



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

Case reference : **MAN/00BR/HNA/2021/0006
MAN/00BR/HNA/2021/0021**

Property : **21 Milford Street, Salford, M6
5QP and 458 Liverpool Street,
Salford, M6 5GQ.**

Applicant : **Mr Marek Kowalek**

Respondent : **Salford City Council**

Representative : **Ms Lucie Wood (counsel) Mr Paul
Scott (solicitor)**

Type of application : **Appeal against a financial penalty
– Section 249A & Schedule 13A of
the Housing Act 2004**

Tribunal member(s) : **Judge J White
Ms S D Latham (Valuer)**

Venue : **(CVPVideo)
Northern residential Property
First-tier Tribunal, 1 floor,
Piccadilly Exchange, 2 Piccadilly
Plaza, Manchester, M1 4AH**

Date of hearing : **14 October 2022**

Date of decision : **11 November 2022**

DECISION

The Order

The Tribunal orders as follows:

- (1) The decision by the Respondent to impose two financial penalties is not in dispute and upheld.
- (2) The financial penalty of £22,500 is reduced to £18,000 and the financial penalty of £16,500 is reduced to £7,500.
- (3) The financial penalty is payable by the Applicant within 28 days of the date of this Order.

The Applications

1. Mr Marek Kowalek was the owner and landlord of 21 Milford Street, Salford, M6 5QP (Milford Street) and 458 Liverpool Street, Salford, M6 5GQ (Liverpool Street). He has made three applications against three financial penalties issued by Salford City Council (the Council) made under section 249A of the Housing Act 2004 (the 2004 Act).
2. On 18 October 2021, Mr Kowalek purported to make an application 2021 against the financial penalty notice dated 13 January 2021 in relation to failure to obtain a licence for Liverpool Street of £7500. On 25 May 2022, following a video hearing this application was struck out.
3. On 1 December 2020 Mr Kowalek made an application against the financial penalty final notice for £22,500, dated 28 November 2020 in relation to breach of management regulations at Liverpool Street. On 25 May 2022 we made an order that unless Mr Kowalek submitted a bundle by 6 July 2022, his application be struck out.
4. On 12 February 2021 Mr Kowalek made an application against the financial penalty final notice for £16,500, dated 21 December 2020 in relation to breach of management regulations at 21 Milford Street. On 25 May 2022 we made an order that unless Mr Kowalek submitted a bundle by 6 July 2022, his application be struck out.
5. Marek Kowalek had issued bundles prior to the hearing of 25 May 2022. Following directions, he issued substantially the same bundles again on 7 July 2022. The Council submitted a response. The matter was originally set down for a hearing on 24 July 2022. Due to unavailability of the Respondent, it was relisted for 14 October 2022. I decided that the Applicant had substantively complied with the Directions, as the bundles had already been submitted in substantially the same form and the Respondent had not been prejudiced in any way. The remaining two applications would not be struck out.
6. This Tribunal convened 14 October 2022 to determine the matter by video hearing. The Applicant, Marek Kowalek represented himself. The Respondent was represented by Counsel Lucie Wood, of Cobden House

Chambers. Paul Scott was in attendance as was the Respondents witnesses as set out below.

Law and Guidance

7. In summary section 249A of the 2004 Act inserted by the Housing and Planning Act 2016, enables a local housing authority to impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a 'relevant housing offence' in respect of premises in England.
8. Relevant housing offences are listed in section 249A(2). The two relevant offences are that under s23 of the 2004 Act the Applicant has breached his duty as Landlord and manager to ensure satisfactory management in accordance with the Management of Houses in Multiple Occupation 2006 Regulations (Management Regulations). In relation Liverpool Street he is in breach of Regulation 4 and Milford Street he is in breach of Regulation 7.
9. There are no procedural issues raised in these applications.
10. The Council must follow Government Guidance and adopt a Civil Penalties Policy ("the Policy"). The Guidance also sets out the following list of factors which local housing authorities should consider to help ensure that financial penalties are set at an appropriate level:
 - (a) Severity of the offence.
 - (b) Culpability and track record of the offender.
 - (c) The harm caused to the tenant.
 - (d) Punishment of the offender.
 - (e) Deterrence of the offender from repeating the offence.
 - (f) Deterrence of others from committing similar offences.
 - (g) Removal of any financial benefit the offender may have obtained as a result of committing the offence.
11. The Tribunal can set aside a penalty which is inconsistent with the decision maker's own Policy, but it must do so without departing from the Policy, excepting any part of that Policy that does not comply with the Guidance. The burden is on the Applicant to persuade the Tribunal to depart from any Policy. (London Borough of Waltham Forest v Marshall and Ustek [2020] UKUT 0035 (LC) followed in Sheffield City Council v Hussain [2020] UKUT 292 (LC)). The Applicant has not sought to do so. The Policy is in accordance with the Guidance as set out below.
12. In accordance with paragraph 10 of Schedule 13A the appeal is by way of a re-hearing of the local housing authority's decision as opposed to a review of their decision making. We are required to remake the decision and reach our own conclusions.

13. The Tribunal may have regard to matters of which the authority was unaware. In Sheffield City Council v Hussain the Upper Tribunal considered the proper approach to remedial works undertaken after commission of offences and decided that in considering the amount of the penalty the Tribunal can only consider factors following the offence when it comes to considering mitigating and aggravating factors.
14. The Tribunal may confirm, vary, or cancel the final notice. However, the Tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed, which is a maximum of £30,000.

Findings: Background

15. The Applicant was the owner and landlord of both Liverpool Street and Milford Street.

Liverpool street

16. We accept the facts contained in the witness statement of Carrie Eden, and Liz Mann from the Council's Housing Standards Office and Sarah Hughes from the Licencing office. All attended the hearing and provided oral evidence. Marek Kowalek did not dispute the main facts found, though did dispute some conclusions reached.
17. The Applicant purchased Liverpool Street on 28 January 2014 for £73,500. It is a 4-bedroom bedsit style house with individual tenancy agreements. Rents varied between £210 and £330 per month.
18. It is defined as a House in Multiple Occupation ("HMO") .It is in a selective licencing area. The Applicant's professional manager at the time obtained a Selective Licence which expired on 3 March 2018, following the removal of the area being designated as a selective Licence area. At around the same time the Applicant's professional manager resigned as set out below.
19. On 27 February 2020, the Council had inspected Liverpool Street. It found that Liverpool Street was a pre-1919 mid terrace. On the ground floor there was a bedroom, lounge, shared kitchen, and WC. On the first floor were three bedrooms and a shared bathroom. The tenants were paying £220, £300, £320, and £330 per calendar month. The following defects were found:
 - (a) The doors were wedged open.
 - (b) There was clutter.
 - (c) Doors had some defects and gaps where they met the frames.
 - (d) Consumer unit wiring was not fireproof.
 - (e) The flooring in the kitchen was damaged and in poor repair.
 - (f) Lighting in the kitchen and bathroom were not working.

(g) The drain to the rear yard was blocked and full of discarded items.

20. On 20 March 2020 they wrote to the Applicant with a list of defects. They informed him that he was in breach of Management Regulations 4 (safety measures) and 7 (Duty of manager to maintain common parts, fixtures, fittings, and appliances). The Applicant requested more time to comply. When he failed to do so, on 11 June 2020 the Council issued an Improvement Notice, setting out defects amounting to Category 2 hazards. On 7 August 2020 they sent a Notice of Intent to the Applicants home address in London. The Notice only referred to breach of Regulation 4. On 7 September 2020, the Applicant informed the Council that he was going to sell Liverpool Street. On 28 September 2020, they sent the final Notice to the Applicant's new home address in Warsaw. On 15 October 2020 he sold Liverpool Street for £162,500, with a notional profit of £89,000.

Milford Street

21. We accept the facts contained in the witness statement of Lisa Protano and Wayne Beston, from the Council's Housing Standards Officer, at the date of the inspection on 10 March 2020. Again, the Applicant, accepted the main facts, though not all the conclusions reached.

22. Marek Kowalek bought Milford Street on 29 March 2013 for £75,250. The Applicant has had an HMO licence since 28 May 2014. He had the same manager and agent as Liverpool Street as set out above.

23. On 10 March 2020, the Council inspected Milford Street. They were unable to gain access to the fifth bedroom on the second floor. Milford Street is a pre-1919 mid terrace. There is a shared kitchen, bathroom, and lounge. There are five bedrooms, with one in the second-floor attic space. It is a bedsit style HMO with individual tenancy agreements. The following defects were found

- (a) Shared kitchen, bathroom, and other communal areas unclean and untidy, with accumulation of rubbish,
- (b) Mould growth in bathroom
- (c) Missing drawer cover and failure to make good leak in kitchen,
- (d) Gaps in bedsit doors exceeding 3 mm to bedsit rooms 1,3 and 4
- (e) No heat detector in kitchen.

24. On 24 April 2020 they wrote to the Applicant with a list of defects and a written interview under caution, informing him that he was in breach of Management Regulation 7 (Duty of manager to maintain common parts, fixtures, fittings, and appliances). They also informed him that they were warning him that he was in breach of Regulation 4 (safety measures) as there were gaps exceeding 3mm in bedsit room 1,3 and 4 and there was no heat detector in the kitchen. The Applicant requested more time to comply. He requested several extensions and failed to reply. On 25 August 2020, the Council issued a Notice of Intent. On 2 September 2020 he informed the Council that he was going to sell Milford Street. On 21

December 2020, the Council issued the Final Notice. On 7 May 2021, the Applicant sold Milford Street for £180,30, a notional profit of £105,050.

The Applicants Case

25. The Applicant relies on his witness statement supported by some documentary evidence set out elsewhere. At the hearing Mr. Kowalek made oral submissions and gave further oral evidence.
26. The Applicant's oral and written submissions are as follows:
 - (a) The Applicant admits that he has committed the offences, though he initially said he did not.
 - (b) The appeal is a challenge to the amount of the financial penalty.
 - (c) He is not a professional landlord, being a news cameraman. The company Bez LTD, he set up to act as a landlord, he has not used. In addition to the two properties, he jointly owned 536 Liverpool Street. He had invested in the properties and did them up. He initially instructed Langworthy Estates to be his agent and manager, for a retainer and commission and followed their advice to let to students. In 2018, Ms Rutkowska from Langworthy started to struggle with the time the management was taking and resigned. the same year the Applicant made an informal arrangement with one of his tenants, Mr Laryefio, to manage both properties on an informal basis. On 27 March 2019 he informed the Council by email. He was not a professional manager but knew other students in each house. He was responsible for the cleaning rota, booking a cleaner for the common parts, booking contractors, certificates and finding new tenants, which he did from a pool of Ghanaian and Nigerian students. However, he had travelled abroad in March 2019, for a two-week conference, and then had to extend his stay for several months due to a broken leg and when he was due to return had to travel to Ghana to visit his mother who had become unwell. He did not return. He was a post graduate student and part time lecturer at Salford University.
 - (d) The Applicant became the manager sometime in 2019 when it transpired that Mr Laryefio was not going to return. He was unclear when this was. The Applicant was living in London, though had lived for a time in Japan and moved to Warsaw on 23 March 2020. He tried to visit every 6 months, though had not visited for 10 months before moving to Warsaw in March 2020. He did not inspect again prior to the sale, partly due to

no longer living in the UK and partly due to travel bans and lockdowns as a result of the pandemic. In oral evidence he said that during this time he had relied on a new tenant at Milford Street to inform him of any problems and he had weekly or fortnightly calls. He did not know why he had not put this in his statement, apart from his family circumstances. The tenants continued to find their own replacement tenants when one moved out to maintain the community and he paid them commission for doing so. He did not evict any tenant, even when there were arrears. No one mentioned the state of the properties. He had up to date safety certificates and provided evidence of these for Milford Street. He arranged a cleaning rota.

- (e) He found it difficult to get reliable contractors to maintain the property. Even if booked through the estate agents, repairs were not done well. For example, in 2019 he paid for a leak from the shower to be repaired when it had not been completed, he had to pay another contractor. He instructed contractors to carry out repairs when reported to him.
- (f) Since March 2018 until 2021 the Applicant's wife's mental health has been unstable. This meant the burden of childcare fell to him for his two young children. She attempted suicide in October 2019 and 2021. The applicant said he became overwhelmed and later sought help for his own mental health.
- (g) The Respondent had identified the Applicant as the same Mr Kowalek as in the Court of Appeal Rent Repayment Order (RRO) Case of Kowalek v Hussanein [2022] EWCA Civ 1041. In oral evidence the Applicant said that he sought advice in relation to possession proceedings. Solicitors advised that he had a good case to make a claim for a RRO and took the case on a no win no fee basis and appealed to the Court of Appeal pro bono. He did not have to actively engage in the process. The brief facts of that case, as set out in the judgement are that on 26 February 2019, he became an assured shorthold tenant of Flat 13 130 Kilburn Park Road, London for a rent of £3553.33 per month. In August 2019 they stopped paying rent and in December 2019 his landlords issued possession proceedings. On 8 October 2021, the county court ordered possession, with a money order for £23,926.64 and a counter claim for an unprotected deposit for £4,920. On 10 January 2020 he made an application for a Rent Repayment Order. which was substantially reduced due to the level of arrears. He unsuccessfully appealed to the Upper Tribunal and then Court of Appeal.
- (h) At the time of the inspections, he did not have the funds for repairs as he had greatly reduced his work to care for his wife

and young children. His net annual income for Milford Street was £8000 (gross rent £14,500) and Liverpool Street £6,500 (gross rent £17,000). He put the houses on the market, after receiving advice and sold both properties. He used the proceeds to settle a secured loan against his Holland Park address. He paid the bank £110,000 to prevent repossession of Holland Park. He had bought Holland Park flat in 1995 for £70,000 and is currently selling it for £500,000. He has £450,00 outstanding secured debt. He says his profit will be around £40,000, though seemed unclear that on these figures he could pay around £70,000 in capital gains tax.

- (i) He now works in camera and video editing teaching, earning £15,000 a year. He wife has started a small business importing and selling vintage crockery and earns £12,000. He has five credit card debts of £11,500, £11,000, £3000, £3000, and £23,000. He is not intending to purchase any other investment properties in the UK.

The Respondents case

- 27. The Respondent relies on two bundles containing a response, witness statements by Housing Standard officers together with all documents served, photographs and notes of inspections that took place as well as email correspondence with the Applicant. Oral submissions were made at the hearing by Ms Wood of Counsel. Carrie Eden, Liz Mann, and Lisa Protuno gave oral evidence.
- 28. Their arguments and evidence are set out below.

Our Determination

- 29. The Tribunal was satisfied beyond reasonable doubt that the Applicant's conduct amounted to offences under s23 of the 2004 Act, entitling the Respondent to impose a financial penalty under s249A of the 2004 Act.
- 30. The Tribunal was satisfied that, in respect of the Notices of Intent and the Final Notices, the Respondent had complied with the following procedural requirements as required under Schedule 13A to the Act:
 - (a) the offence under s23 of the 2004 Act was continuing as at the date of the Notices of Intent.
 - (b) the Notice of Intent and the Final Notices contained the information as required under paragraphs 3 and 8 of Schedule 13A to the Act; and,
 - (c) the Notices of Intent contained information about the right to make representations.
- 31. The Tribunal determined the amount of the financial penalty to be imposed, in relation to Liverpool Street is £18,000. This is calculated using the Council's Guidance. We have assessed the offence as high harm and

mid culpability giving a midpoint Band 5 of £19,500. There are no aggravating factors and one mitigating factor (£1000). £500 has then been deducted to give the lowest level in Band 5, that takes account of proportionality, deterrence, income, and assets.

32. The Tribunal determined the amount of the financial penalty to be imposed, in relation to Milford Street is £7,500. This is calculated as low harm and mid culpability giving a midpoint Band 2 of £7,500. There is one aggravating factor and one mitigating factor. There are no further deductions taking into account proportionality, deterrence, income, and assets.

Reasons

Overall Factors

33. The main findings of fact above are uncontested between the parties.
34. The Tribunal found that Mr Kowalek's evidence was at times vague and contradictory. He changed his evidence at the hearing. His explanations as to why he had changed his evidence were not always convincing, particularly as they were not supported by documentary evidence. It was unclear why he had provided some documents, though not the most significant. However, we had no reason to doubt his overall evidence, that his family and other circumstances set out above, were a significant factor in his behaviour.
35. The Respondents case was largely cogent, credible, and substantiated by other evidence, though they had failed to set out fully every stage of their decision making in their own Policy and did not explain fully their reasoning, dismissing the Applicants evidence as irrelevant, rather than fully addressing their mind to how it affected the level of penalties. Some of the conclusions reached following their inspection were not supported and somewhat tenuous. They did not go beyond step 3, in particular assessing proportionality.
36. As this is a rehearing, we had the benefit of evidence and submissions from Mr Kowalek. We could take this into account when deciding the level of penalty and these factors went some way to reducing the penalties.

The Offence

The Decision

37. The Tribunal finds beyond reasonable doubt that Mr Kowalek has committed both offences.
38. Mr Kowalek as an owner, landlord and manager of Liverpool Street is in breach of Regulation 7 of the Management Regulations, primarily due to inadequate fire safety measures including inadequate fire doors creating easy smoke ingress into bedrooms.

Mr Kowalek as an owner, landlord and manager of Milford Street is in breach of Regulation 4 of the Management Regulations primarily due to inadequate maintenance management.

39. The Applicant has admitted the offences, together with most of the facts surrounding the offences. Though the Applicant initially disputed that Liverpool Street was HMO, at the directions hearing he admitted both offences. Both are HMO's as they both have three or more households and requires a mandatory licence. As an HMO they both must comply with the Management Regulations.

Reasons

40. We remind ourselves that the Upper Tribunal held in I R Management Services Limited v Salford City Council [2020] UKUT 81 (LC), at [27], that *“the offence of failing to comply with the relevant regulation is one of strict liability, subject only to the statutory defence.”*
41. Adil Catering v City of Westminster Council [2022] UKUT 238 (LC) held that Regulation 4 and 7 required the achievement of an outcome or the bringing about of a state of affairs rather than the implementation of policies and the First-tier Tribunal had been entitled to find that, in the absence of a reasonable excuse, the existence of defects within the HMO in question had been sufficient to prove breaches of the Regulations.
42. Thus, the relevant defects found at the date of inspection, which had not been rectified, were sufficient to establish the offence. The Applicant did not attempt to raise a defence of a reasonable excuse, having admitted the offences at the hearing on 25 May 2022. His reasons went to the level of penalty only and did not amount to a reasonable excuse.

Liverpool Street:

43. The relevant parts of Regulation 4 are: *“(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 alarms are maintained in good working order. (4) The manager must take all such measures as are required to protect the occupiers of the HMO from injury, having regard to—(a) the design of the HMO; (b) the structural conditions in the HMO; and (c) the number of occupiers in the HMO. (5) In performing the duty imposed by paragraph (4) the manager must in particular—(b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.”*

44. The Applicant, as manager at the relevant time was in breach of these regulations having regard to his duty as contained in the LACORS fire safety guide for landlords.
- (a) The fire doors, including to the bedrooms were inadequate, in that they did not fully fit in their frames, with gaps of 3 mm or more in places. Bedroom two had missing fire strip on the edge of the door. Bedroom four had a hole in it where a lock had been fitted incorrectly and been partly removed. This would allow for any fire or smoke to spread more quickly.
 - (b) The lounge fire door had two instead of three hinges.
 - (c) The fire alarm was emitting a continuous sound indicating it was due for a service or battery replacement.
 - (d) One low window did not have a safety bar that would have protected occupiers against the danger of falling.
 - (e) The Consumer unit wiring was not fireproof increasing the risk of any fire spreading to the electrics.
45. The Respondent did not adequately make out that other items constituted an offence. For example, there were not clear enough photographs or convincing oral evidence that the means of escape were obstructed. The hanging clothes maiden was at high level and small items, such as some clothes by the wall were not causing an obstruction. Other items listed were not a breach of Regulation 4. The Respondent had only given the Applicant a warning in relation to breach of Regulation 7.

Milford street:

46. The relevant parts of Regulation 7 are “(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. ... (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. (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; ... (5) If any part of the HMO is not in use the manager shall ensure that such part, including any passage and staircase directly giving access to it, is kept reasonably clean and free from refuse and litter.*”
47. The Applicant as manager at the relevant time was in breach of these regulations.
- (f) Shared kitchen, bathroom and other communal areas were particularly unclean and untidy, with excess accumulation of rubbish.
 - (g) Mould growth in bathroom.
 - (h) Missing drawer cover and an ill-fitting door under the sink.
 - (i) The worksurface in the kitchen had a burnt mark and was particularly grimy and covered in old newspaper.

- (j) Failure to make good leak in kitchen; with two damp stains and poor repair,
- (k) Flooring was sticky and threadbare in places.
- (l) There was broken furniture.

48. The Respondent did not adequately make out that other items constituted an offence. For example, there were not clear enough photographs or convincing oral evidence that there was a permanent dryer in the middle of the kitchen. The Applicants evidence that this was the old washer/dryer that had recently been replaced but not removed was credible as we could see the new packaging on top of it. Other items listed were not a breach of Regulation 7, such as gaps in fire doors. The Respondent had only given the Applicant a warning in relation to breach of Regulation 4.

The Penalty

Local Housing Authority Policy on Civil Penalties

49. The Respondent's Policy sets out a number of steps. Each step lists a number of factors to consider. As follows:

Step 1. Assess the seriousness of the offence and level of harm as high, medium, or low.

Step 2. Assess the culpability and track record of the offender as high, medium or low.

Step 3. Use the matrix to determine the band with a mid-level starting point

Step 4. Assess whether the penalty is fair and proportionate in all the circumstances, ensuring that the penalty acts as a deterrent and remove any gain.

- (a) The penalty will increase or decrease by £1000 for every aggravating or mitigating factors with regard to sentencing guidelines.
- (b) The penalty will increase or decrease on a sliding scale to maximum or minimum level taking into account assets and income
- (c) The penalty may be reduced up to 30% where corrective action taken

Step 1. The nature and severity of the offence and risk of harm:

50. In considering the penalty the Tribunal has to have regard to the seriousness of the offence in accordance with Hussain v Sheffield at 46: -

"...An assessment of the seriousness of the offence should therefore focus on the circumstances of the offence itself and should take into account matters as they were at the date of the offence. 47. That is not to say that matters which occur after the offence has been committed are necessarily irrelevant to its seriousness. The longer an offence continues the more serious it may become, and the decision maker, whether the authority or the FTT, may take into account what has happened between the time the offence was first

committed and the date of the decision. But an offence of long duration does not become less serious by being remedied; it does not get any more serious, but nor does it become less serious.”

Liverpool Street:

51. The Council states that the defects exposed occupants to high levels of harm. These are “housing defects giving rise offences poses a serious and substantial risk of harm...for example...serious fire safety risk.” All fire safety risk is serious, so it falls clearly in the high-risk category.
52. The Tribunal determines that the severity of the offence and risk of harm is medium as it poses a serious risk of harm primarily due to gaps in the doors that would allow smoke ingress. The fire alarms and other fire safety aspects were adequate and still working, though one was emitting a sound. The dwelling is a small terrace house over two floors, with four tenants, two exits and no unusual fire risks. The nature and extent of the fire risk is clearly a material factor to its seriousness as is envisaged by Regulation 4 and LACROS.

Milford Street:

53. The Council states that the defects exposed occupants to medium levels of harm. The Policy defines this as “housing defects giving rise to the offence poses a serious risk of harm to occupants and/or visitors; for example, falls between levels, excess cold, asbestos exposure” Medium harm includes housing defects. They argue that the filthy conditions offer a prime environment to attract vermin and cause physical ill health through infections. It also creates an environment that may cause damage to mental health, especially when the tenants do not know each other.
54. The Tribunal determines that the severity of the offence and risk of harm is low. The picture at paragraph 13 and 14 of the Witness statement of Lisa Protano and paragraph 8 of Witness statement of Wayne Belston is of a dwelling where the tenants do not clean or care for the common areas and the Applicant has not replaced flooring or broken fixtures. However, we accept that there was a relatively stable small tenant group from the same countries of origin, from Salford University, who were replaced by the tenants themselves. It was not a large HMO, with a transient population, replaced by the landlord. The Applicant had personal contact with the tenants. There were not major defects such as dampness or cold that would particularly affect health.

Steps 2 culpability and track record:

55. The Policy sets out four levels dependant on intention from deliberate, to reckless, negligence or low/no fault. We determine that the level of culpability for Liverpool Street is high, and Milford Street is medium for the following reasons:

- (a) History of noncompliance: There are three penalties across two properties in Salford within a year. However, the Applicant has been a landlord of those properties, together with a third property since 2013 and has no previous penalties. The third penalty related to failure to renew a Licence for Liverpool Street, which had expired in 2019, before the usual 5-year period. In that case the Respondent had served a penalty Notice with low harm and low culpability.
- (b) Failure to comply: The Applicant did not comply with either notice. However, the Applicant does provide some valid reasons due to COVID lockdowns, travel restrictions, moving overseas, his wife's ill health and that he was attempting to sell the properties.
- (c) Experience of the landlord: Though the Applicant had been a landlord of three small HMOs since 2013, he had previously relied on a professional agent. It was only when he moved to a less formal arrangement with one of the tenants that he started to get into difficulty. When this tenant left, the Applicant became the manager, initially from his home in London. He described how he had received poor, sometimes no service from contractors he paid to repair items as he was not in the immediate area and had little experience of doing this himself. We do not accept his change in evidence that he appointed another inexperienced tenant to informally manage, as this was inconsistent with his written statement, and he did not provide a credible explanation for the error. We do accept his evidence that he was naive, and though realised there were requirements, did not realise the extent of his obligations.
- (d) Longstanding defects: For Liverpool Street we found there were long standing defects and for Milford Street, they were more likely to be short term. For Liverpool Street the failure to comply with HMO Management Regulations is in the High category as taken with the above factors this falls squarely with the breach of fire safety measures that are long standing and the requirements are set out clearly in the Regulations and LACROS. He should have taken account of this when renovating Liverpool Street, as well as carrying out regular fire safety risk assessments. The importance of fire safety has regularly been publicised. The requirements must have been breached for a number of years and the Applicant must have been at the properties several times as he states that he inspected every 6 months. The longest being 10 months. For Milford Street, there is no evidence that the breaches were so long standing and this reduces culpability due to the Applicants more recent circumstances set out elsewhere.
- (e) Lack of checks and systems For Milford Street we find that taken with the above factors the culpability is medium we find that the offences were primarily the result of failure to put in place any proper systems or checks since the loss of the professional agent; or at least since April/May 2019. Relying on reports of tenants is inadequate, though it is relevant that the lack of cleaning was the primary responsibility of the tenants. A manager is required to have rotas in place, check regularly or employ cleaners to ensure

compliance from the tenants. For Liverpool Street the lack of regular if any fire safety risk assessments is more serious. These proactive measures would identify the risks early if undertaken regularly by someone with knowledge of the requirements.

Step 3 conclusions:

56. Using the Respondent's matrix, the medium level of harm and high level of culpability is in Band 5 for Liverpool Street giving a range of £18,000-£20,999. For Milford Street the matrix of the low level of harm and medium level of culpability is Band 2 giving a range of £5000-£9,999.

Step 4 (a) aggravating or mitigating factors:

57. Each adjustment either increases or decreases the level by £1000. The Tribunal may take account of factors up to the date of the hearing. The Respondent does not make any adjustments and has not justified this in their response, skeleton argument, or oral submissions.
58. For Liverpool Street we find there are no aggravating factors, and his family circumstances provides a mitigating factor. The Policy sets out that we deduct £1000 from the midpoint of £19,500 giving us a figure of £18,500
59. For Milford Street we find his reliance on a tenant to be to ensure compliance to be an aggravating factor and there is the same mitigating factor. This leaves the midpoint of £7500.

Step 4 (b) Is the civil penalty fair and proportionate but act as a deterrent and remove any gain as a result of the offence? The Policy also requires us to consider whether the assets and income (not just rental) are such that it is just and appropriate to increase or reduce the penalty.:

60. The Tribunal determines that the penalty for Liverpool Street should be reduced to the lowest range of the band due to the level of debts and low income; though we did not accept the extent of the indebtedness as this was not established by documentary evidence and we did not think the Applicants explanation was credible in this regard. If the debts had been so high then it is more likely he would have included those, as opposed to the lower debts. This reduces the penalty by £500 to £18,000. It is fair and proportionate and high enough to be a deterrent.
61. We determine that it is not proportionate, so not just, or appropriate to reduce the penalty below £7,500 for Milford Street. This is high enough to be a deterrent.
62. **The totality principle:** If issuing a financial penalty for more than one offence the Tribunal must consider whether the total penalties are just and

proportionate to the offending behaviour. Taken together and given the levels of profits from the rent and sales of the properties they are proportionate taken together.

Conclusion

63. The offence has been committed beyond reasonable doubt.
64. The procedural requirements have been followed.
65. Taking into account guidance and following the Respondents own Policy the Tribunal determines the level of the penalties as £18,000 and £7,500.
66. The Applicant must pay the penalty within 28 days of service of this determination.

Judge J White
11 November 2022

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property, and the case number), state the grounds of appeal, and state the result the party making the application is seeking.