FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/HNA/2022/0039-0042**
HMCTS	**:**	**Face-to-Face Hearing**
Property	**:**	**32 Marldon Road, Kings Heath, Birmingham B14 6BJ**
Applicant	**:**	**Mr Joseph Gallagher**
Representative	**:**	
Respondent	**:**	**Birmingham City Council**
Representative	**:**	**Catherine Ravenscroft (Counsel)**
Type of Application	**:**	**Appeal against financial penalties – Section 249A & Schedule 13A of the Housing At 2004**
Tribunal Members	**:**	**Judge D Barlow** **Mr A McMurdo**
Date and Venue of Hearing	**:**	**31 March 2023 at Centre City Tower, Birmingham**
Date of Decision	**:**	**26 June 2023**

DECISION

Decision of the Tribunal

A. The Tribunal confirms the financial penalty of £1,192.00 imposed by the Respondent in respect of the offence under section 72(1) of the Housing Act 2004.

B. The Tribunal confirms the financial penalty of £5,027.00 imposed by the Respondent in respect of the offence under Regulation 4 The Management of Houses in Multiple Occupation (England) Regulations 2006

C. The Tribunal confirms the financial penalty of £5,527.00 imposed by the Respondent in respect of the offence under Regulation 7 The Management of Houses in Multiple Occupation (England) Regulations 2006

D. The Tribunal confirms the financial penalty of £5,527.00 imposed by the Respondent in respect of the offence under Regulation 8 The Management of Houses in Multiple Occupation (England) Regulations 2006

The Application

1. This is an appeal by Mr Gallagher, the Applicant, against 4 x Financial Penalties imposed by Birmingham City Council ("Birmingham") under Section 249A & Schedule 13A of the Housing At 2004 ("the 2004 Act").

    (i) The first penalty relates to an alleged offence under s72(1) of the 2004 Act, that of having control or management of an HMO property required to be licenced under the 2004 Act that was not so licensed.

    (ii) The remaining three penalties all relate to offences under s234(3) of the 2004 Act, that of failing to comply with Regulations 4, 7 and 8 of The Management of Houses in Multiple Occupation (England) Regulations 2006 ("the 2006 Regs")

2. The Final Notices to impose the Financial Penalties are all dated 11 August 2022. The offences specified are as above, and all relate to an unlicenced HMO at 32 Marldon Road, Kings Heath, Birmingham B14 6BJ ("the Property"). The Applicant is the freehold owner of the Property and in receipt of the rents paid by the tenants

3. On 9 September 2022, the Tribunal received the Applicant's appeal application.

4. Following the Tribunal Directions:

(i) The Applicant filed a brief bundle with written representations in support of his appeal. Any references to this will be prefixed by "A.___".

(ii) The Respondent filed an extensive bundle of 468 pages. References to this will be prefixed by "R.___".

5. Procedural Judges decided that all the applications should be consolidated and heard together.

6. **The Hearing**

7. Mr Gallagher represented himself and gave evidence.

8. Ms Ravenscroft (Counsel) who was isolating due to Covid 19, appeared by remote video link for the Respondent. Ms Heather Glover who is a private sector Prosecutions Housing Officer gave oral evidence along with Mr Roger Smith, a tenant of the Property who spoke about the condition of Property. Birmingham's Bundle included short statements of truth from all five tenants in occupation of the Property, but other than Mr Smith, Birmingham did not call them to give oral evidence.

9. The appeal is by way of a re-hearing. The Tribunal is entitled to have regard to matters of which Birmingham was previously unaware.

The offence under s72(1)

Statutory background

10. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

11. The standard test under section 254(2) of the 2004 Act is met if a building:

    (i) consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
    (ii) the living accommodation is occupied by persons who do not form a single household (see section 258);
    (iii) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
    (iv) their occupation of the living accommodation constitutes the only use of that accommodation;

(v) 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

(vi) 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."

12. Section 72(1) creates an offence of having control or management of an unlicenced HMO.

13. A person "having control" means the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent (Section 263).

14. A "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(i) receives (whether directly or through an agent or trustee) rents or other payments from– ....

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

The alleged offence

15. Mr Gallagher does not dispute that he is the owner of the Property and in receipt of the rack rents paid by the lessees. He does not dispute that he was a person having control of and managing the Property on his own account, or that the Property was an HMO which required a licence. It is also not in doubt that on the date of the inspection the Property was an HMO of a prescribed description, because it was a house occupied by 5 persons who did not form a single household, whose living accommodation was their only or main residence and who all shared one or more basic amenities, namely the bathroom and kitchen. Therefore, unless Mr Gallagher can establish a defence under s72(5) it is beyond reasonable doubt that an offence under s72(1) has been committed.

16. Mr Gallagher's excuse for not licencing the Property is that he was unaware of the need for the Property to be licenced because he thought the regulations did not apply to 2 storey properties. Had he realised it was an HMO that required licencing, he would have let the entire property to a single family.

17. The issues for the Tribunal are:

(i) Whether we are satisfied beyond reasonable doubt that when Birmingham inspected the Property on 22 June 2021, Mr Gallagher was a person having control of or managing an HMO which was required to be licenced under the 2004 Act but was

not so licenced. The undisputed facts in this case suggest that the ingredients of this offence are met.

(ii) Whether Mr Gallagher can nevertheless rely on the statutory defence of reasonable excuse.

(iii) If an offence has been committed, what should be the size of any financial penalty.

18. Mr Gallagher did not specifically raise a defence of reasonable excuse. He stated that he was unaware of the provisions of the licensing regime that required him to licence the Property. Mr Gallagher thought that a property needed to have three storeys to be a licensable HMO and said that he would have rented out the property as a single letting had he understood the legislation. Since becoming aware of the position he has served s21 notices on all the tenants. One tenant has moved out, another is preparing to leave. One tenant applied to Shelter in April for help with accommodation and another tenant is flexible and willing to leave whenever requested. Mr Gallagher said that he was genuinely unaware of the need to licence the Property.

19. Following the death of his mother in 2005, Mr Gallagher rented the whole Property to a single tenant. It was not until about 2009 that Mr Gallagher let the Property for multiple occupation. He was not completely certain of the dates but was clear in his belief that the Property was not at that time a licensable HMO because it was only 2 storeys.

20. Mr Gallagher has, in effect, put forward an arguable case for reliance on the statutory defence under s72(5). We must therefore determine whether, on the balance of probabilities, his lack of knowledge of the relevant licensing legislation affords him a reasonable excuse for failing to licence the Property.

21. We are satisfied that Mr Gallagher's belief that the Property was not an HMO of a prescribed description (because it was only 2 storeys), was honestly held. That had been the position under Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006. Mr Gallagher was clearly not aware of the change brought about by the 2018 Order which removed the 3-storeys requirement and required all landlords renting out properties occupied by 5 or more unrelated tenants (regardless of the number of storeys) to apply for a licence by 1 October 2018.

22. The 2018 Order also introduced minimum room size conditions for mandatory HMOs. A provision Mr Gallagher was also unaware of, which would have precluded him from renting out the first floor (front) right-hand bedroom, because it was less than 6.51 sq meters.

23. An honest belief might, in certain circumstances constitute a defence of reasonable excuse, but not if on the facts of the case, it is unreasonable for a landlord to have held that belief.

24. We are not satisfied that Mr Gallagher's belief, although honestly held was a reasonably held belief. He was letting the Property for a total rental of some £18,440.00 per annum. He knew there was legislation governing HMO properties because he had correctly identified the relevant provisions of the 2006 Order when he first decided to rent out the property to multiple occupiers. Mr Gallagher knew that he was a landlord operating in a regulated sector. He knew that meant complying with regulations, some of which he listed at the hearing. He was receiving a substantial rental from the tenants who were entitled to expect their landlord to understand and comply with all relevant housing legislation. It cannot be reasonable for a landlord to check out the regulatory position at the start of his lettings venture and then fail to update himself on changes to those regulations. Mr Gallagher was unaware of the changes because he had failed to behave responsibly with regard to his duties and liabilities as a landlord operating in a regulated sector.

Tribunal's determination

25. It follows that the Tribunal do not find that Mr Gallagher has established a defence under s72(5) and that it is therefore beyond reasonable doubt that he has committed an offence under s72(1) of the 2004 Act. All that remains to be determined is the size of any financial penalty. This is considered below with the other financial penalties.

The offences under the 2006 Regs.

Introduction

26. Section 234, Housing Act 2004 authorises the making of regulations to ensure that satisfactory management arrangements are in place in respect of houses in multiple occupation (HMOs). The 2006 Regulations were made under that power, and they apply to any HMO in England other than a converted block of flats (to which section 257 of the 2004 Act applies (reg 1(2)).

27. Three of the regulations are material to this appeal. Each imposes duties on the person managing an HMO.

28. By regulation 4 the manager is required to take certain safety measures. These include ensuring that all means of escape from fire are kept free from obstruction and maintained in good order and repair (reg 4(1)). The manager must also ensure that any firefighting equipment and fire alarms are maintained in good working order (reg 4(2)). More generally, the manager must take all such measures as are reasonably required to protect

the occupiers of the HMO from injury having regard to the design, structural conditions, and number of occupiers of the HMO (reg 4(4)).

29. Regulation 7 imposes duties on the manager to maintain the common parts of the HMO, keeping them in good and clean decorative repair and reasonably clear from obstruction, and any fixtures, fittings and appliances in a safe and working condition. Regulation 7(6) provides a definition of "common parts" which includes staircases, halls and corridors and any other part of an HMO the use of which is shared by two or more households.

30. Regulation 8 deals with the duty of the manager to maintain each unit of living accommodation.

31. New provisions were inserted into the 2004 Act by section 126 and Schedule 9 of the Housing and Planning Act 2016. Section 249A now empowers a local housing authority in England to impose a financial penalty on a person if it is satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence. A failure to comply with regulations made under section 234 of the 2004 Act is a relevant housing offence (s.249A(2)(e)).

32. Schedule 13A to the 2004 Act prescribes the procedure for imposing financial penalties. This involves service of a notice of intent to impose a penalty, an opportunity for the person on whom the notice has been served to make representations in response to it, consideration of any representation received and service of a final notice imposing the penalty.

33. A person on whom a final notice has been served may appeal to the FTT against the decision to impose the penalty or against the amount of the penalty (para 10, Sch 13A, 2004 Act). By paragraph 10(3) the appeal is to be "a re-hearing of the local housing authority's decision" but it may be determined having regard to matters of which the authority was unaware.

34. Paragraph 12 of Schedule 13A requires a local housing authority to have regard to any guidance on financial penalties given by the Secretary of State. Relevant guidance was first published in 2016 and re-issued in 2018. It requires authorities to develop their own policies on determining the appropriate level of civil penalty. Paragraph 3.5 of the guidance states that "the actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending." In addition, when setting penalties authorities are directed to consider the following: the harm caused to the tenant; punishment of the offender; deterrence of the offender from repeating the offence; deterrence of others from committing similar offences; and removing any financial benefit the offender may have obtained as a result of committing the offence.

35. The relevant issues for the Tribunal, in relation to each of the three alleged offences is:

(i) Are we satisfied beyond reasonable doubt that "a relevant housing offence" has been committed (sections 249A (1) and (2) of the Act; and section 234(3) and (4) of the 2004 Act); and if so,

(ii) Is a civil Financial Penalty is the most appropriate enforcement action and if so, in what amount having regard to all relevant factors.

Relevant Facts

36. On 27 August 1982, Mr Gallagher was registered as the freehold proprietor of the Property. He moved to a nearby property in Brandwood Road in about 2005 following the death of his mother. The Brandwood Road property is bound up in a dispute concerning the estate of Mr Gallagher's late mother and he says that he moved there to prevent the property falling into disrepair. At the same time, Mr Gallagher decided to let out the Property. It was originally a standard 3-bedroom house with a lounge, kitchen and dining room on the ground floor, which he let as a single household dwelling for a few years. Mr Gallagher then adapted the Property to provide 5 bedrooms which he has been letting out with the use of a shared bathroom and kitchen since about 2009. Mr Gallagher manages the Property and is responsible for all maintenance and repairs. There is no shared living accommodation other than the kitchen and bathroom and all five bedrooms were let at the date of Birmingham's inspection on 22 June 2021.

37. The inspection was prompted by a report received from Crew Commander John Williams from West Midlands Fire Service ("WMFS"), of inadequate fire safety precautions. Mr Williams inspected the Property on 23 May 2021 to carry out a "safe and well check" following a self-referral from Karl Mendy, one of the occupiers. He found the Property to be in a rundown condition with no functional fire detectors or alarms and no fire doors. He fitted two smoke alarms in the communal areas before leaving. Mr Williams provided Birmingham with a brief statement dated 9 September 2021 (at R32-33), in which he comments that the kitchen had just one double socket from which an extension lead for the appliances had been run and the garage was full of rubbish belonging to the landlord which the occupiers were concerned might be a fire hazard.

38. On 22 June 2021, Ms Emma Crawford, an Environmental Health Officer with Birmingham, inspected the Property with Ms Heather Glover. She carried out an assessment under the Housing Health and Safety Rating System "HHSRS" and the 2006 Regs. Having determined that the Property was a Category A HMO she noted the defects apparent on her

inspection that were relevant to that categorisation and took extensive photographic evidence which she exhibited to her statement [R75-224]

39. A letter was sent to Mr Gallagher on 23 June 2023, by Ms Glover which detailed the long list of issues and defects noted by Ms Crawford and advised that, pre-covid, an interview under caution would have been arranged to consider them. However, to avoid an uncertain delay a questionnaire would be sent to Mr Gallagher with questions that would have been put to him at interview. The list of defects includes many items that were not included in the notices of intent (R69-72).

40. During the inspection on 22 June 2021, all 5 tenants provided Ms Glover with brief statements.

    (i) Mr Roger Smith (ground floor rear bedroom) stated that he paid Mr Gallagher £75.00 per week and had moved into his room in 2013. His statement is at R10-11.

    (ii) Mr Karl Mendy (first floor front left bedroom) stated that he paid Mr Gallagher £80.00 per week and had moved into his room in 2010. His statement is at R12-21.

    (iii) Mr Martius B Aguinaldo de Anunciacao (ground floor front bedroom) stated that he paid Mr Gallagher £345.00 per month and had moved into his room in March 2020. His statement is at R22-25.

    (iv) Mr Tony Mathias (first floor front right bedroom) stated that he paid Mr Gallagher £50.00 per week and had moved into his room 1 week previously. His statement is at R26-29.

    (v) Mr Joseph Brien (first floor rear bedroom) stated that he paid Mr Gallagher £70.00 per week and had moved into his room 15 years ago. His statement is at R30-31.

41. Ms Glover noted in her statement of 25 June 2021 (R34-74), that none of the bedrooms had smoke detectors, that the entry doors of Mr Brein, Mr Mendy, Mr Mathias and Mr Smith all had key operated locks and Mr Aguinaldo da Anunciacao's room had a faulty lock necessitating use of a padlock to secure it. The ground floor hallway had items stored including a bike.

42. On 9 July 2021, Ms Glover served the questionnaire under caution on Mr Gallagher who provided written responses on 28 July 2021. In this Mr Gallagher stated that he was responsible for repairs to the property, which were carried out when he noticed them or was alerted to them. He confirmed that no fire risk assessment had ever been carried out and he then commented on each of the alleged defects. Mr Gallaghers responses

are broadly consistent with his grounds of appeal and his statement of case. Where relevant to the offences, his submissions are considered in more detail below.

43. On 17 December 2021, Birmingham reviewed the case to consider whether a financial penalty should be imposed as an alternative to prosecution. Given that this was a first offence by a private (i.e., not professional) landlord with one property, a civil penalty was considered to be the most proportionate enforcement option for the offences.

44. Notices of Intent to issue a Financial Penalty for the s72(1) offence and for breaches of the 2006 Regs were sent to Mr Gallagher on 20 December 2021, initially in respect of breaches of Regulation 4, 5, 7 and 8. However, Birmingham subsequently decided not to proceed with the Regulation 5 offence and to reduce the penalty for the regulation 4 offence by £500 to reflect the removal of the failure to provide thumb locks (item 3) from the final notice.

45. The specific breaches identified by Birmingham under each regulation, are:

Reg. 4	1. No fire detection within the property apart from two battery operated smoke detectors installed by WM Fire Service as a temporary measure. 2. No fire blanket in kitchen. 3. Exit doors from ground floor rear bedroom to garden, doors to first floor front and rear bedroom and rear exit door from kitchen were without thumb turn locks. 4. Inadequate provision of electrical sockets in kitchen – just one double socket with tenants using a 6-gang extension plugged into another cable extension which was connected to the socket, for the appliances.
Reg. 7	1. Inadequate handrail on staircase. Existing handrail only covers 1.2 meters on one side. No handrail on wall 2. Peeling paintwork and mould to bathroom ceiling, missing ceramic tiles, behind WC and hand basin, blown and missing tiling above the bath and a constantly dripping cold water tap. 3. Hole in porch ceiling and rotten timber sill below. 4. Loose single socket on first floor landing. 5. Holed plasterboard to kitchen ceiling and part timbered board ceiling. Gaps around pipes where they exit at ceiling above sink, no splashback to sink, peeling paint and dampness to rear external wall behind sink taps, worn thermoplastic floor tiles, sections of missing tiles, sink base unit door missing and gap around rear exit door. 6. Gaps around garage door allowing pests to enter, accumulated rubbish in garage, garage roof holed, severe damp and mould, worn mortar joints and defective brickwork adjacent to boiler cupboard, multiple pest entry points.

	7. Defective and missing plaster to ground floor hall ceiling and adjacent to porch. 8. Defective and holed plaster to top of staircase, rear wall next to bathroom. 9. Missing panelling to front elevation of bay window wall and defective brickwork to right hand side of garage door. 10. Mortar joints missing to rear elevation and right-hand side of garage exit door.
Reg. 8	1. First floor front right-hand bedroom, mould to the ceiling, some lifting of mould affected paper on right side and front external walls and mould to window seal. 2. Ground floor rear bedroom socket loose and taped up. Loose sockets in First floor front right-hand and left-hand bedrooms.

46. The alleged breaches were evidenced by the witness statements of Birmingham's housing and environmental officers, and in particular by the contemporaneous photographic evidence annexed to their statements [R 1-9; 34-74; 75-224]. With the exception of the absence of fire safety detectors (specifically commented on below), the defects listed were not disputed by Mr Gallagher.

47. On 18 March 2022, Ms Glover carried out a re-inspection of the Property to assess progress with remediating the outstanding defects. She wrote to Mr Gallagher of 24 March 2022, to confirm that there had only been limited progress. A substantial number of items, including many items specified in the Final Notices, had not been addressed (R303-305).

48. On 11 August 2022 Birmingham reviewed the case in light of Mr Gallaghers representations and determined that Final Notices should be issued in respect of the failure to licence offence under s72(1) and for the breaches of Regulation 4, 7 and 8 of the 2006 Regs.

Parties' submissions

49. Mr Gallaghers submissions on the specific allegations of breach are considered under the relevant heading below. Generally, however, the thrust of Mr Gallaghers appeal in respect of all allegations is (apart from the absence of smoke detectors, which he disputes) that the lessees were responsible for the defects, that he remediated any defect promptly on becoming aware of it, that he had addressed most of the items raised in Birmingham's correspondence.

50. Mr Gallagher challenged the level of each penalty saying that he was generally a good landlord, and the penalties were excessive. He did not however explain why the penalties were excessive or make any comment

on Birmingham's policy, or its application to the assessment of the penalties. He just thought an informal warning would have been more appropriate.

51. Mr Gallagher also provided evidence that he was undergoing tests for a serious illness during much of 2021, with treatment commencing in January 2022. This he said, had affected his management of the Property.

52. Ms Glover gave oral testimony. In relation to Mr Gallaghers general management of the Property she said that this was a bad, really neglected property, that was poorly managed. Although Mr Gallagher had cooperated to an extent with the investigation, he had not really addressed the issues thoroughly. Had Mr Gallagher responded immediately to the issues and planned for the repair and maintenance to be carried out they would not have imposed financial penalties. Unfortunately, by the date of the re-inspection in March 2022 very little progress had been made.

53. Mr Smith gave oral testimony concerning the condition of the Property. His relevant evidence was that there had been no maintenance of the Property until the Council became involved and listed the repairs that were needed. They then had carpets fitted, the banister fixed, ceilings repaired, and an electrician had replaced the fuse box and put in new switches and sockets. That was, he said the only time any maintenance work had been carried out since 2014. Mr Smith said that he had put sealer around the sink because when disrepair was reported nothing happened. There had been a bad infestation of mice from the garage into the kitchen behind the sink. He put traps down which had caught mice 3-4 time a week. It was a persistent problem until Mr Gallagher finally cleared all the mattresses and waste out of the garage.

54. Mr Smith said that although Mr Gallagher collected rent fortnightly, he never inspected the Property but sometimes crept in at night to switch off the heating. The Property suffered from mould, particularly in Mr Mendy's room but also in the kitchen and around the bay windows. There were no fire alarms in the bedrooms and no manual locks for evacuation of the building. Also, some of the exit door locks were broken.

55. Mr Gallagher said that he had a good relationship with his tenants until he had given them notice to quit. Since then, Mr Smith had turned on him and was not telling the whole truth about these matters. He said the garage was used by the tenants as a workshop and for storage, that problems with the door locks were caused by tenants forcing the latches and that he would have dealt with the mice problem if asked.

56. The parties' evidence and submissions on the specific breaches of Regs 4, 7 and 8 can be summarised as follows:

<u>The offence under Regulation 4</u>

57. Mr Gallagher stated that a smoke alarm was fitted to the landing prior to WMFS inspection. He also stated that he left a smoke detector on the hall windowsill which had disappeared prior to the inspection. He suggests the fire officer replaced his smoke detector with the fire service's own detector.

58. Mr Gallagher stated that a fire blanket was provided in the kitchen. He had left it on the work top next to the cooker, but a tenant had apparently moved it into a drawer prior to Birmingham's inspection. Mr Gallagher has since fixed the fire blanket to the wall. Mr Gallagher also stated that there was an additional double socket in the kitchen adjacent to the pantry area. He couldn't understand why the tenants had run an extension from the other socket.

59. Mr Gallagher was unaware of the requirement for thumb turn locks.

60. Birmingham's response to these submissions is that the clear findings of Mr Williams of WMFS was, that on 23 May 2021 there was no working fire detection apparatus in the Property. A smoke detector left on a windowsill is not "appropriately sited" as it can easily be removed, which appears to be what happened.

61. A fire blanket must be easily accessible, it should be wall mounted and not put where it can be easily misplaced.

62. The double socket in the pantry was not picked up on the inspection because it was not appropriately sited so as to be clearly visible to the tenants (and those inspecting the Property). There should be an adequate number of appropriately sited sockets. The socket was not, appropriately sited, as evidenced by the tenants' trailing extension leads to the appliances.

63. In relation to thumb locks, Birmingham accept that they are *recommended* in HMOs, rather than a *requirement*. The final notice was therefore varied to remove reference to the thumb locks and the penalty reduced by £500.00 to reflect the variation.

Tribunal's determination on the Regulation 4 offence

64. The Tribunal finds as a fact that there were no working smoke alarms or detectors in the Property at the date of Birmingham's inspection. It is evident from the photographs that a smoke detector had at one time been fitted to the landing next to the one fitted by WMFS. However, we have no reason to doubt the clear evidence of Crew Commander Williams, that on the date of his inspection the Property lacked any operational fire safety equipment. Leaving smoke detectors on a windowsill is clearly not a satisfactory measure. On the evidence of both Birmingham and Mr Gallagher himself, he has failed without reasonable excuse to install much

in the way of fire safety measures, or to ensure that such limited measures as he had provided were in good working order, or in fact there at all.

65. The Tribunal finds that for a fire blanket to be considered useable, it must be visible and readily accessible. This generally means attaching it to the wall, not leaving it about to be stolen or shoved in a drawer. Tenants may sometimes misuse fire blankets, but it remains the responsibility of the landlord to ensure that this important safety measure is maintained in a visible and accessible position. Mr Gallagher stated that he regularly inspected the Property, and that the fire blanket had been removed to a drawer prior to the council's inspection. He has since secured the fire blanket to the wall but only after it went missing. We find as a fact that at the date of inspection the fire blanket was not reasonable visible and accessible, and that Mr Gallagher knew but failed to remedy the position until after his responsibilities under the Regulations had been drawn to his attention.

66. The Tribunal finds that the double socket adjacent to the pantry was not in a position that was practical for plugging in the kitchen appliances. The position and number of sockets may have been adequate for a single household but are a poor design for an HMO where there are several occupiers using the appliances. This caused the tenants to use of a series of extension leads, with the consequent hazard posed by trailing leads and a risk of overloading the circuit. Mr Gallagher did address the defect by installing another double socket once it was drawn to his attention, but that does not provide him with a defence.

67. The Property had been let as an HMO since 2009. For the above reasons we are satisfied beyond reasonable doubt that Mr Gallagher failed to maintain such fire-fighting equipment or alarms as there were, in good working order and failed to take such safety measures as are reasonably required under Regulation 4, to protect the occupiers from risk of injury from fire, the spread of fire, overloaded electrical circuits and the risks associated with trailing extension leads. Mr Gallagher has taken some steps to remediate these issues but should not have waited for Birmingham to explain what was required before acquainting himself with his responsibilities under the 2006 Regulations

The offence under Regulation 7

68. Mr Gallagher's relevant submissions on the items specified in the Notice are:

    (i) Staircase; inadequate handrail – he was unaware of the requirement.

    (ii) Bathroom; all peeling paintwork, and mould is due to the tenants failing to open the window. The tiles were

broken by the tenants and the tap just needed turning off properly.

(iii) Porch ceiling and sills; Mr Gallagher tried to remedy this but was let down by a contractor.

(iv) First floor landing; loose socket. The damage was caused by a tenant yanking the vacuum cleaner cable.

(v) Kitchen; Mr Gallagher only made submissions to the allegations concerning the holes in the ceiling and the gap around rear exit door. He said that following repairs to cure a leak from the bathroom the contractor had suggested replacing the plasterboard with a sheet that had pre-drilled holes so as to alert him to any future leaks. He said that the gapping around the rear door was caused by tenants kicking the base of the door.

(vi) Garage; gaps around door allowing infestation by rodents, and accumulated rubbish. Mr Gallagher states that the tenants had dumped surplus furniture and cardboard in the garage causing the door to become distorted. He cleared it the garage a few years ago but they continue to dump stuff.

(vii) Missing panelling in bay window; Mr Gallagher states that it is just decorative panelling, not structural or insulating.

(viii) Mr Gallagher also questioned whether a mistake in the Notice of Intention invalidated it. In addition to the address of the Property, the Notice of Intention included an erroneous address of a property in Gravelly Hill. Mr Gallagher didn't claim to have been misled by this and did not advance any argument or submission concerning validity.

69. In summary, Birmingham's response to these submissions (following the same numbering) are:

(i) Mr Gallagher should have been aware that this is a specific requirement under Regulation 7(2)(a) and (b).

(ii) This is a common excuse, but a landlord should resolve this by installing an extractor fan. The tiles will eventually succumb to fair wear and tear, particularly with five occupiers and Mr Gallagher is responsible for maintaining the property in good repair. The officer

inspecting the Property disagrees that the tap just needed turning off properly.

(iii) It is evident from the photographs that the damage was of long standing. Mr Gallagher may have been let down by one contractor, but the repairs have been outstanding for some considerable time.

(iv) It is nevertheless Mr Gallaghers responsibility to resolve and repair the damage.

(v) This should not have been adopted as a long-term measure because it adversely impacts on smoke and fire separation between the kitchen and first floor. His explanation concerning the rear exit door indicates that there was an ongoing issue with closing the door that the tenants resolved by kicking it. Mr Gallagher should have investigated and remediated the problem.

(vi) It is Mr Gallaghers responsibility to control the situation and remediate any damage.

(vii) The panelling is a common part of the property and should be maintained in good and clean decorative repair whether structural or insulating.

(viii) Birmingham submitted that the inclusion of the additional address was an obvious mistake, the Notice correctly identified the Property and had been sent in an envelope with the other Notices on the same date. Mr Gallagher had patently not been confused or prejudiced by the mistake because he had made representations in response to disrepair specified in the Notice but had not raised this issue. The mistake had not carried through to the Final Notice and Birmingham was unaware of any issue with the Notice until Mr Gallagher filed his statement of case.

Tribunal's determination on the Regulation 7 offence

70. The Tribunal's general impression, drawn from the extensive photographic evidence in the bundle confirms that of the findings of WMFS and Birmingham's housing officers. The Property was in poor condition throughout and appeared to suffer from a long-term lack of maintenance and repair. The common parts appear to be very shabby and in need of extensive cleaning and redecoration. The garage was in disrepair externally and internally, with large gaps clearly apparent between the garage and the adjoining structures which could allow pests to enter.

71. The kitchen was little short of a disgrace. The floor covering consisted of broken, worn, and missing tiles. There were missing doors and drawer fronts to the base units and evidence of rodent droppings. The sink lacked a splashback, sporting instead flaking paintwork. The trailing leads from the extension leads were evident. The bathroom fared just as badly. Tiles were missing behind and around the sink, above the bath and next to the WC. Tiles above the bath were bulging and precariously loose. The ceiling paintwork was mould spotted with extensive flaking and efflorescence suggestive of damp ingress to the ceiling. The front porch was in a parlous state with heavily rotted windowsills, a holed rotted timber ceiling and mould spotted walls. The rotting and missing panelling on the external bay window elevation was clearly apparent.

72. We find as a fact that Mr Gallagher has without reasonable excuse, failed to maintain the common parts, fixtures and fittings of the Property as alleged by Birmingham. This is because:

(i) The handrail provision to the staircase was inadequate. This was not disputed by Mr Gallagher, who subsequently installed satisfactory handrails.

(ii) The items of disrepair in the bathroom were clearly shown on the photographic evidence and not disputed by Mr Gallagher. The damage appeared consistent with long term wear and tear not deliberate or careless use. It is in any event the landlord's responsibility to maintain the common areas in good repair. If Mr Gallagher believes his tenants have caused the damage, he can pursue whatever contractual and common law remedies he may have against them. It does not relieve Mr Gallagher of his primary liability as the landlord to maintain the Property or provide him with a defence of reasonable excuse. There is a dispute of fact as to the dripping tap. On balance we prefer the evidence of Ms Crawford in this respect because her statement is factual and measured, given the poor condition of the Property. By contrast Mr Gallagher seeks to excuse himself or blame others for most of the items of disrepair.

(iii) Mr Gallagher's submissions about being let down by a contractor may well be true but the condition of the porch is consistent with water ingress over a long period of time. The remedial work was carried out relatively quickly once Birmingham had become involved which indicates that had Mr Gallagher made consistent efforts to address the problem when it first became apparent the repairs could have been addressed before the condition of the porch became very poor indeed. We do not therefore accept that Mr Gallagher had a reasonable excuse for the delay in addressing this issue.

(iv) Loose sockets are an obvious hazard that a landlord needs to address quickly. It is not a reasonable excuse to blame the tenants for tugging at the hoover cable. The landlord is primarily responsible for maintenance of the common parts and Mr Gallagher does not dispute that the socket was loose, he just explains how it had happened. That does not amount to a defence of reasonable excuse.

(v) The kitchen floor, tiling, walls, kitchen units and ceiling all required considerable work to put them in repair. Apart from claiming reliance on some poor advice from his contractor to install holed plasterboard in the ceiling, Mr Gallagher does not dispute the substance of the allegations and has since remediated many of items listed. He blames the tenants for damage to the door but does not provide any reason why they might need to kick the bottom panel.

(vi) The poor condition of the garage and the missing external panelling around the bay window are not disputed. Mr Gallagher blames the tenants for dumping furniture and rubbish and doesn't seem to think non-structural panelling is within the regulations. It is his responsibility to control his tenants and to keep the common parts of the Property in repair. Mr Gallagher's excuses for some of the failings might have been credible had there been some evidence that he implemented a programme of maintenance and repair. Unfortunately, the general condition of the Property is consistent with a long terms lack of basic maintenance. It is therefore difficult to conclude that his excuses amount to more than just that. They do not justify a finding of reasonable excuse.

(vii) We do not find that the inclusion of an additional address invalidates the Notice of Intention. The Property address was shown correctly, and the Notice clearly related to the Property. Mr Gallagher responded to the notice without raising any issue concerning the additional address. It appears to be something he only spotted when preparing his appeal against the Final Notice, which did not contain any error.

(viii) The remaining items are not specifically commented on because they are neither disputed nor excused by Mr Gallagher.

The offence under regulation 8

73. Mr Gallagher's relevant submissions are:

(i) He did not have access to the tenants' rooms and was not aware of the damp and mould in the first-floor front right-hand bedroom occupied by Mr Mathias. Once made aware, he cleaned the mould and found the surface below to be dry. Mr

Gallagher disputed that Mr Mathias had only been in residence for a week prior to the council's inspection.

(ii) Once drawn to his attention the loose sockets were all secured. There was no loose wiring present to create any additional danger. The taped socket was not visible because it was obscured by furniture. Once he became aware of it, the socket was fixed.

74. Birmingham's relevant response to these submissions are:

(i) Mr Mathias made a statement confirming that he had only been in occupation of his room for a week prior to the inspection. It is simply not credible that the amount of mould in his room could have accumulated in that time.

(ii) As a professional landlord Mr Gallagher should check all parts of the Property regularly not just those immediately visible.

Tribunal's determination on the Regulation 8 offence

75. The photographic evidence showed visible mould extending over a significant area of wall from the bed almost to the ceiling of the room occupied by Mr Mathias. It is highly improbable that this could have accumulated over a short period of time, particularly if, as submitted by Mr Gallagher, the wall was not damp. The Tribunal is satisfied on the evidence that Mr Gallagher failed to ensure that this room was maintained in good repair and condition. There can be no excuse for failing to address the mould problem, particularly as there had been a change of tenant just days before the inspection.

76. Mr Gallagher accepts that there were loose and taped up sockets in three of the bedrooms but says that they were not immediately visible, and he did not have access to the tenant's rooms. This does not provide Mr Gallagher with a reasonable excuse. It is good practice for a landlord to visibly check all electrical appliances and sockets regularly and they should be tested 5 yearly by a qualified electrician. A competent landlord should ensure that his tenancy agreement has terms which allow for this. It is evident from the photographs that the gapping around the loose and taped sockets presented a risk of harm from electrical shock and fire.

77. The Tribunal is therefore satisfied beyond reasonable doubt that Mr Gallagher failed, without reasonable excuse, to ensure that the parts of the Property used as living accommodation, namely three of the bedrooms were maintained in good order and repair contrary to Regulation 8.

Birmingham's Policy and its assessment of the appropriate penalties

78. Ms Glover provided a copy of Birmingham's Private Rented Services Enforcement Policy ("the Enforcement Policy") (2019 revision) R352-462 and Civil Penalty Charging Policy ("the Charging Policy") (February 2019) R394-401. She also exhibited Birmingham's Case Summary which explained how the decision to impose financial penalties for the offences was arrived at R260-270.

79. The Case Summary recites the relevant legislation and confirms that Birmingham have regard to the Government Guidance when making their decisions. In line with the Guidance and Birmingham's Enforcement Policy they considered that the offences were not sufficiently serious to warrant prosecution because: it was Mr Gallagher's first offence, the offences all relate to a single property, Mr Gallagher had cooperated throughout the investigation and improved the physical conditions in the Property, there was no evidence of pre-meditated or planned offending, no history of offending and nothing to suggest the offending will be repeated.

80. The Tribunal agree that the imposition of financial penalties for the offences was the appropriate enforcement action in this case, for broadly the same reasons.

81. In assessing the level of penalty for each offence Birmingham's general policy is that a civil penalty should not be seen as an easier or lesser option to that of prosecution, it should be proportionate to reflect the severity of the offence and have a real economic impact on the offender that reflects his failure to manage the Property. The Charging Policy recites the factors set out in the Government Guidance that must be taken into account when deciding on the level of penalty and sets out a 5-step approach Birmingham adopt when applying the policies.

82. When calculating the risk of harm for differing offences under the same regulation, Ms Glover said that Birmingham looks at the offences individually and then assess the aggregate risk under that regulation.

83. Step 1 determines culpability and harm. Culpability is assessed as being Low, Medium, High or Very High. All offences were placed in the High category because Mr Gallagher knew, or ought to have known, that he was in breach of his legal responsibilities and that there was non-compliance over a long period of time, the Property had been let as an HMO for over 11 years.

84. Harm is assessed as being High, Medium or Low. The failure to licence offence under s72(1) was assessed as being Low because the offence of failure to licence did not of itself pose a greater than low risk. The breaches of Regulation 4, 7 and 8 were all assessed as High because the conditions of the Property posed a high risk of serious adverse effect to the occupants.

85. Step 2 establishes a starting point for each offence by carrying the culpability and harm assessments into a matrix to arrive at a starting penalty. Using the matrix, an assessment of High culpability and Low harm places the starting penalty at £2000.00 for the s72(1) offence. An assessment of High culpability and High harm places the starting penalty at £10,000.00 for each of the breaches of the 2006 Regulations.

86. Step 3 requires consideration of factors that indicate an increase or decrease in the level of penalty and lists factors that might increase the seriousness of the offence (aggravating factors) and factors that might reduce the seriousness (mitigating factors). Consideration of these factors adjusted the penalties for each offence as follows:

Offence	Starting point	Aggravating factors	Mitigating factors	Adjusted penalty
S72(1)	£2000	none	No prior history of offending. Co-operation with the investigation	£1,333
Reg 4	£10,000	none	No prior history of offending. Co-operation with the investigation	£6,666
Reg 7	£10,000	none	No prior history of offending. Co-operation with the investigation	£6,666
Reg 8	£10,000	none	No prior history of offending. Co-operation with the investigation	£6,666

87. Step 4 requires Birmingham to consider whether the overall penalty reflects the extent to which the offender fell below the required standard to

ensure that the penalty is fair and proportionate in meeting the policy objectives of punishment, deterrence, and removal of gain. This review could reduce or increase the penalty. Adjustments were then made as follows:

(i) The penalty for the S72(1) offence was increased by £95.00 to £1.428.00. This reflected an unjustified saving of 10% of the licence application fee. The rationale for only adding 10% being that any licence application would probably have been rejected due the fifth bedroom being below the minimum sizes stipulated in the 2018 Order, leading to a 90% refund of the fee.

(ii) Birmingham determined that a fair and proportionate penalty that reflected the totality of the offending required an overall penalty of around £20,000.00 to meet their policy objectives. Having regard to the totality of the offending Birmingham reduced the s72(1) offence to £1,192.00 and each of the breaches of the 2006 Regulations offences to £5,527.00.

88. Step 5 is a review of the offenders means and representations. In this case Mr Gallagher did not provide any evidence of his means and did not ask for his personal circumstances to be considered. His submission on the assessment of the penalties was simply that they were excessive. The Regulation 4 offence was however reduced by a further £500.00 to £5,027 to reflect the removal of the thumb locks from the Final Notice on the basis that they are an advisory measure as opposed to a legal requirement.

89. Mr Gallagher did ask for his illness to be considered. Birmingham reviewed the correspondence from the hospital which confirmed that Mr Gallagher was being assessed by the hospital during 2021 but that his treatment did not commence until some two months after the date of the offences. On that basis Birmingham did not consider that Mr Gallaghers illness, although serious, warranted any further reduction to the penalties.

Assessment of Penalty for each offence

90. In *Marshall v Waltham Forest LBC* [2020] UKUT 35 (LC), the Upper Tribunal confirmed that when dealing with an appeal against a Financial Penalty, a FTT should start with the LHA's policy and apply it as if "standing in the shoes of the local authority". Moreover, although the appeal is conducted as a re-hearing, the Tribunal must consider the authority's original decision (i) to impose the Financial Penalty and (ii) as to the level of the penalty set under the Policy. The Tribunal must afford those decisions "considerable weight" and "great respect". In the subsequent decision of *Gateshead Borough Council v City Estates Holdings Limited* [2023] UKUT 35 (LC), the Upper Tribunal emphasised that a FTT must make its own decision. Its role is not to review the decision made by the LHA.

S72(1) Failure to Licence

91. Birmingham's assessed this offence as justifying a penalty of £1,192.00 which was specified in the Notice of Intention. The Notice set out details of the offence, and Birmingham's methodology in calculating the proposed penalty. Mr Gallagher made representations in relation to the offence itself but did not make any submissions concerning Birmingham's assessment of the penalty.

92. As the submissions did not amount to additional mitigating factors Birmingham affirmed their proposed penalty of £1,192.00 in the Final Notice.

The Tribunal's Decision on penalty for failure to licence

93. The Tribunal considers any failure to licence to be a serious offence. Unlicensed HMOs with inadequate fire protection carry a serious risk of death or personal injury. Add to that the unfit condition of the Property, its overcrowding, inadequate ventilation, damp and mould growth which carry a serious risk of illness or injury. All of this would have been identified years ago had Mr Gallagher applied for licence in 2018. The purpose of the licensing regime is to address the social evil posed by landlords who fail to licence or properly manage their properties. We agree with the assessment of culpability as being High but find that Birmingham have adopted too narrow a definition of the risk of harm to the occupiers, which is at least medium for the above reasons. That would produce a starting figure of £4000.00 on the matrix.

94. We agree that Mr Gallagher has cooperated with the investigation and has taken steps to reduce the number of occupants. That he has no previous record of offending is unsurprising as this is his only rental property, and that does not amount to a good track record. He has no track record of renting out properties other than this one and his performance on this one would certainly not justify any reduction in the penalty.

95. The main aggravating factor which the Tribunal believes should increase the penalty is the profit Mr Gallagher has made from letting an additional fifth bedroom in a property which included one below minimum size bedroom. Mr Gallagher has been receiving rental in the region of £50.00 per week for a room that he should not have been letting since the 2018 Order stipulated minimum room sizes. He has made gross profits of over £7000.00 between October 2018 and December 2021 from unlawfully letting this room.

96. The Tribunal conclude that the starting figure should have been assessed at £4000.00 for this offence applying Birmingham's matrix, to which a reduction of 15% to £3,400.00, should be applied to reflect Mr Gallagher's cooperation with the investigation. To this we have added a sum that is designed to remove Mr Gallagher's profits from letting the property as an

unlicensed HMO. We calculate that the gross additional rental for the offence period could have been in the region of £7000.00 but we don't know the actual rental income for the smaller room for the period of offending, or how much of the rent was attributable to utilities, we have therefore taken a broad-brush approach and limited the additional penalty to 50% of that sum, giving a total proposed penalty of £6,900.00.

97. However, we then come onto totality where we have given considerable weight to Birmingham's assessment that a fair and proportionate penalty for the totality of the 5 offences is in the region of £20,000.00 (which included a proposed penalty of £2,227.00 for the withdrawn Regulation 5 offence and the £500 subsequently deducted from the Reg 4 offence). We agree that a penalty of £20,000.00 for the totality of the 5 offences is fair and proportionate in achieving the policy objectives. The totality of the penalties for the 4 offences proceeded with is 17,273.00. This is consistent with Birmingham's assessment of the appropriate overall penalty once account is taken of the withdrawal of the Regulation 5 notice and the £500.00 reduction to the Reg 4 offence. A fair and proportionate penalty, taking into account the totality of the offending (and our penalties for the other offences), would require us to row this penalty back to £1,192.00.

98. We therefore conclude that although we disagree with Birmingham's approach to calculating this penalty, to achieve overall proportionality we should confirm the Financial Penalty of £1,192.00 imposed by Birmingham on Mr Gallagher.

Breaches of Regulation 4

99. Birmingham assessed this offence as justifying a penalty of £5,527.00 which was specified in the Notice of Intention. The Notice set out details of the offence, and Birmingham's methodology in calculating the proposed penalty.

100. The factors determining a harm assessment of High were stated to be: the absence of any suitable, properly installed and maintained fire detection and warning systems to alert occupiers at an early stage of danger; the only smoke detectors were those installed by WMFS; the absence of a properly sited fire blanket and inadequate electric sockets, all of which posed a serious risk of harm to the occupiers. Mr Gallagher made representations in relation to the offence itself but did not make any submissions concerning Birmingham's assessment of the penalty.

101. Birmingham made the reduction of £500.00 in relation to the removal of thumb turn locks from (mentioned above) and issued a Final Notice for the adjusted penalty of £5,027.00.

Tribunal's Decision on penalty for breach of Regulation 4

102. We are satisfied that an assessment of culpability as High is appropriate and that a High harm assessment is also the appropriate level. The Property had no effective fire safety measures other than the two smoke alarms fitted by Mr Williams. Mr Gallagher had never arranged for a fire risk assessment to be carried out and had no clear idea of his responsibilities under the Regulations.

103. We do not find that there are any aggravating factors, there is no history of any interventions for failing to comply. Mr Gallagher was not motivated by financial gain; he was just ignorant of his responsibilities. There was no concealment or obstruction of the investigation and Mr Gallagher is the landlord of just this property.

104. The mitigating factors are his cooperation with Birmingham and the steps taken to remediate most of the defects, albeit at a leisurely pace, once alerted to them. For this Birmingham reduce the proposed penalty from the starting point by 1/3rd to £6,666.00. That figure was then reduced to £5,527.00 to reflect the totality of offending. Finally, a reduction of £500 was made to reflect the removal thumb turn locks as a requirement. Mr Gallagher was suffering from a serious medical condition which was gradually diagnosed during a serious of consultations between 21 September 2021 and 6 January 2022 with treatment finally commencing on 21 January 2022. However, we agree with Birmingham that Mr Gallagher had been renting out the Property as an HMO for some 11 years prior to his illness. Most of the items of disrepair were of long standing and only addressed when Birmingham became involved. For that reason, we see no justification in reducing this, or the other penalties.

105. Taking all these factors into account, including the totality principle we conclude that we should confirm the Financial Penalty of £5,027.00imposed by Birmingham on Mr Gallagher.

Breach of Regulation 7

106. Birmingham's assessed this offence as justifying a penalty of £5,527.00 which was specified in the Notice of Intention. The Notice set out details of the offence, and Birmingham's methodology in calculating the proposed penalty. Mr Gallagher made representations in relation to the offence itself and a mistake on the Notice of Intent but did not make any submissions concerning the assessment of the penalty other than he considered it to be excessive.

107. The factors justifying an assessment of harm as High were stated in the Notice to be: inadequate handrails presenting a risk of a serious fall; the surfaces of the internal walls could not be maintained in a clean condition; faulty sockets presented a risk of shocks and fire; the disrepair to the fabric eroded fire smoke and fumes compartmentalisation; the floor coverings present trip hazards and are difficult to keep clean; holes and gaps in the fabric of the building and storage of rubbish presented a risk of pest infestation; the presence of mould can produce allergens, irritants and

toxic substances the inhalation of which may cause serious allergic reactions and asthma. Long standing water ingress had rotted the fabric of the porch

108. As Mr Gallagher's representations did not introduce any additional mitigating factors Birmingham affirmed their proposed penalty of £5,527.00 in the Final Notice

Tribunal's Decision on penalty for breach of Regulation 7

109. We are satisfied that an assessment of culpability as High is appropriate and that a High harm assessment is also the appropriate level. We agree with Birmingham's assessment of the harm risks posed by Mr Gallagher's failure to maintain the common parts of the Property, which were serious and of long standing. He did not dispute the items listed in the notice but sought to justify the breach by blaming the tenants for the damage.

110. We do not find that there are any aggravating factors, there is no history of any interventions for failing to comply. Mr Gallagher was not motivated by financial gain; he was just ignorant of his responsibilities. There was no concealment of the disrepair or obstruction of the investigation and Mr Gallagher is the landlord of just this property.

111. The mitigating factors are as before, Mr Gallagher's cooperation with Birmingham's investigation and the steps taken to eventually remediate many of the defects once alerted to them. For this Birmingham reduce the proposed penalty from the starting point by 1/3rd to £6,666.00.

112. Having regard to the examples of aggravating and mitigating factors set out in Birmingham's policy we are satisfied that a reduction of 1/3rd should be made for the mitigating circumstances identified by Ms Glover and do not find that there are any circumstances that should increase the penalty.

113. Taking all these factors into account, including the totality principle we conclude that we should confirm the Financial Penalty of £5,527.00 imposed by Birmingham on Mr Gallagher.

Breach of Regulation 8

114. Birmingham's assessed this offence as justifying a penalty of £5,527.00 which was specified in the Notice of Intention. The Notice set out details of the offence, and Birmingham's methodology in calculating the proposed penalty. Mr Gallagher made representations in relation to the offence itself but did not make any submissions concerning the assessment of the penalty other than that he considered it to be excessive.

115. The factors justifying an assessment of harm as High were stated by Birmingham to be: damp and mould can affect the occupants health causing breathing difficulties, asthma, depression, anxiety and fungal

infection; prolonged exposure to high levels of dampness can cause chronic health problems; there was extensive mould growth to a room used for sleeping meaning the occupant had prolonged exposure to spores produced by the mould; faulty sockets present a risk of shock and are a fire hazard.

116. As Mr Gallagher's representations did not introduce any additional mitigating factors Birmingham affirmed their proposed penalty of £5,527.00 in the Final Notice.

Tribunal's Decision on penalty for breach of Regulation 8

117. We are satisfied that an assessment of culpability as High is appropriate and that a High harm assessment is also the appropriate level. We agree with Birmingham's assessment of the harm risks posed by Mr Gallagher's failure to maintain the internal structure of the Property that were being used as living accommodation was maintained in good repair. The issues identified in the Final Notice were serious and of long standing. Mr Gallagher did not dispute the items, he questioned the seriousness of the mould problem and sought to blame others for not drawing the defects to his attention.

118. We do not find that there are any aggravating factors, there is no history of any interventions for failing to comply. Mr Gallagher was not motivated by financial gain; he was just ignorant of his responsibilities. There was no concealment of the disrepair or obstruction of the investigation and Mr Gallagher is the landlord of just this property.

119. The mitigating factors are as before, Mr Gallagher's cooperation with Birmingham's investigation and the steps eventually taken to remediate many of the defects once alerted to them. For this Birmingham reduced the proposed penalty from the starting point by 1/3rd to £6,666.00.

120. Having regard to the examples of aggravating and mitigating factors set out in Birmingham's policy we are satisfied that a reduction of 1/3rd should be made for the mitigating circumstances identified by Ms Glover and do not find that there are any circumstances that should increase the penalty.

121. Taking all these factors into account, including the totality principle we conclude that we should confirm the Financial Penalty of £5,527.00 imposed by Birmingham on Mr Gallagher.

Judge D Barlow **26 June 2023**

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.