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

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| **Case reference** | **:** | **LON/00AG/HNB/2023/0010** |
| **Property** | **:** | **Flat C, 105 Fordwych Road, London NW2 3TL** |
| **Applicants** | **:** | **Hyeon Jeong Ro**<br>**Aaron Shorr** |
| **Representative** | **:** | **Freemans Solicitors** |
| **Respondent** | **:** | **London Borough of Camden** |
| **Type of application** | **:** | **Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004 |
| **Tribunal** | **:** | **Judge Nicol**<br>**Mr S F Mason BSc FRICS** |
| **Date and venue of hearing** | **:** | **31st August 2023**<br>**10 Alfred Place, London WC1E 7LR** |
| **Date of decision** | **:** | **1st September 2023** |

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**DECISION**

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**The Tribunal varies or confirms the penalties imposed by the Respondent on each Applicant as follows:**

- **£6,000 for the First Applicant (Ms Ro) but £1,000 for the Second Applicant (Mr Shorr) for being in control of or managing an HMO which was required to be licensed but was not so licensed, contrary to section 72(1) of the Housing Act 2004;**
- **£5,000 each for failing to ensure any firefighting equipment and fire alarms were maintained in good working order and failing to take all such measures as were reasonably required to protect the occupiers of the HMO from injury, contrary to**

**reg.4 of the Management of Houses in Multiple Occupation (England) Regulations 2006;**

- **£1,500 each for failing to ensure that all common parts of the HMO were maintained in good and clean decorative repair or were maintained in safe and working condition, contrary to reg.7 of the same regulations; and**
- **£500 each for failing to ensure that the Respondents' name, address and any telephone contact number were clearly displayed in a prominent position in the HMO, contrary to reg.3 of the same regulations.**

Relevant legislation is set out in the Appendix to this decision.

**Reasons**

1. The local authority Respondent has sought to impose the following financial penalties on each Applicant:
   - £6,000 for being in control of or managing an HMO (House in Multiple Occupation) which was required to be licensed but was not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act");
   - £5,000 for failing to ensure any firefighting equipment and fire alarms were maintained in good working order and failing to take all such measures as were reasonably required to protect the occupiers of the HMO from injury, contrary to reg.4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Regulations");
   - £1,500 for failing to ensure that all common parts of the HMO were maintained in good and clean decorative repair or were maintained in safe and working condition, contrary to reg.7 of the Regulations; and
   - £1,000 for failing to ensure that the Respondents' name, address and any telephone contact number were clearly displayed in a prominent position in the HMO, contrary to reg.3 of the Regulations.

2. The final penalty notices were served on 15th February 2023. The Applicant appealed to this Tribunal on 14th March 2023.

3. The Applicant's appeal was heard by the Tribunal at a face-to-face hearing on 31st August 2023. The attendees were:
   - One of the Applicants, Ms Ro;
   - Mr Karol Hart of Freemans Solicitors, representing the Applicants;
   - Attending by remote video due to her being 9 months into her pregnancy, Ms Denitsa Dimcheva of the Respondent's Private Sector Housing Team; and
   - Mr Paul Bernard, Legal Services Officer, representing the Respondent.

4. The Tribunal had the following documents, filed and served in accordance with the Tribunal's directions issued on 24th May 2023:
   - Applicants' Bundle, 43 pages; and

- Respondent's Bundle, 378 pages.

5. By letter dated 30th August 2023, the Applicants' solicitors sought to provide a further Addendum Bundle of 24 pages containing two documents: a draft of the licence eventually granted by the Respondent to the Applicants in February 2023 and Ms Ro's tax return for the year ended April 2022. Mr Bernard did not object and so the Addendum bundle was allowed in, despite coming so late and close to the hearing.

6. The Respondent has had since 8th December 2015 a borough-wide additional HMO licensing scheme requiring all HMOs to be licensed. It was renewed on 8th December 2020. The Applicant accepts that the subject property came within the scheme at all material times, subject to the points made in the grounds of appeal. The Applicant eventually applied for a licence on 27th October 2022 and it was granted in February 2023.

7. Following a tenant complaint, Ms Dimcheva obtained authorisation from her senior officer and inspected the property on 19th October 2022. She found 4 residents, in 4 separate households, constituting an HMO. She also found a number of problems which engaged the HMO Regulations:

   a) No name, address and any telephone contact number for the Applicants were displayed.
   b) There was an inadequate automatic fire detection system within the property. The present fire detection consisted of battery operated non-interlinked smoke detectors. Furthermore, there was no heat detector in the kitchen, and the alarm in the lower-level hallway did not sound when tested.
   c) The upper floor front left bedroom had a thin door, not of a solid traditional construction, which would not provide the required protection from fire to the means of escape.
   d) There was no fire blanket in the kitchen.
   e) The front door was not fitted with a thumb-turn mortice lock or equivalent.
   f) The lights at several locations in the property did not work:
      a. The two spotlights near the entrance door
      b. Two spotlights in the lower floor hallway.
      c. No working lights on the upper floor and staircase leading to that floor.
   g) Disrepair to the washing machine cupboard door in the kitchen.
   h) Broken self-closing mechanism and handle to the living room door.
   i) Broken handle to the upper floor front left bedroom door.

8. The Respondent has produced its own policy statement on enforcement in relation to the Private Sector Housing Service, following the Government's Guidance for Local Housing Authorities on Civil Penalties under the Housing and Planning Act 2016 ("the Guidance"). In accordance with that policy, on 28th December 2022 the Respondent served notices of intent to impose financial penalties on the Applicant

of £7,500 for the failure to licence and £5,000, £2,000 and £1,000 respectively for the breaches of the management regulations.

9. By letters dated 25th January 2023 the Applicants' solicitors made representations to the Respondent on behalf of each Applicant. When the final notices were issued on 16th July 2021 the total amount of the penalties was reduced by £3,000 for each Applicant, including no longer pursuing a penalty for the most minor of the alleged breaches, namely a broken door handle in breach of regulation 8. As Mr Hart pointed out, this left each Applicant with a total penalty of £13,500 each, £27,000 between them.

10. The Applicants did not dispute that the property should have been licensed but was not and that they each satisfied the definition in section 263 of the 2004 Act of persons having control of or managing that HMO. The first point they made against the penalties imposed by the Respondent was to assert that, in accordance with section 72(5) of the 2004 Act, they had a reasonable excuse for having control of or managing the unlicensed property, namely that they were ignorant of the Respondent's additional licensing scheme.

11. Ms Ro said that she was the only active person in managing the property, although her husband is a joint lessor with her. It had been bought with her own money. The only assistance Mr Shorr had given her was to represent her in dealing with the Respondent in the crucial period around October 2022 while she was away in South Korea following the death of her father. Her understanding was that there needed to be 5 people in a property to count as a licensable HMO and, since 2015, there had never been more than 4 adults living in the subject property.

12. The requirement of 5 people derives from the mandatory statutory licensing scheme. Ms Ro was familiar with that because it applied to her other property, 32 Rosemont Road, which was duly licensed. When a potential tenant asked her in around August 2022 whether the subject property was licensed, she confidently asserted that it did not require licensing.

13. The Respondent was understandably sceptical that the Applicants were entirely unfamiliar with the additional licensing scheme. It appeared to them from the number of adults recorded in Council Tax records as living at the property since 2015 and from the layout and current use of the property that it had been rented out as an HMO for the entire time since the additional licensing scheme had been brought in. Ms Ro was aware that HMO licensing existed. She held a licence from the Respondent and so was familiar with the process and the relevant department. Any competent landlord would have a system for keeping up-to-date with relevant legal and regulatory requirements which could include:

(a) Employing an agent.

(b) Getting one-off advice from an agent.
(c) Getting one-off or ongoing advice from a solicitor.
(d) Joining one of the national or local groups or organisations for landlords.
(e) Subscribing to any relevant email list run by such groups or organisations.
(f) Checking with one of the Respondent's officers.
(g) Checking the Council's website.

14. The fact is that the Applicants had never instituted any system for keeping up-to-date with anything applicable to landlords. They did not put forward any explanation for this. All Ms Ro suggested in evidence was that she is "stupid". The Tribunal does not accept this for a moment. Mr Shorr is a music professor senior enough to be appointed the Artistic Director and Chair of the Jury for the Scottish International Piano Competition, which clashed with the Tribunal hearing and was put forward as the reason he could not attend. Ms Ro has been managing two properties as a landlord, without the assistance of a professional agent, for at least 8 years. It was clearly within their abilities to achieve a basic level of competence in property management by taking the relatively simple step of instituting a system to keep up-to-date with their obligations. The Applicants had pointed to personal difficulties, such as problems arising from COVID and Ms Ro's father's death to explain why they did not have their minds focused on their management responsibilities but the fact is that they have had 8 years to implement a system and still have yet to take any steps to do so.

15. On 11th April 2023 the Tribunal issued a decision granting a rent repayment order of £3,200 to the four people who occupied the property for the period from 1st September 2022 until the Applicants applied for an HMO licence on 27th October 2022. One of their findings in that decision was that the Applicants had no reasonable excuse for having control of or managing the subject property while it was unlicensed. It would have been open to the Applicants to remedy the lack of evidence which the previous Tribunal had used as part of their reasoning for making that finding. However, this Tribunal was presented with no new evidence and, for the reasons given above, agrees with the previous Tribunal on this issue.

16. Therefore, the Tribunal is satisfied so that it is sure that the Applicants committed the offence under section 72 of the 2004 Act. Further, the Applicants presented no evidence to contradict Ms Dimcheva's findings on her inspection nor did they submit that the breaches of the HMO Regulations did not occur. Therefore, the Tribunal is similarly satisfied so that it is sure that the Applicants breached the HMO Regulations in the way described by Ms Dimcheva and as set out in the penalty notices.

17. This leaves the question of the quantum of the financial penalty to be imposed on each Applicant for each offence.

18. Although the appeal is a rehearing and the Tribunal needs to reach its own conclusion on this issue, the Tribunal is entitled to have regard to the Respondent's views (*Clark v Manchester CC* [2015] UKUT 0129 (LC)) and must consider the case against the background of the policy which the Respondent has adopted to guide its decisions (*R (Westminster CC) v Middlesex Crown Court* [2002] EWHC 1104 (Admin)).

19. The Respondent's policy is in line with Government guidance and provides a careful balance, within the objectives of the legislation, between the various elements which make up the offences and their context. Essentially, the Tribunal concluded that it should follow the Respondent's policy unless there was a clear reason to do otherwise.

20. Mr Hart argued that the Respondent had failed to follow Government guidance and their own policy in calculating the penalties for the Applicants. He pointed to the following passages in the Guidance:

> The Government wants to support good landlords who provide decent well maintained homes and is keen to strike the right balance on regulation in order to avoid stifling investment in the sector.
>
> But a small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. We are determined to crack down on these landlords and disrupt their business model.
>
> The aim of any HMO licensing is to improve standards in the PRS. However, the worst conditions will be found in those unwilling to licence. Therefore, there will be an enforcement drive to find and tackle these. To ensure that the worst landlords/agents are targeted for enforcement and that those who are small portfolio, good landlords but are simply unaware of the scheme the following will apply: Landlords should have had a written warning (or a verbal warning from an enforcement officer) to them that their property may require a HMO licence.

21. Mr Hart was surprised that neither the Tribunal nor Ms Dimcheva took it as read that the Applicants were not "rogue landlords" but rather were "good landlords" who were "simply unaware" of the Respondent's additional licensing scheme. In popular imagination, it may well be that "rogue landlords" is a phrase which is perceived only to apply to the very worst but the Tribunal has to deal with the statute where the phrase arguably extends to all those who do not comply with the requirements in the statute.

22. The Tribunal has accepted the Respondent's findings that the Applicants were in breach of a number of obligations and, in relation to fire safety, some of which give rise to serious risks to their tenants. The Guidance also says, "Landlords are running a business and should be expected to be aware of their legal obligations." As already described, the Applicants did not meet that expectation.

23. The Tribunal accepts that, to an extent, Ms Ro was well-intentioned. She spent considerable sums refurbishing the property to a high standard. However, it did not even occur to her to have a fire risk assessment carried out so that the refurbishment works could include any fire safety upgrades required. For these reasons, the Tribunal cannot assume that the Applicants are the kind of "good landlords" who should not be regarded as a target of the penalty regime, let alone the kind who should be let off with just a warning.

24. Mr Hart argued that there was an element of double-counting in the Respondent's calculations. Ms Dimcheva explained how she followed the Guidance by assessing how aggravating or mitigating factors increased or lowered what would otherwise have been the penalty sum in relation to the Applicants' failure to license the property. The aggravating factors included the condition of the property, part of which consisted of the matters which resulted in the fines for breaches of regulations 4 and 7 of the HMO Regulations. Mr Hart argued that the resulting increase in the licensing penalty was the same sanction as the separate penalties for breaches of the Regulations.

25. The Tribunal does not accept this argument. The Respondent is entitled to impose penalties for each offence. The calculation of the amount of the penalty sum for each offence is a separate exercise. As considered further below, the Respondent must consider whether the overall sum is proportionate to the offences committed but the penalties for each breach are separate and must be considered as such when carrying out the initial calculation.

26. Mr Hart argued that the Respondent had clearly failed to assess the different levels of culpability between the two Applicants. The Tribunal does not accept this. While Mr Shorr was less active in the management of the property, Ms Dimcheva took into account the fact that the rent went into a joint account, he was a joint owner and he stepped into his wife's shoes in dealing with the Respondent when she was away. In terms of legal responsibilities as opposed to their practical implementation, Ms Dimcheva considered Mr Shorr to be equally culpable.

27. Having said that, the Tribunal was concerned that the Respondent had failed to consider properly whether the total sum of all the penalties taken together for both Applicants was proportionate to the offences committed. The subject property happened to be in both their names because, as Ms Ro said, as a married couple they shared everything. The Respondent appears to have calculated the penalty sums for each Applicant entirely separately so that they were each treated as if they were the sole owner – if only one of them had owned the property, it seems that the total fine would have been £13,500 and if there had been a third owner, the total fine would have been £40,500.

28. The Applicants are separately liable for the offences and the Respondent is entitled to impose separate penalties: *Gill v Greenwich*

*RLBC* [2022] UKUT 26 (LC); [2022] HLR 30. However, the Guidance also refers to splitting penalty sums between joint offenders.

29. The Applicants are a married couple who arranged their affairs to divide responsibilities between them – Ms Ro had the responsibility of day-to-day management of the property. They are not entirely separate but nor do they bear the same degree of culpability for the offences which were committed in this case. Imposing penalties on the two of them as if they were entirely separate but bore equal culpability has resulted in a total fine which is disproportionate to the offences committed. For these reasons, the Tribunal has decided to vary two of the penalty sums:

    (a) The offence of failing to license the property is principally Ms Ro's responsibility. Reducing Mr Shorr's penalty sum for this offence to £1,000 both better reflects his individual responsibility and brings the total sum down closer to a proportionate amount.
    (b) The failure to ensure that the Respondents' name, address and any telephone contact number were clearly displayed in a prominent position in the HMO was not serious enough to justify two full penalty sums for each Applicant given that the relevant details had been provided to each tenant. Therefore, the sum of £1,000 each is varied to £500 each, again helping to bring the total sum down to a proportionate amount.

30. The Tribunal has decided not to vary but to confirm the other two sums because, taken by themselves, they are proportionate to the offences committed.

31. It was also argued that the Applicants' financial circumstances justified a lower penalty sum. However:

    (a) This was the sole reason for the reductions allowed by the Respondent in the final penalty notices relative to the Notices of Intent.
    (b) The Applicants provided no information about Mr Shorr's or their joint financial circumstances.

    In the Tribunal's opinion, there was no basis for any further reductions in the penalty sums arising from the Applicants' financial circumstances.

32. The Tribunal's variations lower the total penalty sum from £27,000 to £21,000. The Tribunal is satisfied that each penalty sum is appropriate for the offences committed by the Applicants and that the total sum is proportionate.

**Name:** Judge Nicol **Date:** 1st September 2023

## Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## Appendix of relevant legislation

## Housing Act 2004

### 72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,
(b) he knowingly permits another person to occupy the house, and
(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or
(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
(b) for permitting the person to occupy the house, or
(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

### 249A Financial penalties for certain housing offences in England

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

(2) In this section "relevant housing offence" means an offence under—

(a) section 30 (failure to comply with improvement notice),
(b) section 72 (licensing of HMOs),
(c) section 95 (licensing of houses under Part 3),
(d) section 139(7) (failure to comply with overcrowding notice), or
(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or
(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,
(b) appeals against financial penalties,
(c) enforcement of financial penalties, and
(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

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

### 254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");
(b) it meets the conditions in subsection (3) ("the self-contained flat test");
(c) it meets the conditions in subsection (4) ("the converted building test");
(d) an HMO declaration is in force in respect of it under section 255; or
(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
(b) the living accommodation is occupied by persons who do not form a single household (see section 258);
(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and
(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

(a) it is a converted building;
(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
(c) the living accommodation is occupied by persons who do not form a single household (see section 258);
(d) 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);
(e) their occupation of the living accommodation constitutes the only use of that accommodation; and
(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

"basic amenities" means–

(a) a toilet,
(b) personal washing facilities, or
(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;
(b) either the whole or a material part of which lies above or below some other part of the building; and
(c) in which all three basic amenities are available for the exclusive use of its occupants.

**263 Meaning of "person having control" and "person managing" etc.**

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) 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.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

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

(a) receives (whether directly or through an agent or trustee) rents or other payments from–
(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

**SCHEDULE 13A**

**FINANCIAL PENALTIES UNDER SECTION 249A**

**6**

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

**10**

(1) A person to whom a final notice is given may appeal to the First tier Tribunal against—

(a) the decision to impose the penalty, or
(b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

(a) is to be a re-hearing of the local housing authority's decision, but
(b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

## Management of Houses in Multiple Occupation (England) Regulations 2006

### 3.— Duty of manager to provide information to occupier

(1) The manager must ensure that—

(a) his name, address and any telephone contact number are made available to each household in the HMO; and
(b) such details are clearly displayed in a prominent position in the HMO.

### 4.— Duty of manager to take safety measures

(1) The manager must ensure that all means of escape from fire in the HMO are—

(c) kept free from obstruction; and
(d) maintained in good order and repair.

(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.

(3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.

(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—

(a) the design of the HMO;
(b) the structural conditions in the HMO; and
(c) the number of occupiers in the HMO.

(5) In performing the duty imposed by paragraph (4) the manager must in particular—

(a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and
(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.

(6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.

**7.— Duty of manager to maintain common parts, fixtures, fittings and appliances**

(1) The manager must ensure that all common parts of the HMO are—

(a) maintained in good and clean decorative repair;
(b) maintained in a safe and working condition; and
(c) kept reasonably clear from obstruction.

(2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—

(a) all handrails and banisters are at all times kept in good repair;
(b) such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided;
(c) any stair coverings are safely fixed and kept in good repair;
(d) all windows and other means of ventilation within the common parts are kept in good repair;
(e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and
(f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.

(3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(4) The manager must ensure that—

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

(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.

(6) In this regulation—

(a) "common parts" means—
  (i) the entrance door to the HMO and the entrance doors leading to each unit of living accommodation within the HMO;
  (ii) all such parts of the HMO as comprise staircases, passageways, corridors, halls, lobbies, entrances, balconies, porches and steps that

are used by the occupiers of the units of living accommodation within the HMO to gain access to the entrance doors of their respective unit of living accommodation; and

(iii) any other part of an HMO the use of which is shared by two or more households living in the HMO, with the knowledge of the landlord.