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

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| **Case reference** | **:** | CHI/24UB/HNA/2022/0002 & 0003 |
| **Property** | **:** | 86 Wrekin Close, Basingstoke, Hampshire, RG22 5BZ |
| **Applicant** | **:** | Mr Paul Belcher |
| **Representative** | **:** | Mr T Morris of Counsel<br>Instructed by Lamb Brooks LLP |
| **Respondent** | **:** | Basingstoke & Deane Borough Council |
| **Representative** | **:** | Mr F Umukoro - In-house Solicitor |
| **Type of application** | **:** | Appeal against a Financial Penalty<br>Section 249A & Schedule 13A Housing Act 2004 |
| **Tribunal member(s)** | **:** | Mrs J Coupe FRICS<br>Mr B Bourne MRICS |
| **Hearing Date and venue** | **:** | 23 August 2022<br>Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL |
| **Date of decision** | **:** | 2 October 2022 |

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**DECISION**

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## Summary of the Decisions of the Tribunal

(1) The appeal against a financial penalty imposed by Basingstoke and Deane Borough Council on Mr Paul Belcher under 72 of the Housing Act 2004 is successful and the financial penalty is hereby cancelled.

(2) The appeal against a financial penalty imposed by Basingstoke and Deane Borough Council on Mr Paul Belcher under section 234(3) of the Housing Act 2004 is dismissed. The penalty notice dated 13 January 2022 is confirmed. The penalty of £8,755.20 is upheld.

The reasons for our decision are set out below.

## Background to the application

1. The Appellant appealed against the imposition of two financial penalties under section 249A of the Housing Act 2004 ("the 2004 Act") in respect of the property known as 86 Wrekin Close, Basingstoke, Hampshire, RG22 5BZ ("the property"). The Applicant was the registered freehold proprietor of the property as at 13 January 2022, that being the date the two financial penalties were served.

2. The Respondent alleges that the property was a house in multiple occupation ("HMO") between 18 February 2020 and 21 May 2021 and that the Applicant failed to licence the property during this period. The Respondent imposed a financial penalty of £9,684.80 on the Applicant.

3. The Respondent further alleges that between December 2020 and 14 June 2021 the Applicant breached Regulation 4(2) of the Management of Houses in Multiple Occupation (England) Regulations ("HMO Regulations") in that the Applicant failed to ensure fire alarms were maintained in good working order, contrary to section 234 of the 2004 Act. The Respondent imposed a financial penalty of £8,755.20 on the Applicant.

4. The property is a terraced house with accommodation comprising, at ground level, an entrance hall; kitchen/living room; WC; bedroom 5/living room; and at first floor level a bathroom; three bedrooms and a fourth bedroom housing the central heating boiler ("the boiler room").

## The hearing

5. The Appellant attended the hearing and was represented by Mr Tom Morris, Counsel. The Respondents were represented by Mr F Umokoro, in-house Solicitor for the Respondent. Representatives of both parties helpfully filed skeleton arguments in advance of the hearing, the Respondents' being prepared by Ms Poonam Pattni, 12CP Chambers.

6. A number of observers were also in attendance.

## The law

7. Financial penalties were introduced by the Housing and Planning Act 2016, which amended the Housing Act 2004 by inserting a new section 249A and Schedule 13A, and provide an alternative to prosecution. Prior to issuing a financial penalty a local authority must be satisfied beyond reasonable doubt that the conduct amounts to a relevant housing offence.

8. Section 249A lists the relevant housing offences, which include offences under section 234 (management regulations in respect of HMOs).

9. Schedule 13A sets out the requirement for a notice of intent to be given before the end of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates or, where the conduct is continuing, within the period of 6 months beginning with the last day on which the conduct occurs. It also contains provisions in respect of the right to make representations within 28 days after that initial notice and the requirements for the final notice.

10. Appeals are dealt with in Schedule 13A. The appeal is a re-hearing and may be determined having regard to matters of which the local authority was unaware. On an appeal the First-tier Tribunal may confirm, vary or cancel the final notice.

11. The maximum civil penalty for each offence is £30,000. The relevant factors, as set out by the, then, Ministry of Housing, Communities and Local Government are:

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

12. The Upper Tribunal guidance provides that whilst the Tribunal should determine what penalty is merited by the offence, weight should be given to the local authority's own enforcement policy and the assessment made by the authority of the seriousness of the offence and culpability of the appellant.

13. The first alleged offence relates to the licensing of a HMO. The definition and standard test as to whether a property is an HMO is found in section 254 of the Act, which, under Section 254(2) include the following.

14. A building or a part of a building meets the standard test if:

    *(a) "it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;*
    *(b) the living accommodation is occupied by persons who do not form a single household …;*

*(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it …;*
*(d) their occupation of the living accommodation constitutes the only use of that accommodation;*
*(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and*
*(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."*

15. By virtue of Section 258 of the Act persons are to be regarded as not forming a single household unless they are all members of the same family. To be regarded as members of the same family the occupiers must be related, a couple, or related to the other member of a couple.

16. By virtue of Section 234(1) of the Act *"Management regulations in respect of HMOs"* the appropriate national authority may, by regulations, make provision for the purpose of ensuring that in every HMO:

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

*(b) satisfactory standards of management are observed.*

*2. The regulations may, in particular –*

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

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

17. The meaning of "person having control" and "person managing" etc is defined in Section 263 of the Act which provides:

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

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

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

*(ii) …… ; or*

18. Section 234(4) provides that it is a defence to a charge of an offence under Section 234(3) of the Act that a person had a reasonable excuse for committing it.

19. The local housing authority must prove beyond reasonable doubt that the offences relied on have been committed. In the case of IR Management Service Ltd v Salford City Council (2020) UKUT 81 (LC) it was found that any defence of reasonable excuse must be established by the appellant on the balance of probabilities and that the Tribunal should consider

explanations provided by the manager of an HMO and determine whether such explanations constitute a reasonable excuse, whether so claimed or not.

**Chronology (summarised)**

20. The Respondent considered that the property qualified as an HMO between the period 18 February 2020 and 21 May 2021 and that during that period the Applicant failed to obtain the required licence. The reasons for the Respondent reaching its conclusion on the point follow. The financial penalty issued, by way of penalty, was £9,684.80.

21. The Respondent stated that on or around 13 June 2018, the Applicant was advised in writing of HMO legislative changes effective from 1 October 2018 pertaining to the removal of the three-storey requirement of mandatory licensing.

22. The Respondent claimed that between 27 July 2018 and November 2019, the property was occupied by a single family. The additional occupation of Mr Jason Hicks during that period was raised in oral evidence.

23. On 18 February 2020, the Respondent carried out an inspection of the property and was satisfied that it was no longer occupied by a single family but was occupied by five people, therefore bringing it within the licensing regime.

24. The Respondent stated that, on 18 February 2020, the Applicant was reminded of his licensing obligations and advised to either apply for a licence or evict one tenant. The Respondent relied on a contemporaneous note within the bundle titled "HMO Inspection Report of Visit" which, they alleged, was countersigned by the Applicant. Point 8 of the note reads *"5 tenants insitu. Licence needed or eviction"*.

25. Around December 2020, the Southern Central Ambulance Service attended the property and reported that smoke alarms had been removed from the property by the Applicant. Such claims, the Respondents alleged, were later repeated by the tenants. In January 2021, the Community Safety Team visited the property and noted the absence of working smoke alarms.

26. On 6 May 2021, Hampshire Fire and Rescue Services attended the property due to a domestic fire and advised that there were no working smoke alarms. They took remedial steps of installing six single point battery fire alarms. The Respondent allege that the Fire Service reported that they understood there to be five occupied rooms, with around five or six tenants in total.

27. On 21 May 2021, the Respondents carried out an unscheduled inspection of the property and, in doing so, met Ms Rachel Hoyle who advised that she had moved in during November 2019 and that, at that date, there were four tenants in occupation. Ms Hoyle informed the Respondent that within two months a fifth tenant, Mr Gary Smithers, had moved in, meaning that by February 2020 five tenants occupied the property.

28. The Respondent, during that inspection, was satisfied that the property was occupied by 5 tenants and identified the occupant of the boiler room as a single male who was working locally at Morrisons' carwash facility.

29. Between 24 to 26 May 2021, the Respondent issued the Applicant a Section 235 Notice under the 2004 Act and Section 16 Requisition for Information ("ROI"). The Respondent stated that no response was received to the ROI and that the Section 235 Notice was only partially and belatedly complied with.

30. The Respondent relied on correspondence received on 28 May 2021 from the Community Safety Team at Hampshire Fire Services advising of their concerns in relation to the condition of the property.

31. During a scheduled visit on 14 June 2021, the Respondent observed that no remedial fire safety works had been completed and that three tenants remained in occupation.

32. The Respondent issued a Financial Penalty on 19 October 2021.

33. The Applicant stated that during the period July 2018 to November 2019 a single family occupied the property, in addition to his long-standing tenant Mr Hicks, Mr Hicks having tenanted the property for approximately sixteen years.

34. The Applicant stated that in November 2019, the family vacated the property and three further tenants, Mr Gary Smithers, Ms Rachel Hoyle and Ms Alison Bennett moved in. Accounting for Mr Hicks who continued his tenancy, four tenants were in occupation, each occupying one of the main rooms.

35. The Applicant agreed that, on 18 February 2020, Mr Ben Cutler of Basingstoke Council inspected the property and that during that time it was evident that a fifth person was occupying the boiler room. The Applicant explained that this gentleman, known as Mustafi, worked at the local carwash and that the Applicant had an arrangement with the manager of the carwash allowing an employee to occupy, and pay rent for, the boiler room.

36. Mr Belcher accepted that during dates unknown but between February and March 2020 Mustafi occupied the boiler room with his consent. Mr Belcher advised that, on vacating the room, Mustafi returned to his home country due to the impending Covid 19 lockdown. He further accepted that upon vacating the boiler room a further carwash employee, named "Chris" moved into the room for a period of approximately twenty three days, before himself returning to his home country due to lockdown.

37. Mr Belcher, in cross examination, was asked whether he recalled signing the contemporaneous note, titled "HMO Inspection Report of Visit" provided by the Respondent in evidence and which recorded five tenants as living at the property. Mr Belcher replied that the signature appeared to be his but that due to alcohol related memory and health issues he was experiencing at the time, he was unable to recall signing the note.

38. Mr Belcher acknowledged that at some unknown date during May and June 2020, Mr Smithers invited a friend to share his room. The Applicant contended that such action was prohibited under the terms of Mr Smither's tenancy agreement and that as soon as he was advised of this additional tenant by Mr Hicks, he immediately ordered Mr Smithers to cease subletting his room. The friend vacated the property by mid July 2020.

39. The Applicant contended that once Chris vacated the boiler room in April 2020 there remained only four, authorised, occupiers of the property. In cross examination, Mr Belcher conceded that he had never retrieved the property keys from the carwash manager and that, therefore, there was a potential risk that the manager had continued to use the boiler room without his knowledge or express permission.

40. The Respondent submitted that Mr Belcher had admitted in a phone call on 24 May 2021 to permitting five tenants to occupy the property. Mr Belcher denied this admission and pointed to the lack of any contemporaneous note in the bundle reporting such admission.

41. Counsel for the Applicant relied on three grounds in relation to the first financial penalty, that being the alleged lack of an HMO licence, these being (1) no offence has been committed; (2) the Respondent is out of time; (3) reasonable excuse. Taking each in turn.

42. No offence has been committed. In order for the property to have been an HMO which requires to be licensed, each occupier must have occupied it *"as their only or main residence"*. Counsel averred that the Respondent had adduced no evidence to prove that each occupier occupied the property as their only or main residence. In particular, the Respondent had not proven that Mr Smither's friend occupied the property in such way or that Mr Hicks, who returned to live with his wife during lockdown, occupied as his only or main residence. Furthermore, Counsel claim that no evidence had been submitted as to the legal status of the two known occupiers of the boiler room, both of whom returned to their home country during lockdown. In summarising, Counsel stated that the Respondent had adduced insufficient evidence on the point to meet the criminal standard of proof.

43. Respondent is out of time. Paragraph 2 of Schedule 13A to the 2004 Act requires the service of a notice of intent to be within six months of the Respondent having sufficient evidence of the relevant conduct, or where such conduct is continuing, within six months beginning with the last day on which the conduct occurred.

44. The Applicant claimed that the Respondent, on its own case, had sufficient evidence by February 2020 of the conduct relied upon. From the middle of July 2020, there were only four lawful occupiers of the property. Accordingly, the last date by which the Respondent could serve a notice of intent was the middle of January 2021, being 6 months after July 2020.

45. The notices of intent were served on 19 October 2021, by which time the Applicant contends the Respondent was out of time.

46. Reasonable excuse. Alternatively, the Applicant had a reasonable excuse for being a person having control of or managing an unlicensed HMO. The Applicant reduced the number of occupiers to four within a reasonable time of being notified that he needed to do so or apply for a licence. The occupation by Mr Smither's friend was a breach of the terms of his tenancy agreement, which the Applicant addressed swiftly. Any occupation of the boiler room after May 2020 was without the Applicant's knowledge or consent.

## The Tribunal's decision on the HMO Financial Penalty

47. The Tribunal determines that the Respondent was out of time in serving the notice of intent on 19 October 2021. Accordingly, the financial penalty of £9,684.80 is cancelled.

## Reasons for the Tribunal's decision

48. The Respondent alleges that the property was an unlicensed HMO between 18 February 2020 and 21 May 2021.

49. The Tribunal finds it proven that the property was an unlicensed HMO between 18 February 2020 and 30 April 2020 ("the relevant period"). During the relevant period the property was occupied Mr Hicks; Mr Smithers; Ms Hoyle; Ms Bennett and either Mustafi or Chris.

50. The Applicant admitted as such in written and oral evidence, and signed a "HMO Inspection Report of Visit" note to that effect on 18 February 2020. The Tribunal finds that, in the absence of any evidence, or assertion, that the signature on the contemporaneous note was not that of Mr Belcher, that the Applicant did sign the report confirming five tenants were in occupation.

51. The Tribunal does not concur with Counsel that the Respondent failed to prove the tenants occupied the property as their only or main residence. Counsel advised that Mr Hicks returned to live with his wife during lockdown. However, there was no suggestion that during the sixteen years of Mr Hick's occupation, that the property was anything other than his only of main residence. Furthermore, Mr Belcher gave oral evidence to the effect that Mr Hicks partner/wife was extremely angry at the Applicant for evicting Mr Hicks, claiming that he had nowhere else to live, with the Applicant considering that to be the reason Mr Hicks was unwilling to give evidence in his favour at the hearing, as he had made him "homeless". In regard to the occupation by Mustafi and Chris, the Tribunal disagree with Counsel that, by returning to their home country during lockdown, this proved the property was not their only or main residence. The Tribunal finds that whilst living in the United Kingdom, 86 Wrekin Close was the place within which the car-wash tenants ate, slept and returned to after work, in other words it was their main residence.

52. Turning next to the occupation by Mr Smither's friend for a short period in May/June 2020. The Tribunal finds the Applicant is not responsible for the actions and breach of Mr Smither's tenancy agreement. The agreement

clearly prohibited subletting and the Tribunal finds that, upon learning of the unauthorised occupation, the Applicant took steps to remove the additional occupier and that he vacated by July 2020. Accordingly, the Tribunal does not take into account this period in determining the period within which the HMO was unlicensed.

53. The Applicant admits the occupation of the boiler room by Mustafi and Chris between February – April 2020 and that such occupation resulted in there being five occupiers insitu. The Tribunal finds that the Respondent has not proven to a criminal standard that anyone occupied the boiler room thereafter. The Respondent's conclusion was based upon a number of assumptions and hearsay. In May 2021, the fire service suggested that there were additional occupiers during their visit, where they reported that they believed there were around five/six tenants and that they were told that all five rooms were occupied. The Fire Service only spoke to three occupiers during their visit. Furthermore, at no point after 18 February 2020 did the Respondent have visibility of five occupiers.

54. The Tribunal finds the only period where it is proven that the property was occupied by five tenants was 18 February 2020 – 30 April 2020.

55. The Tribunal does not find that during this period the Applicant had a reasonable excuse. The only excuse forwarded was that the Applicant reduced the number of occupiers to four within a reasonable time. The Tribunal disagrees. By signing the inspection report on 18 February 2020, the Applicant accepted that the property was over-occupied and unlicensed on that date. However, by the Applicant's own evidence, possession of the boiler room was not attained until sometime in late April and during the intervening period Mustafi vacated the room and the Applicant granted permitted occupation to a new tenant "Chris", who remained in occupation for 23 days.

56. Accordingly, the Tribunal finds that, without reasonable excuse, the property was an unlicensed HMO between 18 February 2020 – 30 April 2020. After this date the Tribunal finds there to be insufficient evidence to meet the criminal standard that the property was occupied by more than four tenants.

57. The Tribunal finds that, as evidenced by the signed and counter-signed note "HMO Inspection Report of Visit" the Respondent had sufficient evidence of the offence by 18 February 2020, as admitted by the Applicant in signing the Inspection Report. The offence continued until 30 April 2020. The last date upon which the Respondent could therefore serve a Notice of intent was 30 October 2020. The Notice was served on 19 October 2021. The Tribunal noted the Respondents' explanation during cross examination that service was delayed partly due to work-load pressures. This is not a factor which the Tribunal can take into account.

58. Accordingly, the Tribunal finds that the property was an unlicenced HMO during the relevant period but that the Respondent failed to serve the Notice of intent within the required period. Accordingly, the financial penalty of £9,684.80 is cancelled.

## The alleged breach of Fire Regulations

59. In this matter, the Respondent alleges that between December 2020 and 14 June 2021 the Applicant breached Regulation 4(2) of the Management of Houses in Multiple Occupation (England) Regulations ("HMO Regulations") in that the Applicant failed to ensure fire alarms were maintained in good working order, contrary to section 234 of the 2004 Act. The Respondent imposed a financial penalty of £8,755.20 on the Applicant.

60. Section 4 of the HMO Regulations concerns the duty of a manager to take safety measures. By virtue of Section 4(2) *"The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order."*

61. The Respondent attended the property on 21 May 2021, at which time they allege the property was in a poor condition; was not being well managed and that they considered this amounted to unacceptable risks to vulnerable tenants.

62. During the inspection the Respondent noted that the mains wired smoke detector heads in bedrooms 1 and 2 had been removed. No access was provided to bedrooms 3 and 5. Furthermore, the smoke detector heads had also been removed from the means of escape corridor through the ground floor hallway and first floor landing. The smoke detector in the dining room was noted to be hanging from the ceiling.

63. The Respondent stated that, during this inspection, two of the tenants advised them that one of the smoke detector heads had been removed by the landlord in December 2020, due to a water leak causing it to malfunction and sound. The same tenants advised the Respondent that there had been no working smoke detectors until the Fire Service installed single point battery alarms on 6 May 2021. Neither tenant attended the hearing and such evidence was therefore untested.

64. On 28 May 2021, the Respondent received an email from Community Safety – Hampshire Fire Service reporting on the general condition of the property. The email referred to concerns raised by Southern Central Ambulance Services who had attended the property in December 2020 and had reported that there were no smoke alarms in the property. The Community Safety team visited the property in January 2021 and reported that there were no smoke alarms present. The email stated that, on 6 May 2021, they had installed six single point alarms at the property following an unrelated external fire incident.

65. The Respondent inspected the property on the 14 June 2021 in the presence of the Applicant and his partner, during which time the Respondent observed that no remedial fire safety works had been carried out.

66. The Applicant advised that a fire alarm inspection was carried out by Auream Energy in February 2020, at which point all alarms were fully operational.

67. The Applicant accepted that in December 2020 he removed a fire alarm from bedroom 4, as the tenant had taken to using a toaster and microwave in her room, against the terms of her tenancy agreement, which was causing the alarm to sound and cause irritation to other tenants.

68. During his visit in December 2020, the Applicant stated that the fire alarm on the first floor landing was sounding, proving that it was in working order. He averred that the fire alarm in the kitchen and hallway were also operational. He did not test the alarms within bedrooms due to Covid 19 restrictions on entering rooms and stated that, if, detectors had been removed these were the actions of the tenants, without either his knowledge or consent.

69. Counsel for the Applicant advanced two grounds of defence. (1) No offence committed. (2) Reasonable excuse. Taking each in turn.

70. No offence committed. Regulation 4(2) requires that any fire-fighting equipment and fire alarms are maintained in good working order. The Applicant contended that this does not extend to installing new alarms, nor does it create an obligation not to remove fire alarms. By removing a single fire alarm from one bedroom in December 2020 the Applicant was not in breach of regulation 4(2) as, to the best of his knowledge, the remaining alarms were in working order.

71. The Respondent considered the Applicant's defence on this point misconceived and referred the Tribunal to the ordinary meaning of the words, that the fire alarms are *"maintained in good working order"*. The Applicant had installed a fire alarm system but this system was not working at the time of the Respondent's inspection or during the visit of Hampshire Fire Service. When the Respondent revisited the property on 14 June 2021, the system still remained un-operational.

72. The Respondent further pointed to the Applicant's own inventory prepared by "Chase", which showed that although smoke alarms were in situ, they were tested to mains only. The Respondent claimed that the report by Auream Energy on 21 February 2020 confirmed that the system did not comply with regulations and selectivity was not achieved.

73. Reasonable excuse. The Applicant stated that if head units had been removed by tenants, such actions were outwith his knowledge or consent. The Applicant also relied on restriction in place at the time due to Covid 19 and averred that he was prohibited from entering individual bedrooms to check on the status of the fire safety equipment. Accordingly, if an offence had been committed, the Applicant had a reasonable excuse.

74. The Respondent considered the Applicant to be an experienced small portfolio landlord, familiar with the regulatory environment and knowledgeable of the requirements, and means, to carry out safety assessments within the confines of Covid 19 restrictions. The Respondent referred the Tribunal to the Covid guidelines at the time and noted that there was no prohibition preventing essential works being undertaken.

75. Furthermore, the Respondent averred that the Applicant was aware that several of his tenants were vulnerable individuals, some of whom suffered from physical and mental health issues, and, in particular, that one tenant had reduced mobility which, when coupled with the absence of a working smoke detection system could have resulted in a fatality.

76. The Respondent pointed to the joint inspection carried out on 14 June 2021 when the fire safety issues remained outstanding.

## The Tribunal's decision on the Fire Regulation Financial Penalty

77. The Tribunal determines that the appeal by the Applicant is dismissed. The penalty notice dated 13 January 2022 is confirmed. The financial penalty of £8,755.20 is upheld.

## Reasons for the Tribunal's decision

78. The Tribunal finds that during December 2020, and by the Applicant's own admission in written and oral evidence, the Applicant removed a smoke detector alarm in the bedroom occupied by Ms Bennett. The Tribunal finds that the Applicant deliberately chose to disconnect the alarm rather than address the issue of the tenant cooking in her room, contrary to the terms of her tenancy agreement.

79. The Tribunal accepts the evidence of the Respondent that during an inspection on 21 May 2021 the mains wired smoke detector heads had been removed from bedrooms 1 and 2, and from the means of escape corridor through the ground floor hallway and first floor landing, and that the detector in the dining room was hanging from the ceiling.

80. The Tribunal accepts the uncontested evidence within the bundle that on 6 May 2021 Hampshire Fire Service installed six single point alarms at the property having been called to the property on an unrelated matter.

81. The Tribunal finds that the ordinary meaning of Regulation 4(2) is clear. The Applicant was under a duty to ensure that any fire fighting equipment and fire alarms are maintained in good working order. The Tribunal does not consider the removal of an alarm simply because it was fulfilling its purpose and warning occupiers of a danger, to be deemed as maintaining the system in good working order.

82. Furthermore, the Applicant relies on an assertion that removal of one fire alarm was irrelevant, as others in the building remained in good order. Such evidence is clearly contradicted by the Fire Service who identified their own concerns and took it upon themselves to install six single point alarms on the 6 May 2021.

83. The Tribunal finds that, contrary to Regulation 4(2) the manager failed to ensure that any fire fighting equipment and fire alarms were maintained in good working order.

84. In calculating the appropriate financial penalty, the Respondent had regard to the fact that the Applicant had been an HMO landlord for many years and owned other HMO's in his portfolio; that the Applicant had been warned previously about disrepair issues and reminded of his obligations as a landlord and that some of the tenants were considered vulnerable.

85. The Respondent considered that the Applicant had shown a flagrant disregard for the safety of the tenants in failing to provide an early warning fire system. Taking account of these factors the Respondent assessed the level of culpability as "High".

86. The Respondent assessed the level of harm as "Level A", based on an assertion that had a fire had broken out prior to the Fire Service installing six detectors, there would have been no early warning system to notify the tenants.

87. Applying a "High" level of culpability and a "Level A" harm, the Respondent arrived at Penalty Band 5, that being £8,000 - £15,000.

88. Starting at £8,000 the Respondent calculated the Applicant's weekly income based on limited information provided and applied a Penalty Level 5 to an estimated weekly income of £1,040. Accordingly, a subtotal of £12,160 was recorded.

89. The Respondent applied a 10% deduction to the penalty in response to mitigating factors, resulting in a subtotal of £10,944.

90. A further reduction of 20% was applied by the Respondent to the aggregate total to reduce it to a level that was still representative of the seriousness of the offences and breaches of legislation but was also just and proportionate. The final financial penalty being £8,755.20.

91. The Tribunal reassessed the penalty calculation and had regard to the Respondent's own internal guidance, and concur that a financial penalty of £8,755.20 as calculated is appropriate. Accordingly, the appeal on this ground is dismissed and the financial penalty is upheld.

## RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. 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.

3. If the person wishing to appeal does not comply with the 28 day time limit, the 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.

4. 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.