FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KF/HNA/2023/0010**
Property	**:**	**2 Satanita Road, Westcliff-on-Sea, Essex SS0 8DE**
Applicants	**:**	**1. Abdullatif Seif Harrasy** **2. Nassir Seif Harrasy** **3. Fauzia Seif Harrasy**
Representative	**:**	**Jonathan Manning (Counsel)**
Respondent	**:**	**Southend-on-Sea City Council**
Representative	**:**	**Howard Lederman (Counsel)**
Type of application	**:**	**Appeal against a financial penalty – Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal members	**:**	**Judge K. Saward** **Mr R. Thomas MRICS**
Date of hearing	**:**	**22 February 2024**
Date of decision	**:**	**29 April 2024**

DECISION AND REASONS

Decisions of the Tribunal

(1) Pursuant to its case management powers within Rule 6(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal consolidated the three sets of proceedings.

(2) The Tribunal determines that the final notices are valid, and correct procedures were followed to impose a financial penalty.

(3) The Tribunal finds that each Applicant committed a single offence under section 234(3) of the Housing Act 2004 for failure to comply with regulation 7(1)(b) of the Management of Houses in Multiple Occupation (England) Regulations 2006.

(4) The Tribunal finds that the Applicants did not have a reasonable excuse under section 234(4) of the Housing Act 2004.

(5) The appeals are allowed in part to the extent that the Tribunal finds that the appropriate financial penalty is:-

(i) £5,000 for Abdullatif Seif Harrasy
(ii) £2,800 for Nassir Seif Harrasy
(iii) £3,500 for Fauzia Seif Harrasy

(6) The Respondent shall reimburse 50% of the application and hearing fees in the sum of £150 to the Applicants.

REASONS

The application

1. The property at 2 Satanita Road, Westcliff-on-Sea is a three-storey semi-detached house in multiple occupation with 8 bedsit rooms ("the property"). At the time of the issues giving rise to the application, it was licensed for 8 occupiers living as 8 households.

2. By three applications received on 21 April 2023, the Applicants all appealed against separate financial penalties imposed in final notices ("the final notice[s]") issued by the Respondent Council ("the Council") on 24 March 2023 in respect of the property. The final notices were issued under section 249A of the Housing Act 2004 ("the 2004 Act") for alleged offences under section 234(3) of the 2004 Act of failing to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Regulations").

3. The final notices sought to impose a financial penalty of £16,000 on Abdullatif Seif Harrasy (the First Applicant), and £12,000 on both Nassir Seif Harrasy and

Fauzia Saif Harrasy (the Second and Third Applicants). The Applicants are co-owners of the freehold interest in the property.

4. Directions were issued on 23 October 2023. In pursuance of those directions, the Tribunal received an Applicants' bundle of some 63 pages composed of witness statements and appendices plus a legal 'authorities bundle' and 8 pages of copy photographs. From the Council, the Tribunal received an indexed bundle and addendum bundle totalling 424 pages.

5. The bundles included an improvement notice to which various references are made as background information. For the avoidance of doubt the improvement notice falls outside the scope of these appeals.

6. With the agreement of the Tribunal, both parties submitted written closing submissions and comments as detailed below.

7. No inspection took place because it was not necessary to determine the issues before the Tribunal. Photographs and floor plans were supplied.

The hearing

8. With the consent of the parties, the hearing took place remotely using the CVP platform. The Applicants and Council were represented by Counsel who both provided a skeleton argument shortly before the hearing. Mr A. Harrasy and Ms F. Harrasy attended and gave evidence. Mr N. Harassy was not present. Mr Paul Oatt, Chartered Environmental Health Practitioner, gave evidence for the Council. All witnesses were cross-examined and answered questions from the Tribunal.

9. The three applications had proceeded together as they arise from the same facts. At the start of the hearing, and with agreement of the parties, the Tribunal formally ordered the consolidation of all three applications under the same reference number pursuant to Rule 6(3) of the 2013 Rules. In doing so, it is emphasised that the Tribunal has still considered the case against each Applicant individually on the facts and evidence. Where issues are common to all three Applicants, they have been addressed together to avoid unnecessary repetition.

10. The hearing was listed for one day. Despite sitting late, insufficient time remained to conclude proceedings in one day. All evidence was heard on the first day and the case was adjourned to another day to hear closing submissions, which the advocates warned would be complex and lengthy. When a convenient date could not be found to accommodate the advocates and Tribunal members within a reasonable timescale, the closing submissions were dealt with by way of written representations with the agreement of all parties. The hearing was formally closed in writing on 19 April 2024.

11. In accordance with paragraph 10(3) of Schedule 13A to the 2004 Act the appeals have been conducted as a re-hearing of the Council's decision. Thus, the Tribunal has reached its own conclusions on critical issues. In arriving at a determination, regard may be had to matters of which the Council was unaware. However, that does not permit the Tribunal to determine an appeal on the basis of reasons for imposing a financial penalty that have not been set out in the Council's final notice (*Maharaj v Liverpool City Council* [2022] UKUT 140 (LC)).

The Law

12. The procedure for financial penalties and appeals against them are set out in section 249A and Schedule 13A of the 2004 Act. In essence, for a financial penalty to be imposed, there must be a "relevant housing offence" committed by the person served with the notice. The criminal burden of proof applies of "beyond all reasonable doubt".

13. The "relevant housing offence" relied upon in this case is under section 234(3) of the 2004 Act and alleged breaches of the Regulations. Specifically, regulation 7(1) which provides that the manager must ensure that all common parts of the HMO are- (b) maintained in a safe and working condition; and (c) kept reasonably clear from obstruction. Together with regulation 7(2)(e), which provides that in performing the duty imposed by paragraph (1), the manager must in particular ensure that the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO.

14. Extracts of the relevant provisions are set out in the Appendix to this Decision.

The Issues

15. The issues for the Tribunal to determine were agreed at the start of the hearing as:

- Whether or not the final notices are valid and correct procedures followed to impose a financial penalty. If not, what are the consequences?

- Subject to the above, whether the Tribunal is satisfied beyond reasonable doubt that the relevant housing offence has been committed.

- If an offence is found to have been committed, whether, on the balance of probabilities the Applicants have a defence.

- If not, whether the financial penalty has been properly imposed by reason of the requirements in section 249A of and paragraphs 1 to 8 of Schedule 13A of the 2004 Act.

- Is the amount of the penalty appropriate in the circumstances, and having regard to any aggravating and mitigating circumstances?

The Applicants' Case

16. The Applicants raise 5 main grounds of appeal, summarised below.

17. Firstly, they say that the final notice is so seriously defective the appeal should be allowed on this ground alone. It fails, as a matter of public law, to provide sufficient information. For example, it does not explain why the First Applicant's penalty has been set higher than the other two co-owners. No information has been disclosed on the calculations to understand whether the exercise has been undertaken correctly. The final notice does not contain any scores referable to the Council's policy and policy matrix making it impossible to understand which categories have been applied and how the penalty was calculated. The policy and matrix do not explain which scores led to which penalties. Although the policy states that consideration will be given to various factors, it is impossible to tell if they were taken into account. The reasons given in relation to 'financial incentive' are inadequate.

18. Secondly, it is maintained that the final notice and penalty are unlawful and unsustainable for failure to consider and apply its own Civil Penalties Policy.

19. Thirdly, the Applicants are not guilty of the alleged offences and the Council cannot prove them to the criminal standard. The final notice wrongly asserts that the rear garden is a common part for the purposes of the 2006 Regulations. Regulations 7(1) and (2), as relied upon, do not apply to gardens which are dealt with separately under regulation 7(4). The allegations regarding the rear garden gulley and lighting cannot therefore be breaches of regulation 7(1) and (2).

20. Regulation 7(4) is only to keep the garden safe and tidy. It is disputed that the gulley was blocked. Even if it were, a blocked gulley does not render a garden unsafe or untidy. Furthermore, there is no obligation to light a garden under regulation 7(4) and failure to light cannot be a breach of regulation 7(1) or (2)(e).

21. Fourthly, if the offence was committed in terms of the rodent infestation, then the Applicants had a defence of reasonable excuse. The cause and numerous steps to address the rodent infestation are known to the Council and addressed in the evidence of the First Applicant, as summarised below.

22. Fifthly, the Council has failed to consider under its policy whether the penalty was fair and reasonable. It must also be proportionate and include consideration of mitigating factors. A penalty totalling £40,000 has been imposed for 3 relatively minor alleged breaches. The Council is bound to consider the totality principle, so that the penalties imposed for conduct proportionately reflect the overall severity and avoid double counting. The penalty is disproportionate and involves triple counting.

23. Besides this property, the Applicants also own other rental properties. Mr A. Harrasy and his sister Ms F. Harrasy both manage them all with Mr A. Harrasy visiting their HMOs most days.

24. It is accepted that there has been a mouse infestation in the property albeit the cause and extent of the problem is disputed. The Applicants hold one tenant responsible. They say there were never mice in the house before this tenant moved into the property in December 2021. Mr A. Harrasy states that he was first informed of the mouse infestation by another tenant in March 2022. Initially, Mr A. Harrasy tried to resolve the problem himself with mouse traps and poison but later brought in a pest control company in April 2022 who dealt with the infestation at the time.

25. A tenant reported mice again in May 2022. Mr A. Harrasy provided traps once more and Ms Harrasy put up a handwritten notice in the kitchen on 29 June 2022 to warn tenants not to leave food lying around.

26. According to Mr A. Harrasy, various attempts were made to remove the tenant who they hold responsible for the vermin infestation, but the local housing department was unable to find them suitable alternative accommodation. The Applicants claim to have been unaware of an ongoing issue when the tenant reported a mice infestation to the Council on 23 November 2022. The Applicants maintain that the problem is caused by the one tenant failing to follow proper food storage procedures.

27. In terms of the outdoor light, Mr A. Harrasy cannot recall there ever having been a bulb in it. The issue has never been raised before despite numerous inspections by Housing Officers.

The Council's Case

28. The Council says it is unclear what is alleged on ground 1 and that complaints about regulation 7(4) are not relevant. When scrutinised against the reasons in the final notice and viewed in the context of the Council's letter to the Applicant's Solicitor, it maintains that sufficient information was provided.

29. On ground 2, the Council says that detailed consideration was given to the amount and proportionality of the policy by Mr Oatt and his manager, through peer review. The possibility of reducing the penalty was considered at final notice stage. Consideration was given to the Government guidance which is specifically referred to in each notice.

30. In relation to the alleged offences and ground 3, the Council says that it does not have to prove the Applicant's knowledge or intention in relation to the facts alleged as a breach of the Regulations. Assertions of knowledge or ignorance about the gulley or exterior light are not relevant to the offence committed.

31. For ground 4, the burden of proving the defence of reasonable excuse on the balance of probabilities lies upon the Applicants.

32. The complaint that the overall total for 3 individuals exceeds the statutory maximum draws on the analogy of a small company and its director. That analogy does not hold good here where each individual had separate responsibility for the offences.

33. It is submitted that on the final ground of appeal, very considerable weight should be given to the Council's policy and the Tribunal would have to be satisfied there were good reasons for departing from it.

Evidence Heard

For the Council

34. As issues are raised by the Applicants over the validity of the final notices, evidence was firstly heard from Mr Oatt, for the Council, to explain the process followed. The explanations were lengthy. Essentially, Mr Oatt said he had considered the statutory guidance for Local Housing Authorities within the Department of Communities and Local Government publication titled 'Civil penalties under the Housing and Planning Act 2016' dated April 2018. He had applied the '4 dimensions' within the Council's own adopted 'Environment and Regulatory Enforcement Policy'.

35. The Council policy contains a scoring matrix to set the amount of a penalty. Scores are attributed against 4 factors: (1) deterrence and prevention (2) removal of financial incentive (3) offence and history (4) harm to tenants. A review checklist was used before issuing both the notices of intent and final notices with the methodology and recommendations checked and authorised by Mr Oatt's line manager. The checklists did not accompany the notices.

36. The Council had little confidence that a low financial penalty would deter repeat offending because issues of 'excess cold' from heating not being sufficiently controllable by the occupiers were unresolved since 2017. In consequence, each Applicant was scored 15 points against factor (1).

37. Mr Oatt acknowledged that the review checklist completed prior to issue of the 'notice of intent' does not specifically state what gain was made by the Applicants under factor (2). He explained that the distinction between the amount of penalty imposed on the Applicants was due to the different sized property portfolios held which had influenced the 'removal of financial incentive' scores. As Mr A. Harrasy owned more property than his co-owners, his score, and hence penalty was higher. The final notice described him as a 'medium portfolio holder' attracting a score of 15 whereas his co-owners were each described as a 'small portfolio holder' scoring 10.

38. To arrive at these findings, the Council worked on portfolio size and rental income by adopting figures off Zoopla for current valuations. For another house in multiple occupation owned by the Applicants, the valuation had been calculated by multiplying a Zoopla entry per room by the number of rooms. When this approach was queried by the Tribunal, Mr Oatt said that the Council was open to representations if the figures were wrong.

39. There was no known history of licence condition breaches for there to be any previous enforcement history, hence a score of only 1 against factor (3).

40. The Housing Health and Safety Rating System ("HHSRS") was used as a tool to determine the severity (harm to tenants) of the three alleged management breaches. This resulted in a finding of a Band C, category 1 hazard against 'Domestic Hygiene, Pests and Refuse' due to fresh mouse droppings being found in the kitchen base units amongst stored dried food. Band 2, category 2 hazards were found for 'Personal Hygiene, Sanitation and Drainage' for the blocked gulley and against the hazard of 'Falls on Steps' due to the missing bulb and cover to the external porch light.

41. Mr Oatt's final visit to the property had been on 23 March 2022. He considered there to be a major mice infestation. Mice were getting into food in the kitchen cupboards. The property is of pre-1920s construction built with a suspended ground floor that could allow ingress for rodents. The basic entry points were not dealt with.

42. Photographs show some empty cupboard space. It was put to Mr Oatt in cross-examination that these photographs demonstrate that adequate cupboard space was available. Mr Oatt explained that tenants had moved their food out of the kitchen due to the mice infestation. There was only one empty set of cupboards. Each of the 8 tenants needed their own storage unit.

43. In terms of the outside gulley, Mr Oatt said that it was blocked by some garden debris but also an unidentifiable dark viscous. The drain was holding water at grate level during the inspection in October 2023. Water was not escaping, and it was not above brick level.

44. From the back kitchen door there is a step down into the garden, which Mr Oatt described as quite steep. Mr Oatt accepted that the kitchen strip light, if switched on, would provide some light outside. Only the upper panel of the kitchen door is glazed to allow light filtration. If a person was not expecting a change in levels, and depending on the time of year and conditions, a fall would be onto a 'harsh and unforgiving surface'. A working external light was required and not provided.

45. It was Mr Oatt's evidence that the Council could have issued a higher financial penalty by imposing an amount against each of the three breaches. However, under the 'totality principle' set out within its policy, the Council had "amalgamated" the breaches "to be proportionate". This meant that the Council

had taken the vermin infestation as the most severe and primary offence and applied the scores solely for that hazard. By taking this approach, Mr Oatt confirmed that the financial penalty for the First Applicant would still have been £16,000 even if the blocked gully and lighting were omitted from the final notice. Similarly, the amount would be unchanged if only one of the final notices had been issued.

46. With an overall score of 61, the First Applicant came within the score range of 61-70 for which the 'fee' is £16,000. The Second and Third Applicants each scored 56 falling within the score range 51-60 and a 'fee' of £12,000.

47. No breakdown of the financial penalties had been provided to the Applicants prior to these proceedings. The view taken by Mr Oatt was that the recipients could make representations and ask for an explanation or breakdown. At no time had the Applicants or their Solicitors requested a breakdown of the penalties. The information would have been given if requested, including the calculations.

48. When asked by the Tribunal about culpability of each Applicant, Mr Oatt stated that all the Applicants had described themselves as having management and control of the property and that had been the Council's starting point. He acknowledged that there is no box within the matrix for 'culpability'.

49. It was confirmed by Mr Oatt that he was unaware of any measures taken by the Applicants to address the mice infestation until November 2023 when bundles were produced in the course of these proceedings.

For the Applicants

50. Both Mr A. Harassy and Ms Harrasy confirmed that they have over 30 years' experience of property management. Neither has any formal qualification or training in property management or indeed any particular expertise in matters of pest control.

51. The Applicants' bundle contains a typed-up log which Mr Harrasy confirmed was taken from his own diaries. An entry from 10 March 2022 refers to a telephone call made by Mr A. Harrasy to the Council's Housing department and states: "*Detailed mice situation and the environmental risk to the home.*" Under cross-examination Mr A. Harrasy said that he did not mean there was an environmental risk to the whole house, just the one bedroom and the kitchen.

52. Mr A. Harrasy confirmed that he became aware of mice shortly after the tenant to room 1 moved in. He had written to the tenant on 29 December 2021 and again on 12 February 2022 warning of the risk of attracting mice if food is left out. Mr Harrasy had not seen any mice himself by that stage. His

diary entry for 9 March 2022 records another tenant finding and killing a mouse. Mr Harrasy confirmed it was a fair summary to say that his response had been to purchase mice killer from a shop. Mr Harrasy added that he was acting on a situation in the kitchen and bedroom 1.

53. His diary entry of 16 March 2022 says: "*Mice still in the house*". This was room 4, the first floor and bathroom, ground floor kitchen and also, room 1. Mr A. Harrasy told the Housing department in an email on 18 March 2022 that the "*mice issue has not been resolved*" and "*Tenants are now not cooking in the Kitchen [sic] due to the dirtiness of [the tenant].*" Mr Harrasy suggested this was in fact only one tenant who was not using the kitchen and then changed his answer to two, including the tenant being complained about.

54. On 27 April 2022, a recognised pest control company completed 'pest disinfection'. The invoice recommends proofing works at ingress points, rated as 'medium' priority. Mr A. Harrasy said that he did take the works up but with a different company. He was also doing his "own things", such as cleaning out the cupboards. Only after questions from the Tribunal did Mr Harrasy say that he had blocked 3 or 4 tiny holes with filler underneath the kitchen door frame. He said that the company had thought that was probably where the mice were getting in. He had "*felt the bait was sufficient*".

55. By 29 June 2022 Mr A. Harrasy and his sister knew there was a recurrence of mice and acknowledged that they did not engage a contractor at that time. It was accepted as "true" that the professional advice of 27 April 2022 was not followed but Mr A. Harrasy insisted that he had acted. He had checked the kitchen and not seen any signs of mice and put down mice bait and strips in the kitchen and room 1.

56. Mr A. Harrasy was visiting the property "frequently". Another pest control company visited the property on 21 February 2023 and recorded that there were not complete backs on the lower kitchen cupboards thereby allowing mice easy access. Mr A. Harrasy said works to the kitchen cupboards were done "just after" by a builder called 'Mark'. He could not be more specific as his sister dealt with the builders. However, when Ms Harrasy was asked about this, she said she thought Mark the builder had done some works but she was not sure what he did.

57. The pest control company made three visits, the final visit one being on 23 March 2023 when they found no activity. Ms Harassy thought that even before this someone called Edward from another "mice company" had put down bait. Edward had then said they would need to contact his company which Ms Harrasy had done. When pressed on the dates, Ms Harrasy was sure it was September 2023. She re-confirmed the year was correct.

58. It was confirmed that the Applicants instructed their Solicitors when they received the notices of intent. Mr A. Harrasy had understood what the notice meant. It was a "bit vague" to start with but once the Solicitors had explained

"we understood it". Ms Harrasy similarly confirmed that their Solicitor had explained the notice of intent "in language we could understand."

59. Mr A. Harrasy said that he understood there were 3 breaches but felt it was a bit harsh taking into account the work done to remove the mice. However, Mr Harrasy could not say why the Council was not informed of the steps taken to tackle the vermin. The reason given by Ms Harrasy was that they had instructed Solicitors to do everything on their behalf. When it was put to Ms Harrasy that the first the Council knew about the documents now produced was in November 2023, Ms Harrasy replied: "*Yes, I imagine so*." She also acknowledged understanding that they were accused of a criminal offence and the importance of their Solicitors reply of 21 February 2023, which had been sent to the Applicants for approval.

60. When asked in re-examination if Mr A. Harrasy understood how much the penalty was for, he replied that he did not and even after hearing Mr Oatt's evidence he was "still foggy over the figures". Ms Harrasy repeated this line but accepted that nowhere in their Solicitors letter did it say the figures were not understood or requested an explanation.

61. Mr A. Harrasy stated that his brother Nassir, the Third Applicant, is updated regularly but he is living abroad whilst working under contract and has done so for "a good few years". He was abroad when the notices were issued and did not attend the hearing.

Closing submissions

62. Both parties provided lengthy written closing arguments, followed by final comments with a focus on legal submissions. We do not attempt to summarise all points, it being unnecessary to do so. Instead, we focus on points of disagreement in the considerations below. For the avoidance of any doubt, the submissions have been considered in full.

63. A procedural point is raised by the Council in objection to the Applicants' contention that the notice of intent is defective due to lack of reasons. The grounds of appeal, drafted by Counsel, referred only to the validity of the final notices. In agreeing to accept written closings, the Tribunal was explicit that no new matters could be raised. The Tribunal notes that reference to the validity of the notices of intent was mentioned in the skeleton argument received by the Tribunal on the morning of the hearing. Given that the Tribunal will need to be satisfied that correct procedures were followed, it will necessarily involve checking compliance of the notices with the statutory requirements. To that extent the notices of intent fall to be considered.

Consideration

64. As set out above, the Tribunal is making its own decision rather than reviewing the Council's decision. On appeal the Tribunal can confirm, vary or cancel a final notice, but it cannot increase the penalty above the maximum of £30,000.

Validity of the Final Notices

65. The Tribunal's consideration starts with the validity of the final notices. Schedule 13A deals with the procedure for imposing financial penalties. The process requires prior notice to be given to the intended recipient of the local housing authority's proposal to impose a financial penalty. This is the "notice of intent". It must specify the amount of the proposed financial penalty, the reasons for proposing to impose it and information about the right to make representations in response.

66. Notices of intent to issue a financial penalty were issued by the Council to each Applicant on 18 January 2023 after inspecting the property on 13 January 2023. Prior notification of the inspection had been given on 11 January 2023. Having received the notices of intent, the Applicants' instructed Solicitors who made representations on their behalf. The Council responded by a 4 page letter dated 1 March 2023 with further details and proceeded to issue final notices on 24 March 2023. There is no suggestion that the notices of intent or the final notices were issued out-of-time. The Tribunal is satisfied of compliance with the requisite time limits.

67. The final notices gave the reasons for imposing a civil financial penalty as:

"On or about 13th January 2023 being a joint freeholder and Person Managing, and or in Control, in respect of the premises known as 2 Satanita Road….., you did fail to comply with Management Regulations in respect of HMOs and therefore committed an offence under Section 234(3) of the Housing Act 2004."

They proceed to say:

"The manager must ensure that all common parts of the HMO's are maintained in good and clean decorative repair, in safe and working condition and reasonably clear from obstruction.

Within the rear garden being a common part accessible from the shared kitchen the following breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 were observed:

The kitchen area being a common part in frequent use by occupiers is unsafe because there is an active rodent infestation present, in breach of regulation 7(1)(b).

The gulley outside the kitchen exit taking rainwater and grey waste is blocked in breach of regulation 7(1)(c).

The light bulbs to the external rear garden porch light have been removed as has the light cover in breach of regulation 7(2)(e).

68. Copy photographs are reproduced beneath each of the alleged breaches.

69. There is no prescribed form for a notice of intent or final notice. Both notices set out in simple terms the three alleged breaches of the Regulations with reference to the paragraphs said to be offended.

70. Mr A. Harrasy and Ms Harrasy admitted that they understood what each notice referred to. Indeed, they have taken full opportunity to argue the merits of their cases having instructed Solicitors after receipt of the notices of intent.

71. With reference to *South Buckinghamshire DC v Porter (No.2)* [2004] 1 WLR 1953 at [36], the Applicants argue that, as a matter of public law, the reasons in the notices must suffice to not merely allow the recipient to understand why a penalty has been imposed, but the means of calculation in each case. There are other legal authorities specific to the issue of notices under Schedule 13A, which the Tribunal find more pertinent.

72. The Upper Tribunal in *LB Waltham Forest LBC v Younis* [2019] UKUT 0362 (LC) cautioned against an excessively technical approach to procedural compliance. Even if reasons, in a notice of intent, are unclear or ambiguous, Parliament would not have intended that the notice should invariably be treated as a nullity. In *Younis,* the notice of intent failed to give sufficient reasons, but it was accompanied by witness statements setting out full details of the alleged offence. The process also allowed for further dialogue as did the final notice and appeal. It was held that the penalty should not be struck down unless justified because of the prejudice which the procedural deficiency causes to the recipient.

73. In *Maharaj* (as referenced above) HHJ Hodge said at paragraph 17:

"By paragraph 3(a) of Schedule 13A, the notice of intent must set out "the reasons for proposing to impose the financial penalty". Those reasons must be sufficiently clearly and accurately expressed to enable the recipient landlord to exercise the right conferred by paragraph 4 to "make written representations to the local housing authority about the proposal to impose a financial penalty", thereby enabling it to decide whether to impose a financial penalty on the landlord and, if so, the amount of such penalty (as required by paragraph 5). Similarly, by paragraph 8(b) of schedule 13A, the final notice must set out "the reasons for imposing the penalty". These too must be sufficiently clearly and accurately expressed to enable the recipient landlord to decide whether to exercise the right of appeal to the FTT conferred by paragraph 10 against the decision to impose the penalty or the amount of that penalty. In the Tribunal's judgment, those reasons must be directly referable

to the condition of the licence in relation to which it is said that there has been a failure to comply on the part of the landlord; and those reasons must identify clearly, and accurately, the particular respects in which it is said that there has been non-compliance on the landlord's part. The Tribunal does not regard the reasons for imposing a financial penalty, or proposing to do so, merely as giving a factual background to the offence; they should be treated as providing particulars of the offence."

74. More recently in *Welwyn Hatfield Borough Council v Hongmei Wang* [2024] UKUT 24 (LC) the Deputy Chamber President, in reference to a notice of intent, said at paragraph 74: "*What is important is that the notice should equip the recipient with the information they require to enable them to answer the charge against them*". At paragraph 75, "*How precise or particular the contents of a notice must be to achieve that requirement will depend on the circumstances of the case which may include the recipient's knowledge of other facts*." Applying *Mannai Investment Co Ltd v Eagle Star Life Assurance Co. Ltd* [1997] AC 749, the validity of a notice is to be assessed objectively, by asking how a reasonable recipient would have understood it. The Deputy Chamber President did not go as far as saying that an invalid notice could be cured by information supplied at final notice stage or at appeal, preferring to leave that point for decision on another occasion.

75. In *Wang,* the defect was that the notices of intent were vague and did not clearly identify the facts which amounted to the offence being alleged. It is not the same point arising in this instance, which concerns the reasons for the amounts of the penalties, but the authorities support the need for reasons generally to be clear enough to enable the recipient to respond.

76. The Applicants consider the word "the" to be significant in paragraphs 3 and 8 of Schedule 13A where they stipulate that notices of intent and final notices, respectively, must set out the reasons for "the penalty". We do not disagree that this means a need to give the reasons for imposing the specific penalty in the specific amount.

77. However, it strikes the Tribunal that the approach it is invited to take by the Applicants in considering the adequacy of the final notices is excessively forensic. They seek to impute a requirement for a level of detail and explanation in the notices beyond that necessitated by the legislation and required to understand the financial penalty.

78. The notices identified the factors considered in determining the amount of the penalty and how particular consideration was given to deterrence and prevention, removal of financial incentive, and harm to tenants. Several paragraphs of text explain the considerations.

79. The Applicants argue it is still impossible to tell which factors were taken into account. They say the explanations are inadequate and fail to explain how and why conclusions were reached. These concerns go beyond the bare requirements for the notices.

80. It was plain that the higher penalty imposed upon Mr A. Harassy reflected his status as a medium portfolio holder with 4 to 5 properties, whereas the other Applicants were each considered to be a small portfolio holder of at least 3 properties. The merits of this approach may be pertinent to the appropriateness of the penalty but it does not go to validity.

81. The HHSRS scores used to determine the severity of hazard and scores against the Council's policy matrix were not included, but the Tribunal is not swayed they needed to be. Indeed, the Applicants' Solicitors letter of 1 February 2023 responding to the notices of intent, demonstrates that they could engage on the different categories of hazard and challenge the level of penalty without such information.

82. It was only upon instigating Tribunal proceedings that the Applicants suggested the notices were defective. This was not the first opportunity to raise issues. If any of the notices were so lacking in detail, as now contended, then it would be anticipated that the Applicants' Solicitors would have said so earlier having been engaged once the notices of intent were issued. They did not do so. Their focus was on arguing against the imposition of the penalties. The response firmly indicated that the reasons in the notices, including those for imposing the penalties, were understood.

83. In the judgement of the Tribunal, the final notices gave sufficient details of the reasons for issue of a financial penalty and how it had been calculated in each case for a reasonable recipient to understand them. Indeed, it is evident that the Applicants had sufficient understanding and information to mount and pursue their appeals.

84. All the notices sufficed to comply with the requirements of Schedule 13A. There was no procedural deficiency. Even if we had taken the view that the explanation for the amounts was deficient, it would not have been to any material degree to lead to a conclusion that the notices were a nullity.

Compliance with Council policy

85. The Applicants Counsel considers it "critical" that from Mr Oatt's oral evidence neither he, nor the peer reviewer, appeared to have a proper understanding of the Council's own policy. The Tribunal did not draw the same conclusion. Mr Oatt's explanations of the policy were overly lengthy, but they did not portray misunderstanding of its provisions.

86. The main thrust of the Applicants arguments on this ground concern the adequacy of the policy itself. For instance, it is argued that the matrix does not enable the most important factors within the Secretary of State's Guidance to be considered in the determination of a penalty, such as culpability and for mitigation to be properly assessed. The conclusion drawn by the Applicants is that the policy and matrix included within it cannot be operated in a manner to give effect to the states aims. Therefore, the penalties must be cancelled.

87. Attention is drawn by the Applicants to *Kazi v Bradford MBC* [2023] UKUT 263 (LC) where [at 57] the Upper Tribunal said that the Tribunal must "*start from the respondent's policy, but it is not bound by it and should depart from it if it is irrational or unjustifiable*." This was said in the context of making the final determination. It is not authority for the proposition now advanced that the final notices must be cancelled as invalid by reason of the Council policy being flawed. Whether or not the Council's policy is unlawful is not within the jurisdiction of this Tribunal. The Applicants arguments on this ground go nowhere.

The alleged offences

88. Under section 249A(1) of the 2004 Act, a local housing authority may only impose a financial penalty if satisfied beyond reasonable doubt that a person's conduct amounts to a relevant housing offence. Therefore, the Tribunal must be satisfied to the same criminal standard of proof that an offence has been committed.

89. A relevant housing offence will only occur if there is a breach of the 2006 Regulations. The starting point in interpreting the Regulations is section 234(1) of the 2004 Act. It sets out that the purpose of regulations made thereunder is ensuring (a) there are in place satisfactory management arrangements and (b) satisfactory standards of management are observed. If a breach has occurred, the Tribunal's attention will turn to whether the statutory defence of 'reasonable excuse' is made out, and if not the quantum of penalty.

Vermin infestation

90. As a matter of fact, there was a recurring vermin infestation. That is not in dispute. From the evidence it began as early as December 2021. By their own admittance, the Applicants attempted to resolve the issue themselves with bait before calling in a specialist company. Even then, they failed to follow the recommended follow-up action. Most notably, the base level kitchen cupboards were left without complete backs allowing easy ingress for mice and the other preventative measures recommended by the specialist on 27 April 2022 were not followed or at least not in a reasonably timely manner.

91. The Tribunal recognises that mice infestations can be difficult to tackle in older properties with suspended flooring allowing channels for them to utilise. The type of property construction made it all the more important to shore up entry points and to provide secure cupboard space for food storage. All occupants should have been able to cook and leave food in the kitchen cupboards without risk from vermin.

92. In determining whether there was an offence, account can only be taken of the position up to issue of the final notice. The need to engage pest control services after the final notices demonstrates that a problem remained, but it does not influence our findings on what had already occurred.

93. The duty was upon "the manager" to ensure that all common parts of the HMO were maintained in a safe condition. The kitchen is clearly a 'common part' as defined within regulation 7(6)(a)(iii), being shared by two or more households living in the HMO. It is beyond argument that an active mice infestation placed the kitchen in an unsafe condition from risk of food contamination. The Applicants' Solicitors acknowledged in their letter of 21 February 2023 that 2 Satanita Road (and three other properties) "*are owned jointly by our three clients and are managed by them.*" Mr N. Harassy may have lived abroad but he was still an owner in receipt of rents from the tenants/lessees of the HMO. All were 'managers' for the purposes of section 263(3) of the Act.

94. The Tribunal is satisfied beyond reasonable doubt that the Applicants were all managers and each failed to ensure the kitchen was maintained in a safe condition as required by regulation 7(1)(b) and thereby committed an offence under section 234(3) of the Act. The question turns to whether there was any defence.

95. There is no definition of 'reasonable excuse' in the Act, but as set out in *Adil Catering Limited v The City of Westminster Council* [2022] UKUT 238 (LC), the defence is construed broadly.

96. At paragraph 41 of *Kazi*, it was recognised that if some of the problems were caused or exacerbated by the tenants that will in some cases provide a defence. Here, the poor habits of one tenant potentially exacerbated the problem, but there is certainly no evidence that the person's conduct was the cause of the infestation or that it was incapable of resolution until they were evicted. Assertions by the Applicants are not evidence.

97. There were easy means of ingress for vermin as identified by the pest control specialists that were not being addressed by the Applicants, Another more obvious attractant was the ground floor kitchen where food would be left and prepared. In the circumstances, the Tribunal is not satisfied on the balance of probabilities that it has been demonstrated that one tenant was culpable or exacerbated the problem to such an extent for the view to be reached that the defence of reasonable excuse is made out.

98. Some efforts were taken by engaging a recognised pest control contractor in April 2022 after the Applicants' own attempts had failed. Both Mr A. Harrasy and Ms Harrasy indicated that some works (not mentioned in their witness statements) were undertaken by their builder. No receipts or invoices in support are produced. If works were undertaken, they were unsuccessful with a recurrence in June 2022 and January 2023. The details were so vague with each witness suggesting the other would know that the Tribunal found their accounts unreliable.

99. Neither the Applicants nor their Solicitors informed the Council of the measures being taken to address the issues once the notices of intent were served. This is unfathomable if such measures might prevent a final notice or want to be relied on in defence.

100. Ms Harrasy suggested three pest control companies were used in all. It emerged from Ms Harrasy's evidence that it was not until September 2023 and December 2023 that two other companies were instructed some months after the final notices of March 2023.

101. The quote for the works obtained from the first company was not produced and the witnesses could not recall the amount. Ms Harrasy insisted that the cost was not the reason that the Applicants did not follow the recommendations of the specialist pest control company from April 2022. The Applicants believed they could manage the situation themselves despite having no qualifications in pest control.

102. Putting down bait and filling in 2 or 3 minor holes with filler was woefully inadequate. Objectively, the Applicants cannot have held any reasonable expectation these steps would solve the problem when they did not adhere to the specialist advise of April 2022. That advice identified the need to proof large gaps around pipework using wire wool and sealant, proofing an open floorboard beneath a kitchen unit, and using wire mesh to proof air bricks. The Applicants do not dispute that they knew of mice "from time to time". There was patently a recurring problem. They had been told the solution required. Quite simply, they failed to take reasonable steps required of the situation.

103. None of this affords a reasonable excuse when the Applicants did not pursue the measures advised by the professionals choosing instead over a prolonged period to attempt to resolve matters themselves with the assistance of residents. If a builder was used there is no evidence that the measures were adequate.

104. Thus, the Tribunal is not satisfied on the balance of probabilities that the Applicants have a reasonable excuse from the measures taken.

105. The Tribunal was told that Mr N. Harassy worked abroad during the events leading up to the issue of the final notice. That may be mitigation when considering the penalty, but the Tribunal is not satisfied it is a defence of reasonable excuse. Mr N. Harassy was issued with the notice of intent and Solicitors were instructed on behalf of all three Applicants. Whilst represented at the hearing, Mr N. Harrasy has taken no active part in the proceedings and there is insufficient basis to conclude that a defence is made out.

The outside gulley

106. There is consensus that the outside gulley was filled with garden litter. The Council also noted an unidentifiable black substance. It relies upon the duty of the manager to ensure that all common parts are kept reasonably clear from obstruction under regulation 7(1)(c). The parties disagree on whether the drain forms part of the common parts.

107. Notwithstanding that dispute, the Tribunal is not satisfied to the criminal standard of proof that there has been a failure to keep the drain reasonably clear

to give rise to a breach and commission of an offence. Whilst accepting that there does not need to be a complete blockage for a breach to occur, there was plainly not a significant blockage. Water was not draining properly but it was sitting low within the drain without overflowing. A drain cover has since been fitted.

The external light

108. The Council maintains that there was a breach of regulation 7(2)(e) due to the missing porch light and cover outside the back kitchen door where there is a step down into the outside area. The duty is to ensure that the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO. The Applicants say that this is not a "common part" but an outside area which are captured by regulation 7(4), and for which there is no duty to ensure adequate lighting.

109. "Common parts" are defined within regulation 7(6)(a) to include: (i) the entrance door to the HMO (ii) entrances, 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. In the Tribunal's view, this is one of the entrance doors or entrances, but if not captured by (i) or (ii), it is certainly caught by regulation 7(6)(a)(iii).

110. The issue is not whether there ever has been a light fitting in the past or if the Applicants knew it was missing. The question is whether the common part was fitted with an "adequate" light fitting. The Council's concern arises over someone stepping out of the door with the step not adequately lit. It was established that the upper section of door is glazed allowing light filtration and there would also be light spill upon opening the door. On the evidence, the Tribunal is unclear of the amount of available light from the kitchen itself to ascertain whether there was an adequate light fitting to the entrance and step. Given the uncertainty, the Tribunal is not satisfied beyond reasonable doubt that a breach has occurred for an offence to have been committed.

Conclusion on the alleged offences

111. The Tribunal therefore finds that the offence under section 234(3) of the Act is established beyond reasonable doubt with respect to the vermin infestation only, and that the defence of reasonable excuse is not made out. The Council was therefore entitled to impose a financial penalty upon each of the Applicants. The question turns to whether the penalty imposed was for the right amount in each case.

The penalties

112. Under paragraph 12 of Schedule 13A of the Act regard must be had to the statutory guidance given by the Secretary of State about the exercise of functions in relation to civil penalties. The Guidance encourages local authorities to develop their own policy, which the Council has done.

113. Tribunals will generally be slow to criticise properly adopted policies. A core principle of the Council's policy is for any action to be proportionate to the scale of non-compliance. In accordance with *Gill v The Royal Borough of Greenwich* [2022] UKUT 26 (LC), it is important that the responsibilities, actions and circumstances of each landlord are separately assessed, and that penalty reflects their degree of responsibility. In reference to civil penalties, the Court of Appeal in *Sutton v Norwich CC* [2021] 1 W.L.R. 1691 said that an appellant tribunal is not entitled to overturn a penalty just because it would have imposed a different one. To interfere, the tribunal must conclude that the decision was an unreasonable one or wrong because of an identifiable flaw in the reasoning, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.

114. The first issue arising is that there are three co-owners who have each been penalised for the same offence to the total sum of £40,000. This poses the question of whether the approach complied with the legislative provisions, which place a limit of £30,000 per offence. The Tribunal is satisfied that the Applicants are not in the same position as a director in a company. This is not a case of triple counting, as the Court warned against in *R v Rollco Screw and Rivet Co. Ltd* [1999] 2 Cr App R (S) 436. As co-owners and individual managers, each Applicant has responsibility and potential liability for offences. The penalty imposed under the Councils' policy against each individual Applicant does not exceed the statutory maximum.

115. The Council's policy uses a scoring matrix against 4 dimensions: (1) deterrence and prevention (2) removal of financial incentive (3) offence and history (4) harm to tenants.

116. In terms of deterrence and prevention, the Council says it applied the Government Guidance to arrive at a score of 15 for each Applicant. This was due to a previous history of excess cold and heating not being sufficiently controllable dating back to 2017 and the issue persisting. This gave the Council 'little confidence' in successful resolution.

117. Against 'removal of financial incentive', the Council attempted to estimate the amount of monthly rental income from the property and took account of the Applicants' known property portfolio to attribute a score of 15 for Mr A. Harrsay and 10 for Ms Harrasy and Mr N. Harrsay.

118. As there was no previous enforcement history for the Applicants, a score of 1 was applied against 'offence and history'.

119. To assess 'harm to tenants' the Council used the HHSRS risk assessment. It scored the vermin infestation as a category 1 hazard (being the most serious). The severity was placed at 15 and doubled to 30 on the basis that tenants would have been frequently affected by the mouse infestation. Account was taken of the vulnerability of tenants, risk of spread of physical disease and impact on mental health of living in such conditions.

120. The upshot was that Mr A. Harrasy scored a total of 61 (15+15+1+30), and Mr N. Harrasy and Ms Harrasy scored 56 apiece (15+10+1+30). Under the Council's policy, a score of between 61-70 attracts a penalty of £16,000 and 51-60 it is £12,000.

121. Under the Government Guidance, the maximum amount of £30,000 should be reserved for the worst offenders. The amount should reflect the severity of the offence as well as taking into account the landlord's previous record of offending. Relevant factors include:

- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence
- Culpability and track record of the offender
- The harm caused to the tenant

122. Notably, the Council's policy and scoring matrix omits express reference to the level of culpability and there is no apparent provision for mitigation. Moreover, the matrix allows for the doubling up of the score for 'harm to tenants' as being 'in line with Statutory Guidance' but the Government Guidance says only (at paragraph 100) that harm '*is a very important factor when determining the level of penalty*.'

123. As per the Deputy President's comments in *Adil*, the Council's policy is a guide, not a straitjacket. Having now heard all the evidence and with further information available to it, there is reasonable cause for the Tribunal to depart from the Council's scores.

124. It was not adequately explained how a previous issue of excess cold correlated to the Council having little confidence that a low penalty for the current offence would deter repeat offending. The Guidance says that the ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should

therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

125. The Applicants say measures were undertaken twice more after issue of the final notice to address mice in the property before bringing the problem under control. The time taken to address the issue reinforces the Council's lack of confidence in securing a resolution to some degree. The position was exacerbated by the Applicants' reluctance to commission contractors to complete the recommended works, which were unlikely to be costly.

126. Nevertheless, the Tribunal considers the score has been overinflated. We also take into account that the outside light fitting was replaced, and a cover placed over the gulley demonstrating a willingness to address those alleged breaches. A 'medium confidence' rating bearing a score of 5 should be applied for 'deterrence and prevention'.

127. In assessing 'removal of financial incentive', the Tribunal has some concerns over the accuracy of estimated monthly rental income calculated with reference to the advertised value of the property on Zoopla and 'scientific calculator' as to the likely income generated. That said, the Applicants have hardly been forthcoming with information. They have not assisted the Tribunal by providing details of rental income and profits from the property to help gauge the financial impact and deterrence effect.

128. Whilst the Applicants protest that information on profits was never sought, when the notices of intent were issued, the Council invited documentary evidence of rental income payments if the amount of penalty was considered incorrect. The Applicants refused to supply details as "oppressive and unnecessary" in their Solicitors' reply of 1 February 2023. Rental income from other properties was not relevant, but the profits for the property were. Had information been provided then the Council's policy allowed for withdrawal or amendment of a notice of intent or final notice.

129. The guiding principle is to ensure that the offender does not benefit as a result of committing an offence. Contrary to the Applicants' assertions, the means of an offender is also a relevant consideration. Without the provision of financial data, the Tribunal can only conclude that the calculations are fair. Indeed, if they were far out, it would reasonably be expected that the Applicants would have willingly provided details to discredit the figures applied. The Tribunal applies the same scores of 15 to Mr A. Harrasy and 10 to the other two Applicants.

130. The Tribunal has no reason to change the score of 1 in respect of 'offence and history'.

131. Harm caused to the tenants is a very important factor when determining the level of penalty. At the hearing, the Council claimed the penalty would have been the same had the notices been issued solely for the vermin infestation.

Applying the policy matrix, there clearly was a high level of health risk with tenants frequently affected by this one breach given the repeated recurrences of infestation with high impact to warrant a score of 15.

132. Doubling the score may be reasonable depending on the circumstances to reflect the importance of this category. In this instance, it is appropriate to consider aggravating and mitigating factors. Leaving food out and other poor food hygiene habits by one tenant may have exacerbated the infestation and mitigates the offence to some extent. On the other hand, there was an appreciable failure by those managing the property to act promptly and appropriately once alerted to the infestation and to follow professional advice. That was particularly so when they had no expertise or knowledge of vermin control themselves. Had appropriate steps been taken, then the recurrence could have been prevented much earlier without the Council's intervention. All things considered, doubling up is not justified in this instance and we keep the score at 15.

133. This results in a combined score of 36 for Mr A. Harrasy (5+15+1+15) and 31 apiece (5+10+1+15) for Ms Harrasy and Mr N. Harrasy before considering other relevant factors. In terms of punishment of the offender, the Tribunal considers it appropriate to distinguish between the severity of the offence having found a single breach as opposed to the three breaches claimed. This warrants an adjustment for which we deduct 5 points as proportionate bearing in mind that the vermin infestation was significant in itself. This gives Mr A Harrasy a score of 31 and Mr N. Harrasy and Ms Harrasy a score of 26.

134. One matter remains. From our questions of Mr Oatt, the Tribunal is not satisfied that account was taken of the role and culpability of each co-owner. That may have been because the Respondents were not forthcoming with sufficient information at the time. It struck the Tribunal how much reluctance there was on the Applicants' part to engage, which appeared borne out of mistrust of the Council.

135. From what the Tribunal heard, Mr A. Harrasy and Ms Harrasy were both actively involved in the management of the property with Mr A. Harrasy taking more responsibility. However, Mr N. Harrasy worked abroad during the events leading up to the issue of the final notice. On the face of it, it was not unreasonable to leave the day-to-day management to his co-owners. However, that does not divest him of all responsibility, particularly once the notice of intent was issued. From that time, all co-owners were on full notice of the imperative to act. For Mr N. Harrasy we allow a 20% reduction to reflect his lower level of culpability.

136. A score of 31 falls within the 31-40 range under the Council's policy and a penalty of £5,000 for Mr A. Harrasy. A score of 26 for Ms Harrasy and Mr N. Harrasy is within the bracket 21-30 and a penalty of £3,500. Applying the 20% reduction for Mr N. Harrasy results in a penalty of £2,800 for him. We conclude that those sums are appropriate and payable by the respective Applicants. To that extent the appeals are allowed in part.

137. As the Applicants have succeeded in part, the Tribunal considers it just that they are awarded recovery of half their application and hearing fees, i.e., £150.

Conclusion

138. The Tribunal therefore determines that the final notices dated 24 March 2023 issued to the Applicants by the Council imposing a financial penalty under section 249A of the Act should be varied.

Name: Judge K. Saward Date: 29 April 2024

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

234 Management regulations in respect of HMOs

(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations— (a) there are in place satisfactory management arrangements; and (b) satisfactory standards of management are observed.

(2) The regulations may, in particular—
(a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it; (b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

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

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

.....

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.

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.

Schedule 13A – Financial penalties under section 249A

Notice of intent

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

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

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given— (a) at any time when the conduct is continuing, or (b) within the period of 6 months beginning with the last day on which the conduct occurs.

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

3 The notice of intent must set out—

(a) the amount of the proposed financial penalty,

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

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

Right to make representations

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

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

Final notice

5 After the end of the period for representations the local housing authority must—
(a) decide whether to impose a financial penalty on the person, and
(b) if it decides to impose a financial penalty, decide the amount of the penalty.

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

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

8 The final notice must set out—
(a) the amount of the financial penalty,
(b) the reasons for imposing the penalty,
(c) information about how to pay the penalty,
(d) the period for payment of the penalty,
(e) information about rights of appeal, and
(f) the consequences of failure to comply with the notice

9 .....

Appeals

10 (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—
(a) the decision to impose the penalty, or
(b) the amount of the penalty.

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

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

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

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

11 .....

Guidance

12 A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A.

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

Interpretation

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

2. In these Regulations—

(a) "the Act" means the Housing Act 2004;

.....

(c) "the manager", in relation to an HMO, means the person managing the HMO.

7.—(1) The manager must ensure that all common parts of the HMO are—
(a) maintained in good and clean decorative repair;
(b) maintained in a safe and working condition; and (c) kept reasonably clear from obstruction.

(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.