



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

Case Reference : **BIR/47UG/HNA/2022/0023
BIR/47UG/HNA/2022/0031**

**HMCTS code
(paper, video,
audio)** : **Remote Video Hearing**

Property : **3 St Johns Close, Kidderminster,
Worcester, DY11 6YQ**

Applicant : **Mr Craig Rigsby (Litigant in Person)**

Respondent : **Wyre Forest District Council**

**Type of
Application** : **Appeals against Financial Penalties –
Section 41 & Schedule 13A to Housing
Act 2004**

Tribunal Members : **Judge C Payne
Mr A Lavender**

Date of Hearing : **16 August 2022**

Date of Decision : **18 November 2022**

DECISION

Decision of the Tribunal

1. The Tribunal allows the appeal and varies the financial penalty imposed for the offence of being a person in control of or managing a House in Multiple Occupation who does not possess an HMO Licence from £9,000 to **£3,500**.
2. The Tribunal allows the appeal and varies the financial penalty imposed for breaches of The Management of Houses in Multiple Occupation (England) Regulations 2006 from £11,300 to **£1,900**.

Introduction

1. The Tribunal received and application on 13 May 2022 against financial penalties issued by the Respondent under section 249A and Schedule 13A, paragraph 6, of the Housing Act 2004 ('**2004 Act**').
2. The Penalties set out in the Penalty Notices dated 19 April 2022 are:
 - (i) £9,000.00 for the offence under S72, Housing Act 2004 of being a person in control of or managing a House in Multiple Occupation ('**HMO**') who does not possess an HMO Licence.
 - (ii) £11,300.00 for offences under S234, Housing Act 2004 for breaches of The Management of Houses in Multiple Occupation (England) Regulations 2006 ('**Management Regulations 2006**').
3. The Applicant did not dispute that Property was an HMO, which required a licence under s61(1) of the 2004 Act, or that he had committed an offence under s72(1) of the 2004 Act or that the Respondent was entitled to impose a financial penalty under s249A of the 2004 Act. The Applicant disputed the level of fine imposed.
4. The Applicant did not dispute that he had committed an offence under s234(3) of the 2004 Act. The Applicant disputed the level of fine imposed.

The Hearing

5. The Applicant represented himself at the hearing. Ms Nina O'Hare, in house counsel for the Respondent and two witnesses, Ms Kelly Troman, Senior Housing and Enforcement Officer and Mr Richard Osborne, Principal Environmental Health Officer provided submissions on behalf of the Respondent.

6. The Applicant provided the Tribunal with an Application Form and Supplemental Statement with 9 exhibits. The Respondent provided a 246-page bundle of evidence. These were supplemented by submissions made by both parties over the course of the hearing.

Background

7. The Property is owned by Kingswood Investments Limited. The Applicant is the sole owner and director of that company. The Respondent is the local authority.
8. The two penalty notices were served by the Respondent pursuant to an inspection undertaken by the Respondent's officers on 15 June 2021. During the visit it was noted that there were 7 tenants in occupation, although there was no HMO Licence, and 113 items of required works were identified.
9. A further inspection took place on 29 September 2021, by which point the Property was empty. Many of the works had been done, but some were still outstanding.
10. Notices of intention were served on the Applicant on 30 November 2021, to which he responded stating that the property was empty and that he had an intention to sell it.
11. The Property was put up for sale in September 2021 and then withdrawn from the market in March 2022. Since 13 March 2022 the Property has been occupied by 2 tenants and is not currently operating as an HMO.
12. The parties agree that the Applicant was a small-scale landlord with just one property let at the time of the offence and that this is the only HMO property over which he has ever had any control.
13. The Applicant also owns one other property at 25 Elmdale Drive, Kidderminster. This property was his own home but has been let since 10 November 2021. It is not let as an HMO.

Applicant's Submissions

14. The Applicant's parents previously owned the Property with an interest only mortgage. As the mortgage term came to an end, they had concerns about remortgaging the Property. The Applicant was unable to secure a mortgage himself, so the Property was put into a company and remortgaged through that vehicle in late 2019. The Applicant submitted that his parents were entitled to the equity in the Property if it should be subsequently sold, but there was no evidence of this arrangement, it having not been formally documented.

15. The Applicant's initial intention following the remortgage was to sell the Property. However, a Mr Jayden Reid approached the Applicant in December 2019 proposing an arrangement whereby Mr Reid took on responsibility for the upkeep and costs of the Property, rented it out for 5 years and then at the end of that period purchased it. Mr Reid proposed that he would do the Property up and sublet it to a family. The Applicant agreed to these terms with Mr Reid verbally. Mr Reid said his solicitor would draw up documents, but the arrangement was never documented.
16. Mr Reid then took over responsibility for the Property from January 2020. Mr Reid paid the outgoings for the property, including the mortgage Payments, and began undertaking works. In return Mr Reid kept the rent from the Property. A few weeks after granting a lease to Mr Reid, the Applicant noted that Mr Reid had moved in a number of unrelated people as tenants, which was contrary to their agreement.
17. Upon raising this with Mr Reid, the Applicant was advised by him that attempts to rent the property to a family had been unsuccessful and it was being let as shared accommodation. Mr Reid assured the Applicant that he would take full responsibility and that he was obtaining a licence for an HMO. He also told the Applicant that the works he was doing were necessary to ensure the Property met the HMO requirements.
18. Mr Reid had far more experience in letting property than the Applicant. Mr Reid owned a number of other rental properties. The Applicant had comparatively little experience of letting and none of dealing with an HMO, so he assumed that Mr Reid had the matter in hand. It is not disputed that Mr Reid initially contacted the Respondent about obtaining an HMO Licence for the Property in January 2020, but that application was never completed.
19. Mr Reid put in new doors at the Property and undertook some works but appeared never to complete them. The relationship between Mr Reid and the Applicant started to become strained. The Applicant did not feel Mr Reid was managing the Property appropriately.
20. Mr Reid asked the Applicant to provide the necessary confirmation to the Respondent to allow the HMO Licence to be completed in February 2020. The Applicant refused to give his consent, thinking that would make him liable where Mr Reid should be responsible for the Property and the HMO as it was his actions that had created the situation. The Applicant had never wanted the Property to be operated as an HMO or agreed to that use before the tenants were moved in by Mr Reid. The Applicant did not appreciate his own liability in the situation.
21. The Applicant and Mr Reid fell into disagreement, which ended with the Applicant paying Mr Reid £1,921 to end their verbal arrangement in September 2020. Mr Reid retained the tenants' deposits and refused to transfer them to the Applicant's name with the Tenancy Deposit Scheme.

22. Until he took back control of the Property in September 2020, the Applicant received no direct payment of rent or benefit from the Property being let as an HMO. When he took over, he inherited issues with two tenants not paying rent. They vacated the Property by December 2020. He was then left with only 4 tenants in the Property, at which point no HMO Licence was required.
23. The Applicant contacted the Respondent to obtain an HMO Licence when he took back control of the Property in September 2020. He started the application process and thought that he was allowed to carry on letting the property while the application process was ongoing, not realising that defence was only available once the application fee was paid and the application submitted.
24. He was under the mistaken impression that an inspection was needed before he could complete the application process. He did not pay the licence fee before the inspection as he was under the impression that, if works were needed following the inspection, the application fee would need to be paid again. The Applicant stated that he never had an intention of not paying the licence fee. He found the process very confusing and was trying to do what he thought was the right thing.
25. As the number of tenants had dropped to 4 by December 2020, he no longer needed a licence, so he stopped progressing the application.
26. In March 2021 two of the tenants approached him asking if a friend could rent a room on an urgent basis as they would otherwise be homeless. The Applicant took on this tenant on a temporary basis, taking the total tenants to 5.
27. In March 2021 he was also contacted by the family of a man who was homeless and living on the streets. He agreed to rent a room to him on a temporary basis to get him off the street, taking the total tenants up to 6.
28. Another tenant then moved his girlfriend into the Property, taking the total occupancy up to 7.
29. These additional occupiers were only intended to be there on a temporary basis, but stayed longer.
30. In June 2021, he was advised that the Respondent's officers would be making an inspection of the Property. The Applicant admitted that he had asked the tenants via text message on 14 June 2021 to lie about the number of occupants during the inspection on 15 June 2021. He accepted that this was unacceptable behaviour on his part and apologised stating that he was not sure if he was in trouble when he got the notifications about the inspections and panicked.

31. Following the inspection, the Applicant was presented with a long list of items of work that he understood needed to be done to the property urgently. He was surprised by the list of works as Mr Reid had said that he had done all the works needed at the Property for the HMO licence. He started tackling the works on the list immediately.

32. The Applicant stated that he had tried to do all the works listed, undertaking most of them himself as he was struggling to get contractors. He made the following observations on the breaches listed of the Management Regulations 2006 :
 - (i) Regulation 3. Failing to provide information. Although there was not a notice, all the tenants had his contact details when he was managing the Property.

 - (ii) Regulation 4(1). Duty of Manager to take safety measures, in relation to fire safety maintenance and free from obstruction. He kept clearing the routes, but the tenants would then put things back. He thought Mr Reid had put in appropriate Fire Doors, as he was told by Mr Reid that the new doors, he installed were fire doors of the correct specification. It was only after the inspection that he became aware they were not fire doors.

 - (iii) Regulation 4(2) maintaining firefighting equipment and fire alarm. Equipment out of date. He had tried to provide what he thought was the right equipment.

 - (iv) Reg 4(4) design and structural conditions. The two bedrooms next to the kitchen had windows with quick release bolts for easy escape and the route through the garden was clear.

 - (v) Regulation 7(1) maintenance of common parts, lots of very minor issues. £1,000 was felt to be excessive.

 - (vi) Regulation 7(4) maintenance of garden in a safe condition. He undertook maintenance of the garden himself and considerable work was done to address this. The Applicant was unable to secure any tradesmen with availability to come and assist him.

 - (vii) Regulation 8, maintenance of living accommodation. Multiple issues, not very significant. Lack of floor covering, broken window, damaged switches. £1,000. There was no floor covering as the tenant

would not allow access and had said they preferred to supply their own carpet. There were no broken windows. Damages to sockets was cosmetic. This was felt to be excessive.

33. Following the inspection, the Applicant felt the situation was too much for him to deal with longer term, so he gave notice to the tenants to vacate the Property. He helped them all find alternative accommodation and they had all left by August 2021. This is why the property was vacant during the second inspection by the Respondent's Officers in September 2021 and, at that time, the Applicant had a genuine intention to sell the Property.
34. The Property was put on the market, so the Applicant did not progress the application for an HMO Licence. No buyer was secured. The Applicant was approached in March 2022 by a couple wishing to rent the Property with a view to purchasing it once they had saved up a deposit. He agreed to let it to them on the basis they undertook the maintenance of the Property. This was agreed and they are now treating the Property as their own on the understanding they will have the option to purchase as soon as they are in a position to do so. No HMO Licence is needed for this tenancy.
35. The Applicant told the Tribunal that in March 2021 he received £1,550 in rent and from April to June he received £1,975 per month in rent from the 7 occupants. He made mortgage payments during this period of £3,780 between March – June 2021 and paid £60 per month in accountancy fees related to the company's account for the property. Therefore, the income for that period was £3,455. This information was not provided to the Respondent previously.
36. The Applicant provided the Tribunal with copies of his wage slips which showed an income of £160 per week from his employment. These were not provided to the Respondent previously.
37. The Applicant told the Tribunal that the current rent for the Property is £1,100 per month. £944.96 per month is spent in mortgage repayments and £60 per month in accountancy fees for the company, leaving a profit of £95.04. This is applied to undertaking repairs to the Property. There is an interest only mortgage on the Property for £285,000. The Applicant estimated the value of the Property as being in the region of £400,000. However, he stated that any profit on sale would be due to his parents, though there was no evidence of this arrangement with the company.
38. The 25 Elmdale Drive Property (private residence) was put up for sale in October 2021, but then let to a tenant family for £1,000 per month. There is a mortgage on the property of £202,000 and requiring a payment of £505 per month. This property is estimated as having a value of £250,000, leaving equity of £48,000. He also pays agents fees of £85 per

month and Landlord's insurance fees of £25 per month. Therefore, the total monthly income from the Property is £385.

39. The Applicant stated that he has spent all of his savings on doing works to the two properties. He spends most of the income from the properties on their maintenance. He gave the example of having paid £800 recently to put in a new consumer board.
40. At most the Applicant's monthly income is in the region of £1,120.04, which is approximately £280 per week.
41. The Applicant is currently residing in a campervan with his dog after having to move out of 25 Elmdale Drive as he could no longer afford to make the mortgage payments and pay for the repairs to the property at St Johns Close. The Tribunal was advised that the vehicle had been purchased using a credit card. The Applicant attended the hearing from the mobile home, with his dog in evidence. Due to his circumstances, he had found it very difficult to collate and present the evidence to the Respondent and the Tribunal.
42. This is the Applicant's first offence and there is no evidence of any tenants suffering any actual harm. He showed considerable remorse during the course of the hearing, apologising for the situation and accepted that, while he was trying to do the right thing, he had got things wrong.

Respondent's Submissions

43. The Respondent provided a copy of the Wyre Forest District Council Enforcement Policy 2020 ('**Council Policy**') and a copy of the Civil Penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities ('**Guidance**').
44. The Council Policy states that the starting point for a Failure to Obtain a Licence is £10,000 and the starting point for failure to comply with the Management Regulations 2006 is £1,000 per first offence. Acts or omissions demonstrating high culpability may have an additional sum of £2,500 added and where a party has a weekly income of less than £440, a 50% reduction is applied. The maximum single penalty cannot be in excess of £30,000.
45. The premium for acts of omissions demonstrating high culpability is applied where the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.
46. The Guidance suggests that when considering the level of a fine the following should be taken into account:

- (i) Severity of the Offence
- (ii) Culpability and Track Record of the Offender
- (iii) The Harm caused to the tenant
- (iv) Punishment of the offender – A civil penalty should not be regarded as an easy or lesser option to prosecution.
- (v) Deter the offender from the offence
- (vi) Deter others from committing a similar offence
- (vii) Remove any financial benefit the offender may have obtained as a result of committing the offence

47. The Respondent provided the following breakdown of their calculations for the financial penalties imposed:

Failure to Licence

Starting point for consideration according to Enforcement Policy, first offence of failure to licence is £10,000

Harm considered includes

1. *Financial gain apparent estimated as £6,500 from February until June. Income from tenants.*
2. *Knowingly committed the offence as knew a licence was required.*
3. *Additional persons placed in the accommodation after advised on the maximum number.*
4. *Attempted avoidance of penalty by asking tenants to lie about the numbers of occupiers.*
5. *Dishonest and delaying tactics on licence application submission. So acts of high culpability could add £2,500.*
6. *No evidence he is on low income to allow for a reduction.*

Mitigation considered

1. *Property vacated following alerting landlord to apparent offence.*
2. *Landlord has communicated with the council throughout.*
3. *Partial application for licence submitted.*
4. *Claimed misunderstanding.*
5. *Not a large-scale landlord so not increased for this factor.*
6. *First offence so not increased.*

Civil penalty needs to be at least £6,500 to counteract the apparent financial gain. Some mitigation from the standard £10,000 can be allowed for due to partial submission of licence application. Some aggravating factors as well as including culpability of knowingly committing the offence and attempting to deceive the council would add £2,500 according to policy. Overall determination is £9,000.

Management Regs

Offences grouped under each regulation, all treated as first offences. Starting point £1,000 each

1. *Regulation 3. Failing to provide information. Mitigation that landlord in regular contact and all tenants had his mobile number. Fine reduced to £100.*
2. *Regulation 4(1). Duty of Manager to take safety measures, in relation to fire safety maintenance and free from obstruction. Multiple failings as all of the fire doors did not meet expected standards. Potential was for significant harm to occur and high culpability. Cost of proper installation of 7 doors at £500 each, estimated £3,500 cost avoidance. Fine of £5,000.*
3. *Regulation 4(2) maintaining firefighting equipment and fire alarm. Equipment out of date, £200.*
4. *Reg 4(4) design and structural conditions. 2 Bedrooms off kitchen having no safe escape route. Bedroom allocated containing electrical consumer unit, trip hazards in garden. Multiple issues, some with potential for significant harm. £3,000.*
5. *Regulation 7(1) maintenance of common parts, lots of very minor issues, £1,000.*
6. *Regulation 7(4) maintenance of garden in a safe condition. £1,000 estimated cost to make safe. Fine of £1,000.*
7. *Regulation 8, maintenance of living accommodation. Multiple issues, not very significant. Lack of floor covering, broken window, damaged switches. £1,000.*

Overall total of £10,300 fair representation of costs avoided and penalty of non-compliance.

48. The points set out in the written calculations above were reiterated in submissions made during the hearing by the Respondent's officers. The Respondent assumed at the time the fine was issued that the Property was run as an HMO without licence for a prolonged period between October 2020 and 15 June 2021, which is when the inspection took place. At the time of the inspection there were 7 occupants, and 113 items of works were noted as being required.
49. The condition of the Property at the time of the inspection suggested that there was a risk of potential harm to the tenants.
50. The communication from the Applicant has been erratic, changing his position regarding whether he intended to sell or let the Property as an HMO a number of times.
51. Prior to the inspection on 15 July 2015, the Applicant texted the tenants and asked them to lie to the local authority inspectors about the number of tenants. A copy of the text message was provided to the Tribunal. This was considered to be an aggravating factor.

52. The Respondent noted that the Applicant had not provided any details of his financial situation at the time the level of penalties was assessed. The Respondent stated that, had the Applicant provided evidence of his financial situation at an earlier juncture, it would have been taking into account when considering the level of the fine and it would have been reduced.
53. The Respondent also noted that the Applicant did not provide a full explanation of the situation and the reason for the delay in obtaining an HMO Licence at the time the level of penalty was assessed and that, if he had, that may have had an impact on the level of fine imposed.

The Law

Housing Act 2004

41 Notice of emergency remedial action

- (1)The notice required by section 40(7) is a notice which complies with the following requirements of this section.
- (2)The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—
- (a)the nature of the hazard and the residential premises on which it exists,
 - (b)the deficiency giving rise to the hazard,
 - (c)the premises in relation to which emergency remedial action has been (or is to be) taken by the authority under section 40 and the nature of that remedial action,
 - (d)the power under which that remedial action has been (or is to be) taken by the authority, and
 - (e)the date when that remedial action was (or is to be) started.
- (3)The notice must contain information about—
- (a)the right to appeal under section 45 against the decision of the authority to make the order, and
 - (b)the period within which an appeal may be made.

61 Requirement for HMOs to be licensed

- (1)Every HMO to which this Part applies must be licensed under this Part unless—
- (a)a temporary exemption notice is in force in relation to it under section 62,
- or
- (b)an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

72 Offences in relation to licensing of HMOs

- (1)A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

...

- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
- (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition, as the case may be.

234 Management regulations in respect of HMOs

- (1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—
- (a) there are in place satisfactory management arrangements; and
 - (b) satisfactory standards of management are observed.
- (2) The regulations may, in particular—
- (a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;
 - (b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.
- (3) A person commits an offence if he fails to comply with a regulation under this section.

249A Financial penalties for certain housing offences in England

- (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
- (2) In this section “relevant housing offence” means an offence under—
- (a) section 30 (failure to comply with improvement notice),
 - (b) section 72 (licensing of HMOs),
 - (c) section 95 (licensing of houses under Part 3),
 - (d) section 139(7) (failure to comply with overcrowding notice), or
 - (e) section 234 (management regulations in respect of HMOs).
- (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
- (4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

SCHEDULE 13A Financial penalties under section 249A

Notice of intent

1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a “notice of intent”).

2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

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

3 The notice of intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4.

Right to make representations

4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

5 After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and

(b) if it decides to impose a financial penalty, decide the amount of the penalty.

6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

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

8 The final notice must set out—

(a) the amount of the financial penalty,

(b) the reasons for imposing the penalty,

(c) information about how to pay the penalty,

(d) the period for payment of the penalty,

(e) information about rights of appeal, and

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

Withdrawal or amendment of notice

- 9 (1) A local housing authority may at any time—
- (a) withdraw a notice of intent or final notice, or
 - (b) reduce the amount specified in a notice of intent or final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

- 10 (1) A person to whom a final notice is given may appeal to the First tier Tribunal against—
- (a) the decision to impose the penalty, or
 - (b) the amount of the penalty.
- (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (3) An appeal under this paragraph—
- (a) is to be a re-hearing of the local housing authority's decision, but
 - (b) may be determined having regard to matters of which the authority was unaware.
- (4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.
- (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Houses in Multiple Occupation (England) Regulations 2006

Duty of manager to provide information to occupier

- 3 The manager must ensure that—
- (a) his name, address and any telephone contact number are made available to each household in the HMO; and
 - (b) such details are clearly displayed in a prominent position in the HMO.

Duty of manager to take safety measures

- 4 (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 firefighting 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.

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

7 (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.

...

(4) The manager must ensure that—

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

Duty of manager to maintain living accommodation

8 (1) Subject to paragraph (4), the manager must ensure that each unit of living accommodation within the HMO and any furniture supplied with it are in clean condition at the beginning of a person's occupation of it.

(2) Subject to paragraphs (3) and (4), the manager must ensure, in relation to each

of the HMO that is used as living accommodation, that—

- (a) the internal structure is maintained in good repair;
- (b) any fixtures, fittings or appliances within the part are maintained in good repair and in clean working order; and
- (c) every window and other means of ventilation are kept in good repair.

Determination

Failure to obtain an HMO Licence

58. The Applicant accepted that he had committed an offence under sections 72(1) of the 2004 Act. On the basis of the evidence before it, the Tribunal determined that prior to March 2021, the Applicant had a reasonable excuse for not having obtained the HMO Licence under section 72(5) of the 2004 Act. He was not an experience landlord and had never dealt with an HMO before. He was placed into the situation of having an HMO by a third party, Mr Reid, who he reasonably believed was doing all that was necessary to ensure the arrangement was compliant. He did not appreciate he remained responsible for the licencing, despite not directly managing the Property up to September 2020. From September to December 2020, he believed that by starting the application process he had protected his position and had misunderstood the process. However, in March 2021 he allowed the occupancy to go from 4 to 7 tenants without obtaining a licence, which he knew he required. As such, the Tribunal determined that the relevant period for the offence is March 2021 to June 2021.

59. On the balance of probabilities, the Tribunal accepted the Applicant's evidence that he had received income of £3,455 from the letting of the Property from March 2021 to June 2021. Therefore, the civil penalty should be at least £3,455 to remove any financial benefit the Applicant may have obtained from committing the offence.
60. The starting point under the Council's Policy for this offence is £10,000. The Tribunal determined that mitigation should be applied to take account of the partial attempts to licence the Property, the misunderstandings about the process, the fact this is a first-time offence and he is not a professional landlord. The Tribunal determined that these factors should reduce the figure to £5,500.
61. The Applicant explained the delay, but accepted he had a significant lapse in judgement in asking the tenants to lie at the inspection on 15 June 2021. He knew he needed a licence acted in a reckless or deliberate manner in not complying with previous relevant formal advice. Otherwise, the Applicant's communications with the Respondent appears to be a genuine reflection of his fluctuating intentions for the Property. The Tribunal determined an uplift of £1,500 should be applied for culpability, taking the figure to £7,000.
62. The Tribunal, accepting the evidence of the Applicant's income provided in submissions during the hearing, determined that the Applicant is earning less than £440 per week and so applies a 50% reduction, giving a financial penalty of **£3,500**.

Breach of the Management Regulations 2006

63. The offences were all first-time offences, the starting point being £1,000 per offence.
64. In respect of the individual items the Tribunal found as follows:
- i. Regulation 3. Failing to provide information. It had been noted that all tenants had the Applicant's number and the fine reduced accordingly. The figure of £100 is confirmed.
 - ii. Regulation 4(1). Duty of Manager to take safety measures, in relation to fire safety maintenance and free from obstruction. There was no intention of costs avoidance as the Applicant believed the doors were of the correct specification. The Tribunal considered the estimated cost of £500 per door to be excessive. While there were 7 doors, this was also considered to be one offence and, as it was a first offence, the Tribunal determined that no more than £1,000 may be applied. This figure was, therefore, reduced to £1,000.

- iii. Regulation 4(2) maintaining firefighting equipment and fire alarm. Equipment out of date, £200. The Tribunal determined that the appropriate mitigation had been applied and confirms the figure of £200.
- iv. Reg 4(4) design and structural conditions. 2 Bedrooms off kitchen having no safe escape route. This is considered to be one offence and restricted to the maximum penalty is £1,000. The Tribunal reduces this figure to £1,000.
- v. Regulation 7(1) maintenance of common parts, lots of very minor issues. Given the minor significance of these issues the maximum fine was felt to be inappropriate. The Tribunal reduces this figure to £500.
- vi. Regulation 7(4) maintenance of garden in a safe condition. Maintenance work was carried out on the garden and the issues do not appear to warrant the maximum fine. The Tribunal reduces this figure to £500.
- vii. Regulation 8, maintenance of living accommodation. While there were multiple issues, they were not considered to be significant. The Tribunal reduces this figure to £500.

65. The total fine having been determined as £3,800, the reductions of 50% is applied as the Applicant's income is less than £440 per week, giving a financial penalty of **£1,900**.

66. The Tribunal considers that the level of these penalties reflects the severity of the offence in this case and the fact this is a first offence. Potential of some risk to tenants was noted, but no tenants suffered any actual harm. The penalty is at a level which is not going to be easy for the Applicant to pay given his current circumstances and is of a level that would deter him and third parties from committing a similar offence. The penalty is also at a level where it removes any financial gain he may have had as a result of committing the offence.

Rights of Appeal

- 67. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- 68. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

69. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
70. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Judge C Payne
Chairman
First-tier Tribunal (Property Chamber) (Residential Property)