of the penalty for No.17. It is appropriate to impose a financial penalty that reflects the Appellant's failure to provide an automatic fire detector system. That requires the calculation to be revised applying the Civil Penalty Policy. The Tribunal's revised calculation is set out in Annex B. The Tribunal therefore varies the Respondent's final notice in respect of 17 Norman Terrace to £17,250.

The Appellant's financial means

124. One final matter stands to be taken into account under the Respondent's Civil Penalty Policy. The owner has the right to make representations regarding the level of the penalty and their ability to pay. The Appellant has not asked the Tribunal to consider such matters.

Conclusion

125. The Tribunal concludes that in the particular circumstances of this case that the total just and proportionate penalty to cover all five properties is £47,250.

Judge P Forster

9 June 2021

ANNEX A

The Law

A local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England (s. 249A(1))

An appeal against the imposition of a financial penalty is to be a re-hearing of the local authority's decision (para 10, Schedule 13A). The Tribunal must therefore

similarly be satisfied, beyond reasonable doubt, that such an offence has been committed.

A local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England (s. 249A(1)).

An appeal against the imposition of a financial penalty is to be a re-hearing of the local authority's decision (para 10, Schedule 13A). The Tribunal must therefore similarly be satisfied, beyond reasonable doubt, that such an offence has been committed.

A *"relevant housing offence"* includes an offence under s.234 (s. 249A(2)(e)). A person commits an offence under s. 234(3) if he fails to comply with a regulation made under s. 234(1). The Management of Houses in Multiple Occupation (England) Regulations 2006 ("the HMO Regs") were made pursuant to s. 234.

The HMO Regs apply to *"any HMO in England other than a converted block of flats"* (Reg. 1(1). The HMO does not need to be one that requires a licence under Part 2 HA 2004 for the HMO Regs to apply to it.

Regulation 4 of the HMO Regs relevantly provides that:

(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.

(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.

Regulation 7 of the HMO Regs relevantly provides that:

(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.

ANNEX B

9 Foxglove Avenue

Culpability	high			
Harm	medium			
Initial Fine Level				**£15,000.00**
Aggravating Factors	Items of non-compliance	0		
	Previous convictions	yes	5%	
	Record of non-compliance	no		
	Total aggravating factors		5%	£750.00 **£15,750.00**
Mitigating Factors	Co-operation	yes	5%	
	Total mitigating factors		5%	£750.00
Civil Penalty				**£15,000.00**

11Foxglove Avenue

Culpability	high			
Harm	medium			
Initial Fine Level				**£15,000.00**
Aggravating Factors	Items of non-compliance	1		
	Previous convictions	yes	5%	
	Record of non-compliance	no		
	Total aggravating factors		5%	£750.00 **£15,750.00**
Mitigating Factors	Co-operation	yes	5%	
	Total mitigating factors		5%	£750.00
Civil Penalty				**£15,000**

2 Oakwood Place

Culpability	high			
Harm	medium			
Initial Fine Level				**£15,000.00**
Aggravating Factors	Items of non-compliance	1		
	Previous convictions	yes	5%	
	Record of non-compliance	no		
	Total aggravating factors		5%	£750.00 **£15,750.00**
Mitigating Factors	Co-operation	yes	5%	
	Total mitigating factors		5%	£750.00
Civil Penalty				**£15,000.00**

25 Jackson Avenue

Culpability	high			
Harm	medium			
Initial Fine Level				**£15,000.00**
Aggravating Factors	Items of non-compliance	1		
	Previous convictions	yes	5%	
	Record of non-compliance	no		
	Total aggravating factors		5%	£750.00 **£15,750.00**
Mitigating Factors	Co-operation	yes	5%	
	Total mitigating factors		5%	£750.00
Civil Penalty				**£15,000.00**

17 Norman Terrace

Culpability	high			
Harm	high			
Initial Fine Level				**£25,000.00**
Aggravating Factors	Items of non-compliance	2	5%	
	Previous convictions	yes	5%	
	Record of non-compliance	no		
	Total aggravating factors		10%	£2,500.00 **£27,500.00**
Mitigating Factors	Co-operation	yes	5%	
	Total mitigating factors		5%	£1,250.00

Civil Penalty				**£26,250.00**

17 Norman Terrace (2)

Culpability	high			
Harm	medium			
Initial Fine Level				**£15,000.00**
Aggravating Factors	Items of non-compliance	2	5%	
	Previous convictions	yes	5%	
	Record of non-compliance	no		
	Total aggravating factors		10%	£1,500.00 **£16,500.00**
Mitigating Factors	Co-operation	yes	5%	
	Total mitigating factors		5%	£750.00
Civil Penalty				**£17,250.00**

RIGHT OF APPEAL

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.