



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

Case Reference : **MAN/00CG/HNA/2023/0054**

Property : **St Marys House, 11 London Road,
Sheffield, S2 4LA**

Applicant and Appellant : **Mr Gunes Ata**
Represented by **Ms Katie Grey, Barrister and Ashfords
Solicitors**

Respondent : **Sheffield City Council**
Represented by **Miss Ferguson, employed Solicitor
Mr David Gilchrist, Barrister**

Type of Application : **Appeal Against a Financial Penalty, section
234, 249 A and Paragraph 10 of Schedule 13 A
of The Housing Act 2004.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mr. A Hossain, BSc, MRICS**

Date of Decision : **16 September 2024**

DECISION

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Application and Background

1. Mr Gunes Ata “ the Applicant”, who trades as Noble Design and Build has been, at all times relevant to this case, the freeholder of St Marys House, 11 London Road, Sheffield, S2 4LA "the property". By an application, dated 12 July 2023, the Applicant appeals against the issue of 24 financial penalty notices, totalling penalties of £158,660 imposed by Sheffield City Council "the Respondent", for 24 sets of offences of breaching Regulation 4, Regulation 7 and Regulation 8 of the Management of Houses in Multiple Occupation (England) Regulations “the Regulations” contrary to section 234, 249 A and Paragraph 10 of Schedule 13A of The Housing Act 2004, "the Act".
2. The property is a building that was converted in 20015 and 2016, so that it now contains 12 clusters of student accommodation, each cluster forming its own House in Multiple Occupation “HMO”. The building contains 101 rooms for students to occupy on assured shorthold tenancies. The building as well as housing the 12 HMO’s also contains a main entrance doorway, hallway, a lift to all three floors housing student rooms that are all above ground level, a gym, a laundry room, stairs to all levels, corridors, 2 fire exits, stairs to the fire exit and a rear fob activated door with stairs to that. There is a central heating system that provides heating and hot tap water to all 12 cluster HMO’s and common areas outside the 12 clusters. The hot water is created by a biomass hot water boiler that burns wood pellets .
3. Each HMO has a varying number of student rooms, clustered around a communal kitchen. These cluster HMOs are designed so that there is a corridor that is private to the tenants of each cluster that leads to a room that houses a communal kitchen, lounge area and dining area. The corridor starts at the entrance to the cluster, situated at a common landing serving four such clusters. The corridor then runs past the cluster kitchen and the tenant’s bedrooms. At the other end of the corridor there is a door giving access to the fire escape stairs. 94 of the rooms have only a bathroom area that includes a toilet, but 7 of the rooms have a bathroom and a small kitchenet with varying small cooking appliances.
4. All rooms share the use of the room containing the cluster kitchen, lounge and dining area for that particular cluster of rooms. The individual assured shorthold tenancy agreements also contain a right to use the other common areas within the building. The Applicant has sold most of the rooms (except 17 of them) to long leaseholders who hold tenancies subject to long leases with a term of 195 years, the long leaseholders then subletting to students. The long leaseholders pay ground rent of £250 per year and are subject to the requirement to pay service charges to the Applicant.

5. The ground floor of the building contains commercial areas and the entrances and two fire exits for the residential areas. The Applicant continues to manage the non-commercial areas of the buildings and 39 out of the 101 rooms. The remainder of the rooms are managed by Cloud Homes, an alternative manager that plays no active part in this case, being responsible for individual rooms let out under long leases, but not the common areas. The leases of the building therefore provide that where Cloud Homes collect rents from students, these will cover service charges that should be paid to the Applicant. This does not appear to have been happening because of an ongoing dispute over the level of services being supplied by the Applicant.
6. Alun Whitaker is a Principle Legal and Policy Officer “Officer Whitaker”, employed by the Respondent and is the officer who is responsible for this case. Officer Whitaker has from time to time been assisted by Officer’s Stork and Dennison. Officer Whitaker is authorised by the Respondent to carry out all of the functions that he has completed in this case.
7. There have been four inspections carried out by Officer Whitaker, all have been pre warned to the Applicant by the service of notices.
8. The inspections were conducted on the following dates.
 - Inspection on 30 January 2023 (all 3 officers). Photographs were taken AW17.
 - Inspection on 23 February 2023 (all 3 officers) with South Yorkshire Fire and Rescue Officer Nigel Sheppard. Photographs were taken AW19 to AW31.
 - Inspection on 18 April 2023 Officer’s Whitaker and Stork. Photographs Aw36 to Aw48 were taken.
 - On 18 April 2023 an Improvement Notice was issued in relation to allegations that the building central heating system that provides hot water throughout the residential areas of the building was faulty and that the building, including the residential areas is infested with rodents (rats). No appeal has made against this improvement notice.
 - Inspection on 12 June 2023 Officers Whitaker and Stork. Photographs Aw64 to Aw76 were taken.
9. On 21 April 2023 24 Notices on of Intent to Issue Financial Notices were served.

10. On 14 June 2023 the 24 Final Notices of a Financial Penalty were issued and served. These are the Notices to which this appeal relates and as such they will be listed here, in the order in which they appear in the hearing bundle (Hearing bundle, pages 3,308 to 3,183.) (To which two pages have been added due to an error in preparing the bundle). After the word cluster the number refers to the rooms that are in that particular cluster.

- Cluster 324 to 333. Breach of Regulation 7 of the Regulations. A penalty of £5,040. Ten faults giving rise to the breach.
- Cluster 324 to 333. Breach of Regulation 4 of the Regulations. A penalty of £8,000. Six faults giving rise to the breach.
- Cluster 315 to 323. Breach of Regulation 7 of the Regulations. A penalty of £7,200. Eleven faults giving rise to the breach.
- Cluster 315 to 323. Breach of Regulation 4 of the Regulations. A penalty of £8,000. Six faults giving rise to the breach.
- Cluster 309 to 314. Breach of Regulation 7 of the Regulations. A penalty of £7,200. One fault giving rise to the breach.
- Cluster 309 to 314. Breach of Regulation 4 of the Regulations. A penalty of £7,000. Six faults giving rise to the breach.
- Cluster 301 to 308. Breach of Regulation 7 of the Regulations. A penalty of £6,120. Eight faults giving rise to the breach.
- Cluster 301 to 308. Breach of Regulation 4 of the Regulations. A penalty of £8,000. Seven faults giving rise to the breach.
- Cluster 224 to 234. Breach of Regulation 7 of the Regulations. A penalty of £5,760. Eleven faults giving rise to the breach.
- Cluster 224 to 234. Breach of Regulation 4 of the Regulations. A penalty of £8,000. Three faults giving rise to the breach.
- Cluster 216 to 224. Breach of Regulation 7 of the Regulations. A penalty of £3,240. Five faults giving rise to the breach.
- Cluster 216 to 224. Breach of Regulation 4 of the Regulations. A penalty of £8,000. Four faults giving rise to the breach.
- Cluster 210 to 215. Breach of Regulation 7 of the Regulations. A penalty of £3,600. Eight faults giving rise to the breach.

- Cluster 210 to 215. Breach of Regulation 4 of the Regulations. A penalty of £8,000. Three faults giving rise to the breach.
 - Cluster 201 to 209. Breach of Regulation 7 of the Regulations. A penalty of £3,240. Four faults giving rise to the breach.
 - Cluster 201 to 209. Breach of Regulation 4 of the Regulations. A penalty of £8,000. Four faults giving rise to the breach.
 - Cluster 125 to 134. Breach of Regulation 7 of the Regulations. A penalty of £6,480. Six faults giving rise to the breach.
 - Cluster 125 to 134. Breach of Regulation 4 of the Regulations. A penalty of £7,500. Five faults giving rise to the breach.
 - Cluster 116 to 124. Breach of Regulation 7 of the Regulations. A penalty of £7,200. Six faults giving rise to the breach.
 - Cluster 116 to 124. Breach of Regulation 4 of the Regulations. A penalty of £7,500. Five faults giving rise to the breach.
 - Cluster 110 to 115. Breach of Regulation 7 of the Regulations. A penalty of £3,420. Five faults giving rise to the breach.
 - Cluster 110 to 115. Breach of Regulation 4 of the Regulations. A penalty of £8,000. Three faults giving rise to the breach.
 - Cluster 101 to 109. Breach of Regulation 4 of the Regulations. A penalty of £7,500. Four faults giving rise to the breach.
 - Cluster 101 to 109. Breach of Regulation 7 and 8 of the Regulations. A penalty of £6,840. Thirteen faults giving rise to the breach under Regulation 7 and one fault giving rise to the breach under Regulation 8.
11. It is clear from the written evidence that there is a dispute as to whether the Applicant freeholder manages all of the individual cluster HMO's.
12. Directions were issued on 18 January 2024. As a result a hearing bundle has been served of 3,689 pages. Due to the length of this bundle it is not possible for the written evidence to be summarised, but it will be referred to in the Decision where it is necessary to do so.

Inspection

13. The Tribunal inspected the property commencing at 10am on 2 July 2024. Also present were Officer Whitaker and Mr. Ben Bennett a project manager employed by the Applicant.
14. It had been arranged that Mr Bennett would afford us access to the property and all common parts of the residential building, including the common parts of the 12 clusters of flats. The Tribunal did not have access to the 101 student bedrooms.
15. The ground floor main entrance doors are fob operated. Each occupier has a fob. Persons visiting the residents in the property can use an intercom door panel that should be capable of ringing one of 12 telephones, one for each cluster of rooms. Telephones should be located within the room that has the kitchen, lounge and dining areas of each cluster. The Tribunal noted that some of the telephones that should have been present were missing, so that a visitor could not contact the cluster kitchen using this system where the telephone was missing. The Tribunal could not test the functionality of any of this service.
16. The entrance doors lead into an entrance lobby. This has 12 post boxes, one for each cluster of rooms. It has a radiator and is lit by electric lights. The common lobby, corridors and stairs are carpeted throughout the building. There is a fire alarm control panel in the lobby. There is a lift that should give access to the other three floors, but it has not worked for over a year. There is a corridor that leads to a common laundry room where there are 3 clothes washing machines and three clothes drying machines for the use of the 101 residents.
17. There is a common gym, the door was locked and it is not in use. There is a second smaller entrance and exit door that can only be opened from the outside by an occupier's fob. Mr Bennett informed us that the only other facilities for residents on the ground floor were two fire exit doors, not accessible from lobby, these are purely exits with a push lever device to afford exit from the building. Mr Bennett stated that he took the view that in the event of a fire residents could exit through the main entrance or a fire exit.
18. The Tribunal went up stairs to the first floor landing giving access to four clusters of rooms being clusters, 101 to 109, 110 to 115, 116 to 124 and 125 to 134. Thirty four rooms on this level.
19. The entrances to clusters of rooms are via a locked door from the landing into the cluster, the door having a thumb nail lock on its interior side. Each cluster of rooms has a cupboard off the cluster corridor that houses the electricity consumer unit serving that cluster, the cupboard doors do not

- lock as residents may need access to the consumer unit. That can pose a problem because some residents leave items in the cupboards that should not be placed in the cupboards. The size of the kitchen, lounge and dining area will depend upon the number of resident's rooms in that cluster. Some will have one oven and hot plate; some will have two. All cluster kitchen areas have a ceiling extractor, security camera and smoke detector.
20. Cluster 101 to 115. This being provided for 15 residents; the kitchen area has a double oven and double hot plate hob. A sink tap in the kitchen is wobbly to the touch and it appears that water has been leaking into the cupboard under the sink. There is a short wooden bar positioned so that it is intended to hold the wastewater pipe up to a joint that should be a watertight joint and is not.
 21. A work top around the sink is damaged by water and a second has dropped slightly in height where the two work tops are intended to butt up against each other to form a level working area. The base panels under the base unit cupboards are marked.
 22. The self-closing device on the kitchen door is not working properly in that it will not form a properly closed barrier against smoke and fire. When the kitchen door is opened it can bang against the fridge door and has caused damage to the fridge. The hood over the hot plate is not working properly, not extracting air. The lounge area has a window approximately 4 feet by 3 feet that does not have a restrictor, so that it is able to be opened at least 2 feet wide.
 23. The corridor from the kitchen area past the individual residents' rooms now has 2 fire exit signs one pointing in each direction, towards the landing entrance and the fire escape door at the other end of the corridor. The corridor is long so that the signs cannot be seen from some parts of the corridor. Further, in the event of a fire a resident would have to decide in which direction to evacuate the building without knowing where the seat of the fire is located, should they go towards the kitchen (high fire risk area) or go towards the fire exit. These comments relating to fire exit signs are common throughout the building.
 24. The route to the fire exit is down the corridor to a door with a thumb nail lock onto a landing, that does not have a fire exit sign, downstairs to one of the two fire exit doors. The area in front of the fire exit door has clearly had a carpet fitted to it, but that carpet has been removed. There is now a metal plate fixed to the bottom of the fire exit door, intended to stop rats getting through the bottom of the door. The fire escape routes are intended to restrict the spread of fire and smoke into them for 60 minutes.
 25. Cluster 110 to 115. A cluster with only 5 rooms, the kitchen, lounge and dining area is smaller with less cooking facilities than a kitchen intended

- for more residents. It has one oven, one hot plate hob and one hood over the hot plate that is working. The hob is badly cracked. There are two windows and one has a restrictor that is broken. There are two defective chairs in the dining area that are dangerous to anyone attempting to sit on them. The microwave let with the kitchen is broken and the residents have provided their own replacement. Paint is coming off the surface under the extractor hood.
26. Cluster 116 to 124. A cluster with nine rooms. The self-closing kitchen door does not work properly, not engaging fully into the door frame. There is evidence of water damage to the base panel under the sink cupboard area. Two laminate floor panels are loose causing a possible trip hazard.
27. The corridor of the cluster has two possible trip hazards in it, the first being a pile of carpet floor tiles and the second being a disused cannon printer in a plastic box outside the kitchen.
28. The fire exit door leads to stairs to the second fire exit, designed in a similar way to the first fire exit already described. The Tribunal noted that there are trays containing rat poison at various places on the route with rat excreta on the trays. There is a bag containing a foam substance on the floor of the fire escape route.
29. The area in front of the fire exit door has also had its carpet removed. For identification purposes this is the carpet said to have been affected by foul water. The Tribunal could not smell or see any foul water. The skirting boards to either side of the fire exit door are rotten and, in some places, falling off the wall. The whole of the interior of the door has a metal plate on it. However, because the floor is not entirely level it is clear that there is room for rats to enter this area under the bottom of the door. It is also clear that rainwater could enter the fire escape under the door. There are two bits of wood affixed to the fire door frame that are clearly an addition to the frame. It was suggested that these are in place to cover over a defect in the frame.
30. Cluster 125 to 134, for ten residents. The kitchen has two ovens and hot plate hobs. There is an area of the corridor ceiling that is newly painted. The kitchen self-closing door is sprained at the hinges and the door frame is split above the upper hinge so that door does not close. The three windows have three interior panels and then three exterior glass panels (not double glazing they are separate units). The exterior opening windows are fitted with restrictors.
31. The laminate flooring in the lounge area is defective. A kitchen tap wobbles to the touch.

32. Second floor. Cluster 201 to 209, for nine residents. The kitchen has two ovens and two hot plate hobs. the self-closing kitchen door is defective, not closing into the door frame in the correct manner. There is a very large window in the lounge area that is not close to the floor, it has no restrictor. There has been a water leak in the corner of the kitchen area. The veneer around both sinks is not sealed to the sinks so that water spilling out of the sink during normal use can leak through into the cupboards below and there are water marks in the cupboards.
33. The latch plate for the consumer unit cupboard is defective and there is rubbish in the cupboard.
34. Cluster 210 to 215, for 6 residents. There is a damp patch on a wall. There are two windows in the lounge area one of which does have a restrictor, the other does not have a handle so the Tribunal could not attempt to open it to check if it has a restrictor, for fear of not being able to close the window again. There is a rat poison tray in the lounge that should not be in this area. There are two under cupboard panels in the kitchen that are loose.
35. Cluster 216 to 224, for 9 residents. The self-closing kitchen door handle wobbles to the touch. There is water damage to the skirting board in the dining area and a water stain mark to the ceiling. There are two big windows in the lounge area, neither window has a restrictor although one of the windows upon opening it hits the exterior cladding of the building and as such the window opening is restricted to a safe distance by the fabric of the building. The second window has a broken handle.
36. The consumer unit cupboard door latch is defective. There is a hole in the wall of the fire escape corridor.
37. Cluster 225 to 234, for 10 residents. The kitchen self-closing door latch is not engaging. The extractor hood above the hot plates is not working. The microwave oven is not working. The telephone for the door entry system is missing. The veneer on the work top is defective and part of the front edge of the work top is loose, falling off. There is a pan under the sink that has water dripping into it apparently coming from the wastewater pipe. Mr Bennett immediately used his mobile telephone to report this problem to an employee for repair.
38. A wall cupboard in the kitchen has defective hinges. The floor covering has holes here and there in it. Floor panels in front of the refrigerator are lifting up. There are items in the consumer unit cupboard that should not be there.
39. Third floor. The landing ceiling is marked in two places by water leaks that have happened in the past.

40. Cluster 301 to 308, for 8 residents. The kitchen has two ovens and hob units. One of the hot plate hob units is badly cracked. One of the ovens is not working. There is tap that wobbles to the touch. The hood over the hot plate's wobbles to the touch. There are small holes in the refrigerator door.
41. There is a very large window in the lounge area that has a crack all the way across the pane of glass that could cause a danger to anyone falling against it. There is an opening window that has a broken handle and no restrictor. The windows have a blind but it will be difficult to use the blind because the pull cord is missing. The floor covering has panels that are loose and some are missing in various places. The latch for the consumer unit cupboard door is defective.
42. Cluster 309 to 314, for 5 residents. The self-closing kitchen door does close but is defective because the latching mechanism engages only intermittingly. There is a hole in the corridor ceiling.
43. Cluster 315 to 323, for 9 residents. The kitchen has two sinks but they are not properly sealed so that when water spills during normal sink use, it can leak through to the cupboards underneath. In fact when the sink bowls are touched, they move from side to side. The hood over the hot plate units will wobble to the touch.
44. Floor covering panels are loose and some are missing. There are two windows that open and do not have restrictors, but the opening of one of them is restricted by exterior cladding. The lounge floor shows signs of water damage.
45. There is a microwave oven in a cardboard box in the corridor. The consumer unit cupboard has items in it that should not be there.
46. Cluster 324 to 333, for 10 residents. The automatic light sensor in the corridor is defective so that the corridor lights do not illuminate until persons have walked half of the way down the long corridor. There is a mark in the corridor ceiling where there has been a water leak.
47. The self-closing kitchen door is not closing properly. The door intercom telephone is missing. The light that is part of the hot plate hood is not working. There is a pan under the sink that has water dripping into it.
48. The floor covering panels are lifting off the floor, this problem being worse in the area where the dining table is situated. There are 3 opening windows that do have restrictors but one of the window handles is missing.
49. The Tribunal's overall view of the property and in particular the 12 cluster HMO's is that they are poorly maintained. This inspection has been carried out during the university summer holiday period. There were still a

handful of residents that the Tribunal saw mainly in cluster kitchens during the inspection, but this is the time of year when most students will be absent from the building for long periods of time. Bearing that in mind the Tribunal has inspected the building at its most favourable time in so far as cleanliness and good repair are concerned. The building is generally not as clean as the Tribunal would expect. The building is in a poor condition in so far as maintenance is concerned.

50. The Tribunal was not afforded access to the boiler room, but accepts evidence given on behalf of the Applicant that the room contains one biomass boiler.

51. It had been expected that the inspection would take the whole of the morning and it did.

The hearing

52. The hearing commenced at 2pm on 2 July 2024, held over the Tribunal's video hearing platform. Present were the Applicant with his Barrister, Katie Grey. Witnesses for the Applicant were also present, being Ceyda (Jade Ata) Ata, Ben Bennett and James Cargill. Present on behalf of the Respondent were Officer Whitaker, the Respondent's Barrister, David Gilchrist and Sheffield City Council solicitor Miss Ferguson.

53. In written submissions Ms Grey had asked that the Tribunal to determine, as a preliminary point, whether the Applicant was in fact the manager of all 12 clusters HMO's. The Tribunal had intended to deal with this issue in this manner, but Mr Gilchrist accepted that the Applicant was not the manager of the cluster of rooms at Cluster 309 to 314 and as a result he no longer sought to oppose the Applicants appeal in relation to the two sets of offences that relate to that cluster. As such the Tribunal indicated that it would, in due course, cancel these two Final Notices of Financial Penalty (paragraph, 10, above, fifth and sixth bullet points). That being agreed Ms Grey was content for Mr Gilchrist to open the Respondent's case now concerning only 11 of the cluster HMOs.

54. Ms Grey has prepared a skeleton argument, dealing with the appeal. Ground 1 has been dealt with in the preceding paragraph. The Applicant also seeks to challenge the Respondent's case in relation to the fire escape signs, the need for self-closing doors to be fitted to student bedrooms, the height of window sills where it is alleged that widow opening restrictors are needed, heating of water for use in the residential areas, breaches of regulations generally as they attach to common parts, fixtures, fittings and appliances and the quantum of the financial penalties. Ms Grey has prepared a schedule of the financial penalties that she considers to be appropriate, suggesting that a total of £23,525 might be appropriate.

55. Mr Gilchrist had prepared a very thorough skeleton argument of 27 pages and this took a little time to go through.
56. Officer Whitaker was called to give evidence. The Tribunal confirmed that it accepted the Officers statements (hearing bundle pages 346 to 368 and 3335 to 3357) as the Officers evidence in chief. These statements exhibit all of the exhibits with an AW before the exhibit number.
57. Officer Whitaker deals with four inspections at the property and photographs of the faults giving rise to the issue of the Improvement Notice, Notices of Intent to Impose a Financial Penalty, representations made by the Applicant in response, Final Notices of a Financial Penalty and service of all these documents along with notices of an intention to inspect the property. The Officer deals with the decision not to prosecute in the Magistrates Court, but to impose financial penalties instead. The Officer deals with the Respondent's Civil Penalties Policy (hearing bundle 2655 to 2663). That policy contains detail as to how culpability and harm will be assessed and provides a matrix as to how to calculate the appropriate penalty. The determinations made by Officer Whitaker of the appropriate financial penalties having regard to and following that policy are in the hearing bundle, pages 2664 to 2823.
58. One of the problems that had been brought to the Officers attention was that tenants of the upper storey of the building had been reporting that the central heating system of the building was not warming their part of the building. He has seen a WhatsApp message suggesting that an employee of the Applicant J. K. Noble had told an employee of Cloud that a part of the biomass boiler was to be replaced (hearing bundle, page 446). He had also seen a photograph of the biomass boiler information panel displaying the words 'ember burnout' this suggesting to him that there was a problem with the boiler.
59. The Officer was cross examined relating to some mistakes that he admitted making in his witness statements relating to, (i) the date that Cloud took over management of some of the rooms within the building and the fact that although he has given evidence about Cloud leases he has not read them all and (ii) the fact in relation to a South Yorkshire Fire and Rescue letter, the Officer used the word 'threat' of action when 'warning' might have been a more appropriate word to use.
60. The Officer accepted that he was not an expert in biomass boilers and had not had such an expert examine the biomass boiler. The Officer maintained his view that because of a message received from an employee of the Applicant (hearing bundle, page 466) and the complaints being made by residents, he took the view that the boiler was failing to warm the upper level of the residents' rooms to the level required. The Officer accepted that he had been in contact with Cloud and persons making

- complaints. The Officer stated that he had maintained his objectivity throughout. Ms Grey did not cross examine Officer Whitaker about any of the remaining offences in the Final Notices.
61. The case was adjourned to the following day.
62. Just prior to the case commencing on 3 July 2024 there was an incident in which a workman out on the street damaged the internet connection that Judge Tonge was relying on for the second day of the hearing. This took some time to resolve. Persons present on 3 July 2024 were as the previous day except that Ms Ferguson was replaced by Ms Lahodna.
63. James Cargill gave evidence for the Applicant. His witness statement is accepted as his evidence in chief (hearing bundle, page 343 to 344). The witness is known as Jimmy and is employed by the Applicant as a caretaker of five complexes in Sheffield that the Applicant owns. The property is one of these complexes. Jimmy splits his time between the five sites. At the property his duties include putting out and then returning the refuse bins. Dealing with the biomass boiler, cleaning and loading biomass into it. He sends photographs of the biomass boiler to Ben Bennett to confirm that the boiler is working correctly once per year. If there is a maintenance problem with the boiler, he will report this to Ben Bennett.
64. Checking new tenants into rooms and out of them at the beginning and end of an assured short hold tenancy is also one of his duties. He conducts a weekly walk around the property and will report issues that arise. He states that at the moment the Applicant and his staff cannot keep the property in the condition that we used to because there is a lack of money.
65. The witness was cross examined. He confirmed that during his walk round he makes sure that the bin stores and laundry room are kept tidy. He visits the property 3 times per week, working only in normal working hours. If he found a maintenance problem, he would report this to Marcos (maintenance), who was then left to deal with the problem. He agreed that there are a lot of maintenance issues at the building that have not been dealt with.
66. The witness was taken to several photos of faults that are alleged to be offences contrary the Regulations. The witness agreed that the property was not being kept in the condition that it used to be kept in. The photograph of the boiler sent to Mr Bennett was to confirm that the boiler was working correctly not to inform him of a fault.
67. Jimmy was shown a screen shot from a mobile telephone (hearing bundle, page 466) this is a WhatsApp message from J. K. Noble (an employee of the Applicant) to Sofia (at Cloud) and refers to the issue with the boiler, the photograph being of a part of the boiler to be replaced. Jimmy gave his

- opinion that the part in the screen shot was not part of the boiler and he did not know why J. K. Noble had thought that a part of the boiler was to be replaced.
68. Mr Ben Bennett was called on behalf of the Applicant.
69. Mr Bennett's witness statement is accepted as his evidence in chief (hearing bundle pages 34 to 40).
70. In summary Mr Bennett is employed by the Applicant, is not involved in day to day maintenance but will become involved in anything that the maintenance team cannot resolve. He oversees fire safety and matters that involve outside contractors.
71. Mr Bennett, in his statement accepts that he became aware of problems being reported by tenants that the central heating was not warming the upper storey of the building in early January 2023. He had been sent a photograph by Jimmy of the biomass boiler showing an information panel on the boiler and the words 'ember burnout'. This did not mean that there was a problem with the boiler, in fact it meant that the boiler was functioning correctly. The boiler was regularly serviced by an accredited engineer. The boiler was at all times functioning as expected and he didn't know why tenants had been cold. There might have been problems with air in the central heating system that required bleeding. This could have been due to problems within the individual rooms concerned.
72. The statement also deals with fire safety, particularly the alarm and signs to inform residents and visitors of the way out of the building in the event of a fire. Further, it deals with automatic door closers on kitchen doors and individual bedroom doors and rodent infestation (rats).
73. Mr Bennett was cross examined and stated that J.K. Noble was involved in maintenance but only in the management of staff and dealing with emails. The maintenance staff had been Marcos, who at some point had been joined by Yan. There was a record of maintenance issues that he would not normally access but that he could ask to see. Judge Tonge asked that this record be produced.
74. There had been a decision taken at some point to cut down on maintenance so as only to deal with emergency issues. Cleaning of the common parts of the clusters had been reduced. This was due to the fact that service charges were being collected by Cloud but not being paid to the Applicant.
75. Mr Bennett had not become aware of the problem with the upper floor of the building being too cold until early in January 2023 but this did not appear to have involved a lack of hot water in the four cluster kitchens on

the upper floor. It was put to Mr Bennett that the reason that Jimmy had taken a photograph of the biomass boiler information display and sent it to Mr Bennett was that the boiler was faulty. Mr Bennett denied this. Mr Bennett said that he had knowledge of the working of the boiler but was not an expert in such boilers. He added that if the boiler was not cleaned properly, it would stop working and then it would take a full day to get the water back up to the expected temperature again.

76. Mr. Bennett considered the photograph (hearing bundle, page 466) and stated that he did not think that this was a part of the boiler. Mr Bennett thought that the photograph might actually be of an automatic air vent that are installed above the corridors in the cluster HMOs.
77. Mr. Bennett was asked to look at photographs of the most serious maintenance issues contributing to the alleged offences on the Final Notices of Financial Penalties.
78. In relation to a photograph of a large window in one of the cluster kitchen/dining areas that is cracked all the way across it (observed by the Tribunal during its inspection), Mr Bennett stated that he took the view that the repair to this double glazed window was not an emergency.
79. In relation to window opening restrictors Mr Bennett accepted that some windows are not fitted with restrictors and suggested that tenants do mess about with some restrictors that are fitted, causing them to have to be replaced.
80. In relation to missing kitchen/dining room floor tiles he stated that he did not consider these to be an emergency issue.
81. Mr Bennett agreed that he had not been employed by the Applicant when the Biomass boiler had been fitted at the property and that his statement was misleading in that respect.
82. Mr. Bennett stated that the biomass boiler was temperamental, the ash and wood left over from burning the pellets had to be cleaned. This was done by Jimmy who could also re set the boiler when that was required.
83. In relation to fire safety exit signs and automatic door closers Mr Bennett stated that he relied on the several facts. First, the original development plans were signed off by building control and had not required anything more than had been installed or put in place. Second, the building had been inspected in the past by South Yorkshire Fire and Rescue "SYFR" and he had been present at those inspections. He had complied with advice given in those inspections. Third, there had been a fire safety risk assessment carried out in July 2022 and they had not requested that any

- more be done. The building has a fire risk assessment inspection every year.
84. Mr Bennett stated that when SYFR told him that self-closing devices should be fitted to cluster kitchen doors that they were fitted. Mr Bennett stated that the Applicant, through Mr Bennett, had cooperated with SYFR.
85. Mr Bennett accepted that the Applicant had not produced historical SYFR reports. It was put to Mr Bennett that the risk assessment of July 2022 did not cover the interior of the clusters. Mr Bennett denied this, being very clear in his evidence that the report did cover the whole of the building. Mr Bennett had walked the building with the expert who prepared the report and the clusters had been examined. Two of the ten photographs in the report were taken of consumer units in the clusters (hearing bundle, page 261, photograph 2 and 3). Mr Bennett stated that the only place within the building that consumer units are placed is within the clusters.
86. Mr Bennett was referred to an audit carried out by SYFR on 8 March 2023 in which the Applicant was required to fit self-closing devices to cluster kitchen doors and supply more fire exit direction signs to cluster corridors (hearing bundle, pages 741 to 743). Mr Bennett stated that he had walked with Fire Officer Shepherd when this inspection took place and they had agreed where the extra fire exit signs should go, although he had nothing in writing to confirm this agreement. The Tribunal notes that this audit took place between the second and third inspections carried out by Officer Whitaker and that the audit does not require the Applicant to fit self-closing devices to individual tenant's bedrooms.
87. Mr Bennett was reminded that during Officer Whitaker's inspection of 23 February 2023, SYFR Officer Shephard had been present and had pointed out these issues, but the issues had not been dealt with. Mr Bennett stated that compliance had been fairly quick.
88. Mr Bennett exhibits two further documents. The first is a work sheet for service of the biomass boiler on 25 April 2023 (hearing bundle, page 45). The second is a report from Richard Milner of South Yorkshire Mechanical Services a plumbing and heating services provider (hearing bundle, page 46). The report states that the boiler and hot water system within the building was fully functioning and fit for purpose. That heating problems may be the result from air locks and recommends venting of the system.
89. Ms. Ceyda (Jade Ata) Ata was called to give evidence and her witness statement is accepted as her evidence in chief (hearing bundle, pages 325 to 333).
90. Ms. Ata is the daughter of the Applicant and prefers to be called Jade Ata.

91. Jade Ata states that she is employed by her father as a property manager and describes the building, how it was purchased and converted into a building containing 101 student flats, the leases that have been granted, her father's responsibility to clean and maintain the building and entitlement to charge a service charge to fund the services provided.
92. During the summer of 2022 an alternative property manager Cloud Homes "Cloud" became involved with long leaseholders at the site. The long leaseholders that appointed Cloud commenced paying their service charges to Cloud instead of direct to the Applicant and Cloud did not pass them onto the Applicant. As a result there is a short fall in service charge funds and the Applicant is having to supplement the service charges funds that he is receiving with his own funds in order to maintain reduced services at the site. Only emergency repairs are now being carried out.
93. There is another case now pending appeal in which a differently constituted Residential Property Tribunal appointed a different manager at the site (hearing bundle, pages 3665 to 3668).
94. Jade Ata provides a list of the 101 student lets in the building and indicates which rooms are still managed by the Applicant and which are now managed by Cloud. The Tribunal notes that in cluster rooms 309 to 314 the Applicant is not in receipt of any rents at all as all the long leaseholders have appointed Cloud as their manager. The Applicant continues to receive rent from 39 out of 101 rooms.
95. Jade Ata states that none of the occupants of the rooms managed by the Applicant have ever asked for supplementary heaters and have never been permitted to use additional supplementary heaters.
96. Jade Ata deals with the Applicant's grounds of appeal and where her statement goes beyond the evidence already recorded the Tribunal will summarise her evidence.
97. Jade Ata states that HMO licences have been applied for.
98. Jade Ata stated that the rodent infestation is being dealt with and the rats are being poisoned.
99. Jade Ata stated that the involvement of Cloud had caused another problem being that when the long leaseholders moved to Cloud, they might well be informing Cloud as to the identity of the student sub-tenants of the rooms, but Cloud was not passing on that information to the Applicant. This is in breach of the terms of the lease to the long leaseholders. Requests are being made for the information to be provided but these requests are being ignored. This has caused the problem that for some time the Applicant has not known the names or home addresses of the sub-tenants.

100. When a large and or valuable item, for example a bike, is left in an obstructive position in a cluster the Applicant cannot simply move it because that would make him a bailee of the property with a duty to take care for it. Jimmy will put notes under the doors of the rooms to ask that the obstructing item be moved but cannot write to the sub-tenants demanding that the bike be moved. The result is that on very rare occasions such an item might be left in an obstructive position despite their best efforts.
101. Jade Ata was cross examined.
102. Jade Ata indicated that the unpaid service charges, that by her calculation should already have been paid to the Applicant, are in the region of £692,000.
103. Jade Ata stated that the Applicant owns five properties in Sheffield, having about 500 flats or rooms for rent and that she manages all five sites. The Applicant also owns properties in other cities in England has approximately 5,000 flats. Two sites are HMO's and the rest are self-contained apartments. Jade Ata was unable to state what the turnover might be for the Applicants business interests relating to rental properties.
104. In Sheffield the rental business seeks to make a 10% profit because out of the service charges there are the normal service charge costs to be paid.
105. Jade Ata agreed that upon the grant of a long lease at the property the lease includes a three year period in which the lessee does not have to pay a service charge, but that by 2019 service charges were being collected from all long leaseholders.
106. The case papers include a good deal of correspondence between Cloud's solicitors and the Applicant's solicitors that make it clear that since 2022 the issue of service charges has been a very live issue and there is a dispute as to how service charges have been calculated. Jade Ata was shown one such letter (hearing bundle, page 3404). Jade Ata stated that she took the view that service charges have been demanded properly and the fact was that Cloud simply did not want to pay them over to the Applicant. Jade Ata agreed that an application could be made for a Residential Property Tribunal to decide that issue, but that she was attempting to avoid that having to happen. Jade Ata takes the view that there is no dispute over service charges, they have been demanded and they should be paid.
107. As a result of the lack of service charge funds there has been a gradual diminution of services provided, reflecting the gradual reduction in service charge funds being received. By October 2022 cleaning had stopped in the clusters. By late 2022 only emergency repairs were being done. Jade Ata

agreed that the Applicant still has 39 tenants paying service charges and that they are having to suffer as well as everyone else. (The Tribunal makes the observation, not previously mentioned, that in fact all 101 tenants at the property are suffering a lack of the provision of services at the property and the Tribunal would expect all of these student tenants to be paying their rents.)

108. The hearing was adjourned to be continued on a date to be fixed.

109. At 10am on Friday 13 September 2024 the hearing resumed via a cloud video platform. Person's present being the Applicant (as an observer only) and the Applicant's barrister, Katie Grey. For the Respondent, Officer Whitaker, the Respondent's solicitor Catherine Ferguson and barrister David Gilchrist.

110. Jade Ata was recalled for cross examination to continue.

111. Jade Ata stated that there were no issues with the provision of services when service charges were being paid. She stated that decisions were made to reduce service charge work over a period of time and involved discussions first between herself and Mr Bennett and then involving the Applicant.

112. Jade Ata was asked to look at the top photograph in the bundle at page 865. This shows a Housing Officer standing at an open window reaching towards the window handle in a third floor kitchen/dining area. There was no restrictor on this window for 4 months. Jade Ata stated that often tenants would remove restrictors and if replaced whilst the same tenant was there, the restrictor would simply be removed again. Outside contractors would be asked to fit restrictors. At the start of 2013 Marcos had complained that the contractor was not able to attend to complete repairs because of a back log of work. No invoices had been exhibited relating to the payment of outside contractors.

113. Jade Ata was asked about the spreadsheet of repairs referred to by Mr Bennett and requested by Judge Tonge. Jade Ata explained that there was some confusion about the information retained by the Applicant relating to repair work. In fact the booking of repairs by Jimmy to Marcos was via WhatsApp. There were no records. If needed Marcos would contact an external contractor, but there was no record of that either, just invoices which have not been produced. There is nothing to produce to the Tribunal that is not already in the hearing bundle.

114. The case was then closed in so far as the evidence was concerned and closing speeches made. These speeches were extensive, dealing with the offences, statutory defences and the level of penalty appropriate to each offence. The advocates asked the Tribunal to consider whether some witnesses had given evidence in a reliable manner, bearing in mind errors in

their evidence that came to light in cross examination. Further, Ms Grey referred to some parts of the written and oral evidence asking the Tribunal to sift through the evidence to determine what was actually relevant to the issues that needed to be determined.

115. It is not necessary to refer to the closing speeches in any detail, but as a result of Ms Grey's speech, Mr Gilchrist took instructions and was able to make another concession. The Respondent no longer opposed the appeal against offences that relate to the lack of heating being provided, said to be contrary to Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006. There are such allegations in relation to clusters 301 to 308 and 324 to 333. The Respondent accepting that the appeal against these offences should be allowed. As such the Tribunal will cancel any such allegation.

The Law

The Housing Act 2004

Section 249A Financial penalties for certain housing offences in England

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

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

(a)section 30 (failure to comply with improvement notice),

(b)section 72 (licensing of HMOs),

(c)section 95 (licensing of houses under Part 3),

(d)section 139(7) (failure to comply with overcrowding notice), or

(e)section 234 (management regulations in respect of HMOs).

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

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

(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.

Paragraph 10 of schedule 13A

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.

Section 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.

Section 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.
- (5) 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.
- (6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

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

Regulation 2. Interpretation

In these Regulations—

- (a) “*the Act*” means the Housing Act 2004;
- (b) “fixtures, fittings or appliances” are—
 - (i) lighting, space heating or water heating appliances;
 - (ii) toilets, baths, showers, sinks, or wash basins or any cupboards, shelving or fittings supplied in a bathroom or lavatory;
 - (iii) cupboards, shelving or appliances used for the storage, preparation or cooking of food; and
 - (iv) washing machines or other laundry appliances; and
- (c) “*the manager*”, in relation to an HMO, means the person managing the HMO.

Regulation 4.— Duty of manager to take safety measures

- (1) The manager must ensure that all means of escape from fire in the HMO are—
 - (a) kept free from obstruction; and
 - (b) maintained in good order and repair.
- (2) The manager must ensure that any fire 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.

Regulation 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.

Regulation 8.— Duty of manager to maintain living accommodation

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

(2) Subject to paragraphs (3) and (4), the manager must ensure, in relation to each part of the HMO that is used as living accommodation, that—

(a) the internal structure is maintained in good repair;

(b) any fixtures, fittings or appliances within the part are maintained in good repair and in clean working order; and

(c) every window and other means of ventilation are kept in good repair.

(3) The duties imposed under paragraph (2) do not require the manager to carry out any repair the need for which arises in consequence of use by the occupier of his living accommodation otherwise than in a tenant-like manner.

(4) The duties imposed under paragraphs (1) and (2) (b) do not apply in relation to furniture, fixtures, fittings or appliances that the occupier is

entitled to remove from the HMO or which are otherwise outside the control of the manager.

(5) For the purpose of this regulation a person shall be regarded as using his living accommodation otherwise than in a tenant-like manner where he fails to treat the property in accordance with the covenants or conditions contained in his lease or licence or otherwise fails to conduct himself as a reasonable tenant or licensee would do.

Regulation 10. Duties of occupiers of HMOs

Every occupier of the HMO must—

- (a) conduct himself in a way that will not hinder or frustrate the manager in the performance of his duties;
- (b) allow the manager, for any purpose connected with the carrying out of any duty imposed on him by these Regulations, at all reasonable times to enter any living accommodation or other place occupied by that person;
- (c) provide the manager, at his request, with any such information as he may reasonably require for the purpose of carrying out any such duty;
- (d) take reasonable care to avoid causing damage to anything which the manager is under a duty to supply, maintain or repair under these Regulations;
- (e) store and dispose of litter in accordance with the arrangements made by the manager under regulation 9; and
- (f) comply with the reasonable instructions of the manager in respect of any means of escape from fire, the prevention of fire and the use of fire equipment.

Deliberations

116. After the closing speeches, the persons attending the hearing were told that a reserved judgement would be handed down in due course and they left the hearing. The Tribunal then commenced its deliberations. There was insufficient time remaining on 13 September 2004 to complete the deliberations and the Tribunal sat again in private session on Monday 16 September 2004.

117. In summary the grounds of appeal are:

- Ground 1. That the Applicant is not a person managing cluster HMO 309 to 314 and therefore cannot have committed the two offences that relate to that cluster. This has been conceded by the Respondent and the Tribunal now cancels the two offences that relate to that cluster HMO.
- Ground 2. The Appellant has not breached regulation 4 of the Regulations in relation to some of the allegations relating to fire safety. Fire escape signs were clearly visible and that is all that is

required. Self-closing devices were not required to be fitted to bedroom doors because reasonable precautions had been taken by the Applicant in relation to fire safety by fitting self-closing devices to fire doors and kitchen doors. Fire strategy drawings were signed off when complying with building regulations, stating that bedroom doors did not require self-closing devices. Fire risk assessments and inspections by SYFR did not require self-closing devices on bedroom doors.

- Ground 3. Restrictors on window openings. Where these were not present, they had either been removed by tenants or were not required because the window opening is not at or near ground level.
- Ground 4. Allegations that heating was not sufficient in rooms are not made out. The central heating boiler and its system has been working. If rooms were cold that is because of factors inside the room that is not the responsibility of the Applicant.
- Ground 5. A long list of challenges to faults in various clusters submitting that the faults are not such as amount to offences.
- Ground 6. The respondent has failed to take into account the fact that tenants have conducted themselves in a manner that has hindered or frustrated the Applicant in conducting his management duties (Regulation 10 (a) of the Regulations).
- Ground 7. The applicant is entitled to rely on the defence of reasonable excuse in relation to allegations relating to fire risks.
- Ground 8 and Ground 9. Financial penalties are excessive and should not have been imposed at all because of the minor nature of offences or should be significantly reduced. A schedule has been served suggesting the financial penalties that would be considered to be appropriate by the Applicant if he is guilty of committing the offences.
- Ground 10. There is no evidence that the occupiers of the property have suffered any harm.
- Ground 11. The penalty is excessive because the Respondent has failed to carry out any analysis of the Applicants benefit from the offending or the Applicants ability to pay the financial penalty.

118. The Tribunal reminds itself that it must be satisfied of guilt beyond any reasonable doubt.

119. The Tribunal determines that the witness Mr Bennett has made a fundamental error in his evidence relating to being present at the time that the biomass boiler was installed at the property. The Tribunal takes this into account in assessing his evidence. However, in areas other than the clear mistake that has been made the Tribunal found his evidence to be generally helpful and reliable.
120. The Tribunal determines that Officer Whitaker maintained a professional objectivity during his investigations into this case and that his evidence is reliable.
121. The Tribunal determines that Officer Whitaker followed all the procedures as required by the Housing Act 2004.
122. In relation to the relevance of evidence given to the Tribunal. The Tribunal notes that the Respondent has conceded that the allegations brought relating to the lack of central heating should not be proceeded with and the Tribunal will therefore cancel them from the Final Notices of a Financial Penalty. However, the Tribunal does not find that the evidence in relation to the central heating is irrelevant. The Tribunal considers this evidence to be relevant to the allegations that self-closing devices should have been fitted to bedroom doors.
123. The Tribunal considers the allegations that are brought that individual bedroom doors should have self-closing devices. In these allegations there is a chain of reasoning that starts with the lack of heating to bedrooms on the upper storey of the property. That resulted in some tenants asking Cloud to provide portable heaters for use in their rooms. No such requests appear to have been made by tenants of rooms managed by the Applicant. Officer Whitaker determined that the use of such heaters led to an increased risk of fire in those rooms and a need to have self-closing devices on the bedroom doors.
124. The Tribunal determines that this logic is flawed. Irrespective of the Respondents concession that heating offences cannot be committed under Regulation 4 of the Regulations, the Tribunal points out the following. There has not been any general complaint from tenants occupying these 101 rooms that there was a lack of hot water. The biomass boiler system supplies hot water to taps and to the central heating throughout the property. There is evidence from persons other than Mr Bennett that the boiler was working correctly and capable of providing hot water to the property.
125. Second, complaints from tenants of a lack of central heating is limited to some of the tenants of the upper floor. By reverse logic that establishes that the two lower floors were being heated and that some of the upper floor was being heated. The Tribunal determines that the boiler and the central

heating/ hot water system was working correctly. Third, since the central heating was working correctly, there was no reason for a bedroom to be cold unless there was an air blockage within the room itself, this not being the responsibility of the Applicant.

126. As such there was no need to supply portable heaters, the air blockage to the central heating in the individual rooms should have been dealt with. Finally, the requirement to fit self-closers to bedroom doors is applied throughout the building, when the suggestion that rooms were cold is limited to the upper storey. Thus there should not have been any increased fire risk in the bedrooms and there was no reason to require self-closers to be fitted to bedroom doors.
127. Further, the audit from SYFR dated 8 March 2023 requires that self-closing devices be fitted to kitchen doors, it does not require them to be fitted to bedroom doors. As such the Tribunal determines that any offence alleging that self-closers should have been fitted to bedroom doors will be cancelled.
128. There is a good deal of evidence relating to an infestation of rats. The Tribunal has seen that rat poison is still present in the property, suggesting that the problem has not been dealt with to finality. There is an allegation that rat poison has been left in a kitchen and that a dead rat was found with the poison. This evidence is unpleasant because students should not be living in a property that is infested with rats and it is therefore relevant. Further, rat poison should not have been put on the floor in a cluster kitchen/ dining room.
129. The Tribunal is concerned as to the fact that there clearly has been a reduction in the level of service charge funds that have been received by the Applicant during the period that is relevant to this case. The Tribunal acknowledges the fact that no proper financial evidence has been put before the Tribunal of the type that would normally be required to establish financial hardship, so hardship cannot be taken into account at the stage of determining the level of penalty for offences. However, it is obvious that there has been a lack of service charge funds over a substantial period of time.
130. This placed the Applicant in a difficult position. The Applicant had to continue to repair the property. Any lack of repair is something that the Tribunal cannot excuse, whether an emergency repair or not, because the Tribunal takes the view that it cannot be reasonable to fail to repair items in a HMO. However, the costs of cleaning the kitchens in the property, when no repair is necessary is something that the Tribunal is prepared to excuse on the basis that the Applicant has a reasonable excuse for committing the offence. The lack of service charge funds meant that some expenditure had to be cut back and the only reasonable choice of cut back had to be cleaning.

131. It is not acceptable for the Applicant to permit the cluster HMO's to be dirty, but the Tribunal determines that reasonably the Applicant had no other choice. The Tribunal considers the lack of cleanliness to be far less serious than a failure to repair.
132. Ground 1 has been dealt with. Having cancelled offences as they relate to cluster 309 to 314, the Tribunal determines that the Applicant is the manager of the remainder of the property.
133. Ground 2. The Tribunal determines that it agrees with the Applicant that self-closing devices were not necessary on the bedroom doors. However, the Tribunal has carefully considered all the evidence in the case and has walked along the corridors in the cluster HMO's. The Tribunal determines that the offences that relate to the lack of fire escape signs are made out.
134. All of the corridors concerned are long because they have been built so that they run past the kitchen and bedrooms that are all on the same side of the corridor. Some of the corridors are very long when the HMO accommodates a larger number of tenants. There might also be visitors in the bedrooms or kitchens that are not conversant with the layout of the property. Signs should be affixed to walls that are opposite to the bedroom doors to make them easier to see. There must be signs that are visible along the whole length of the corridor that clearly indicate the location of the fire exit and not just the main exit door, which might also be used as a fire exit.
135. The Tribunal agrees with Officer Whitaker that the signs indicating a fire exit out of the main entrance door to the HMO might cause a person to exit towards the scene of the fire that is more likely than not to have commenced in the kitchen of the HMO and the main exit door is often next to the kitchen.
136. The Tribunal determines that during the relevant period referred to in the Final Notices of a Financial Penalty there was insufficient signage to indicate the means of escape from a fire. The Tribunal is satisfied beyond any reasonable doubt that the Applicant has committed these offences. The Tribunal adds that particularly on the longer corridors as inspected by the Tribunal, the present signage is not visible enough. There are not enough signs.
137. Ground 3. The Tribunal has carefully considered the evidence in relation to the need to fit restrictors on the windows in the property. The Tribunal points out that all such windows are on floors that are above ground level and that any person falling out of such a window would be hurt. The likelihood of severe injury or death increases as the height of the fall increases.

138. Regulation 4 of the Regulations has a specific sub regulation relating to windows where the sill is at or near floor level. The regulation also contains a more general duty for the manager to take all such measures as are reasonable to protect occupiers. The Tribunal determines that the specific regulation does not prevent the general part of the regulation being considered. The specific part is intended to make it obvious that certain windows must have opening restrictors, it does not prevent a Tribunal from deciding when the general part of the Regulation requires there to be a window opening restrictor. Further, it is open to the Tribunal to decide when a sill is near to the floor.
139. The Applicant suggests that tenants may have removed window opening restrictors, seeking to establish a defence of reasonable excuse for their absence. The Tribunal notes that some of the window frames inspected did not appear to have ever had window restrictors fitted. Further, evidence establishes that such offences were being committed over a period of time between inspections. Jade Ata suggested that an external contractor was instructed to fit window restrictors. The Tribunal would expect that a professional contractor would fit window restrictors that have fixings that are difficult for a tenant without specialist tools to undo. The Tribunal concludes that the statutory defence is not available to the Applicant in relation to these offences.
140. The Tribunal has inspected the property. The Tribunal has considered the evidence given as to the windows concerned, in particular the photographic evidence. The Tribunal determines that is satisfied beyond any reasonable doubt that the Applicant has committed the offences as alleged in relation to the failure to have window opening restrictors.
141. Ground 4. The Tribunal agrees with the Applicant. This is dealt with above and offences relating to a lack of heating will be cancelled.
142. Ground 5. The Tribunal considers regulation 2 and 7 of the Regulations. The Tribunal makes it clear that it takes the view that when a work surface is fitted in a kitchen that work surface has to be supported, and in this case, it is supported by cupboards. The cupboard, whether it is designed for food to be placed within or not is an integral and necessary part of the unit as a whole. If a sink or a work top requires a watertight seal to be fitted with it, then this is to protect the wood or chipboard parts of the unit from damage from spilt water. The seal is an integral part of the unit, without the seal the unit will not function properly as it will necessarily be damaged by water.
143. The Tribunal notes that bearing in mind the very high usage of the kitchens in these HMO's the kitchen fitments and fixtures are all of a poor quality and it is therefore very necessary that all possible care should be taken to make sure that these items are properly fitted and maintained. The Tribunal determines that a cooker needs a cooker extractor hood and that

the regulations require that both should work properly. A work top requires cupboards underneath it to support it and the work top should be sealed against leakage of water.

144. Further, where a floor is dirty the Tribunal agrees that the defence of reasonable excuse is available to the Applicant (for reasons as stated above). However, where a floor has loose or missing floor tiles then the Tribunal takes the view that these repairs should have been carried out and that this cannot be excused by a lack of money. The Applicant should have taken action through a Residential Property Tribunal to require tenants to pay their service charges or have resolved the issue in some other manner.
145. Having considered all the evidence in this case the Tribunal is satisfied beyond any reasonable doubt that the Applicant has committed the offences pursuant to Regulation 7 of the Regulations in relation to repair and maintenance within the HMO's as alleged, with the exception of offences that relate only to a dirty or filthy condition.
146. Ground 6. The Tribunal does take into account the content of the whole of Regulation 10 of the Regulations. However, in circumstances where it is conceded by the Applicant that there has been a long period of time in which there has been no cleaning and only emergency repairs being carried out by the Applicant, it is very difficult to apportion any responsibility for the condition of the property to tenants. Further, the Applicant's view of what amounts to an emergency repair is one that this Tribunal does not understand. It is clear from the photographs taken by Officer Whitaker that there were many repairs that would normally be classed as emergency repairs that were not dealt with, for example a very large window cracked across the whole length of the window and the lack of window restrictors.
147. Ground 7. The Tribunal has dealt with this, applying the statutory defence where appropriate.
148. Ground 8 and 9 will be dealt with later when the Tribunal determines the appropriate financial penalties.
149. Ground 10. The Tribunal rejects this submission. There is clear evidence that the occupiers of the property have suffered harm. They have had to live in a property that is very much a substandard property and have had to put up with the presence of rats.
150. Ground 11. The Tribunal rejects this submission. The Applicant is a professional property developer and manager. There is no requirement to carry out a detailed analysis of the benefit that the Applicant has received from managing this property. If the Applicant wishes to provide that information, then it will be considered, but it has not been produced.

Further, it is for the Applicant to establish that he cannot afford to pay a financial penalty and he has not done so.

151. The Tribunal takes account of the unchallenged evidence of Jade Ata (paragraph 99 and 100, above) that there is and has been a problem with Cloud failing to provide names and addresses of student sub-tenants to the Applicant making it difficult to cause large valuable items to be removed from cluster corridors. The Tribunal is aware that one of the allegations faced by the Applicant is that a pedal cycle has been left in a cluster corridor. The Tribunal concludes that although the presence of a pedal cycle in a corridor is an offence, that the Applicant (through his employees) has taken all reasonable steps to avoid this obstruction being in place and can rely upon the statutory defence.

152. The Tribunal will now deal with each Final Notice of a Financial Penalty, indicating which of the faults listed in schedule 1 of each Notice the Tribunal is satisfied beyond reasonable doubt that the Applicant has committed.

153. The Final Notice of a Financial Penalty for Cluster 101 – 109 is one such ‘cluster flat’ located within St Mary’s House 11 London Road, Sheffield, S2 4LA. Financial penalty of £7,500. The Notice was as follows:

The Land Registry Title for St Mary’s House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180° in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.

- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the communal corridor, enabling the occupants sufficient time to exit the cluster flat.
- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL.
- A bike was being stored on the communal corridor, which constitutes the means of escape from the HMO. NOT ALLOWED BY THE TRIBUNAL.

154. The Final Notice of a Financial Penalty for Cluster 101 – 109. Financial penalty of £6,840. The Notice was as follows:

Cluster 101 – 109 is one such ‘cluster flat’ located within St Mary’s House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary’s House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- The casing to the above hob extractor has detached from its fixings.
- The induction hobs are in a filthy condition, indicating that they have not been cleaned from a significant period of time. NOT ALLOWED BY THE TRIBUNAL.
- When the right-hand side hob was turned on, it immediately indicated that 3 of the induction plates were hot, when they were completely cold, indicating a fault.
- The door and handle to the fridge have been badly damaged and dented, likely by the handle of the kitchen door.

- The seal between the kitchen work tops and tiled splash back of the wall is mouldy.
- The cupboard under the kitchen sink was filthy, indicating it had not been cleaned in a very long time. NOT ALLOWED BY THE TRIBUNAL.
- A section of the chipboard structure of the under-sink base unit, which supports the work top was broken and completely missing.
- The wastewater pipework to the kitchen sink was leaking in at least 2 places, indicated by droplets on the pipework and pots underneath, catching the leaking water.
- There is a piece of fabric which has been wrapped around the bottom of the tap, likely by one of the tenants, indicating that the tap is leaking. NOT ALLOWED BY THE TRIBUNAL AS INSUFFICIENT EVIDENCE OF A LEAK.
- The chipboard to the underside of the kitchen work top around the sink, was severely affected by water damage, indicating the seal between the sink and the work top has failed.
- The insides to some of the other kitchen cupboards were in a poor state of cleanliness. NOT ALLOWED BY THE TRIBUNAL.
- The under cooker panel, below the right-hand side cooker was missing.
- The kitchen floor was filthy, with dirt deeply ingrained into the laminate floor covering, indicating that it had not been cleaned in a very long time. NOT ALLOWED BY THE TRIBUNAL.

The following breaches of Regulation 8 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There is evidence of a leak to the ceiling of one of the ensuite rooms, indicating a leak from the bathroom above. This has resulted in a significant mould build-up in the bathroom.

155. The Final Notice of a Financial Penalty for Cluster 110-115. Financial penalty of £8,000. The Notice was as follows:

Cluster 110 – 115 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there

were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180o in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.
- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the communal corridor, enabling the occupants sufficient time to exit the cluster flat.
- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL.

156. The Final Notice of a Financial Penalty for Cluster 110-115. Financial penalty of £3,240. The Notice was as follows:

Cluster 110 – 115 is one such ‘cluster flat’ located within St Mary’s House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary’s House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were a significant number of large cobwebs all around the windows to the kitchen, indicating that the area had not been

cleaned for a substantial period of time. NOT ALLOWED BY THE TRIBUNAL.

- There was evidence to suggest that the radiator in the kitchen was leaking.
- The wall paint above the cooker was cracked and peeling away.
- The grease trap for the extractor hood above the cooker was filthy. NOT ALLOWED BY THE TRIBUNAL.
- The cooker hob was in a filthy condition. NOT ALLOWED BY THE TRIBUNAL.

157. The Final Notice of a Financial Penalty for Cluster 116-124. Financial penalty of £7,500. The Notice was as follows:

Cluster 116 – 124 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180° in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.
- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the communal corridor, enabling the occupants sufficient time to exit the cluster flat.

- The handle to the kitchen door is coming away from the door. This could have a detrimental impact on an individual's ability to safely evacuate the flat in an emergency situation.
- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL.
- There was a dead rodent, on a sticky pad type trap, located in the kitchen and there was significant evidence of rodent droppings throughout the kitchen.

158. The Final Notice of a Financial Penalty for Cluster 116-124. Financial penalty of £7,200. The Notice was as follows:

Cluster 116 – 124 is one such 'cluster flat' located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of 'person managing' as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- The kitchen floor is in a filthy condition, and clearly has not been cleaned in an extremely long time as the dirt was deeply ingrained into all areas of the floor surface. NOT ALLOWED BY THE TRIBUNAL.
- A section of the kitchen laminate floor covering was completely missing, adjacent to the kitchen sink.
- The kick panel below the kitchen sink is badly damaged, with a significant section missing, it appears to be badly water damaged and may even have been gnawed by rodents.
- The left-hand side door to the undersink cupboard is filthy and is water damaged, with the veneer coming away and the chipboard having expanded.

- Both the induction hobs are in a filthy condition, indicating that they have not been cleaned for a significant period of time. NOT ALLOWED BY THE TRIBUNAL.
- The above hob, extractor hood, is dripping with grease, indicating it has not been cleaned in a significant period of time. NOT ALLOWED BY THE TRIBUNAL.

159. The Final Notice of a Financial Penalty for Cluster 125-134. Financial penalty of £7,500. The Notice was as follows:

Cluster 125 – 134 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180° in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.
- The handle to the main front access door to the cluster flat is in disrepair, as it is coming away from the door. This could have a detrimental impact on an individual's ability to safely evacuate the flat in an emergency situation.
- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the communal corridor, enabling the occupants sufficient time to exit the cluster flat.

- The handle to the kitchen door is coming away from the door. This could have a detrimental impact on an individual's ability to safely evacuate the flat in an emergency situation.
- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL.

160. The Final Notice of a Financial Penalty for Cluster 125-134. Financial penalty of £6,480. The Notice was as follows:

Cluster 125 – 134 is one such 'cluster flat' located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of 'person managing' as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- The handle to the right-hand side opening casement window in the kitchen is missing, preventing this window from being opened, closed and securely locked. The window was in the open position, thereby preventing the occupants from being able to maintain a comfortable internal temperature.
- The under cooker panel, below the right-hand side cooker was broken and not affixed properly in place.
- Both the induction hobs, where in such a poor state of cleanliness that it was clear that they had not been cleaned for a significant period of time. NOT ALLOWED BY THE TRIBUNAL.
- The seal between the work top and the tiled wall splash back was covered in mould.
- There is evidence of a leak to the ceiling around the access hatch in the communal corridor.
- There is evidence to suggest that the radiator in the kitchen is leaking.

161. The Final Notice of a Financial Penalty for Cluster 201-209. Financial penalty of £8,000. The Notice was as follows:

Cluster 201 – 209 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180° in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.
- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the communal corridor, enabling the occupants sufficient time to exit the cluster flat.
- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of

portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL

- The opening casement to the kitchen window has a sill height of less than 1m, and there is no restrictor stay, to limit the opening distance to 100mm.

162. The Final Notice of a Financial Penalty for Cluster 201-209. Financial penalty of £3,240. The Notice was as follows:

Cluster 201 – 209 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- The latch plate to the electrical cupboard door is missing.
- The fans in the kitchen were not functioning.
- There is evidence of significant water damage to the wall, skirting board and carpet to the communal corridor between bedrooms 204 and 205.
- There is evidence of a leak to the ceiling along the communal corridor.

163. The Final Notice of a Financial Penalty for Cluster 210-215. Financial penalty of £8,000. The Notice was as follows:

Cluster 210 – 215 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there

were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180o in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.
- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the communal corridor, enabling the occupants sufficient time to exit the cluster flat.
- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL.

164. The Final Notice of a Financial Penalty for Cluster 210-215. Financial penalty of £3,600. The Notice was as follows:

X Cluster 210 – 215 is one such ‘cluster flat’ located within St Mary’s House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary’s House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- The hallway carpet adjacent to the main access door is in a filthy condition. NOT ALLOWED BY THE TRIBUNAL.
- The hand sanitizer dispenser and the associated signage have fallen from the wall and are lying broken on the floor.
- The induction hob was in a filthy condition, evident that it had not been cleaned in a long time. NOT ALLOWED BY THE TRIBUNAL.
- The tiled splash back to the wall behind the hob was filthy. NOT ALLOWED BY THE TRIBUNAL.
- The kitchen floor was in a filthy condition, with dirt and grime ingrained into the floor, evident that it had not been cleaned in a long time. NOT ALLOWED BY THE TRIBUNAL.
- The handle to the right-hand side window in the kitchen was broken and as a result the window could not be opened.
- There was a significant build up of cobwebs in the kitchen, evident that the kitchen had not been cleaned in a very long time. NOT ALLOWED BY THE TRIBUNAL.
- The extractor hood was filthy and covered with significant grease and grime build up, evident that it had not been cleaned in a very long time. NOT ALLOWED BY THE TRIBUNAL.

165. The Final Notice of a Financial Penalty for Cluster 216-224. Financial penalty of £8,000. The Notice was as follows:

Cluster 216 – 224 is one such ‘cluster flat’ located within St Mary’s House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary’s House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on

the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180° in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.

- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the communal corridor, enabling the occupants sufficient time to exit the cluster flat.
- The seal to the kitchen door, which appears to be a smoke seal is coming away from the frame at the top of the door. If a fire were to occur in the kitchen a defective smoke seal will allow smoke to enter into the means of escape, from the kitchen, even if the door was closed.
- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL.

166. The Final Notice of a Financial Penalty for Cluster 216-224. Financial penalty of £3,240. The Notice was as follows:

Cluster 216 – 224 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- The handle to the left-hand side opening casement of the kitchen window is missing.
- None of the lights were working on the extractor hood.

- The left-hand side induction hob was in a filthy condition. NOT ALLOWED BY THE TRIBUNAL.
- The base unit panel, under the right-hand side oven is missing.
- There is evidence that the radiator in the kitchen is leaking from both its feet.

167. The Final Notice of a Financial Penalty for Cluster 225-234. The Tribunal observes that this cluster is incorrectly numbered, it is actually rooms 225 to 234. Financial penalty of £3,240. The Notice was as follows:

Cluster 225 – 234 is one such ‘cluster flat’ located within St Mary’s House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary’s House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180° in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.
- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the communal corridor, enabling the occupants sufficient time to exit the cluster flat.
- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of

portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL.

168. The Final Notice of a Financial Penalty for Cluster 225-234. Financial penalty of £5,760. The Tribunal observes that this cluster is incorrectly numbered, it is actually rooms 225 to 234. The Notice was as follows:

Cluster 225 – 234 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- A section of the laminate floor covering to the kitchen is damaged and has completely come away.
- Both the induction hobs are in a filthy condition and it is evident that they have not been cleaned in a considerable period of time. NOT ALLOWED BY THE TRIBUNAL.
- When the left-hand side hob is turned on it indicates that two of the hob plates are hot, when they are cold, indicating a fault.
- The panel in the base unit under the left-hand side oven is missing.
- The right-hand side oven door does not close properly.
- The door to the base unit adjacent to the right-hand side oven, is showing signs of heat damage / scorching, likely due to the fact that the adjacent oven door does not close fully.
- The work top incorporating the sinks and drainer is in a terrible state of repair and very badly water damaged. A large section at the rear of the work top is completely missing have either rotten or disintegrated away. Neither of the sinks are affixed or sealed to the work top with a sizeable gap of well over a centimetre between the sink and the work top. The tap has become completely loose with significant lateral movement of around 450 in all directions.
- The under-sink cupboard is in a dilapidated, damaged and filthy condition, with clear signs of water damage.

- The bottom hinge to the door of the wall mounted cupboard adjacent to the fridge has become completely disconnected from the unit.
- The handheld corded phone for the intercom system is missing, rendering the system inoperative.
- The door handle to the electrical cupboard door is loose.

169. The Final Notice of a Financial Penalty for Cluster 301-308. Financial penalty of £8,000. The Notice was as follows:

Cluster 301 – 308 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180° in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.
- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the communal corridor, enabling the occupants sufficient time to exit the cluster flat.
- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of

portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL.

- The heating to room 301 is not working and so preventing the occupant from heating their room. NOT ALLOWED BY THE TRIBUNAL.
- The heating to room 302 is not working and so preventing the occupant from heating their room. NOT ALLOWED BY THE TRIBUNAL.
- The heating to room 306 is not working and so preventing the occupant from heating their room. NOT ALLOWED BY THE TRIBUNAL.
- There is a bin being stored on the communal corridor of the HMO. NOT ALLOWED BY THE TRIBUNAL (This could have been an offence under Regulation 7(1)(c) but not under Regulation 4 of the Regulations).

170. The Final Notice of a Financial Penalty for Cluster 301-308. Financial penalty of £6,120. The Notice was as follows:

Cluster 301 – 308 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There is significant water damage to the ceiling of the communal corridor, adjacent to the kitchen door.
- The glazing to the left-hand side kitchen window is badly cracked, with a crack running the full width of the pane.
- The radiator in the kitchen is leaking, which has resulted in water damage to the floor covering directly below, causing it to lift.
- The cowl to the ceiling mounted extractor fan in the kitchen is missing.

- The induction hobs are in a filthy condition, indicating they have not been cleaned in a significant period of time. NOT ALLOWED BY THE TRIBUNAL.
 - The right-hand side oven is not functioning.
 - The handle to the inside of the electrical cupboard door is missing, as is the lock, latch and associated latch plate.
 - The waste pipe to the kitchen sink is leaking, causing damage to the base unit below.
171. Cluster 309-314, the Applicant's appeal has not been opposed. It is agreed that the two Final Notices of a Financial Penalty should be cancelled. These two notices imposed financial penalties of a total of £14,200.
172. The Final Notice of a Financial Penalty for Cluster 315-323. Financial penalty of £8,000. The Notice was as follows:

Cluster 315 – 323 is one such 'cluster flat' located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of 'person managing' as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180° in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.
- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the

communal corridor, enabling the occupants sufficient time to exit the cluster flat.

- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL.
- At least one of the light sensors in the communal corridor do not seem to be functioning as designed. Having entered the HMO the lights did not activate until an individual had walked past the first four room doors. Due to the design of the HMO there is no windows or other sources of borrowed light afforded to the corridor.
- The opening casement to the right-hand side kitchen window, has a sill height of 92.5cm. This is a third-floor window, with a significant drop onto hard and unforgiving pavement below. There is nothing to restrict the opening distance of this window, allowing it to be opened to a distance of 74cm. During the course of operating this window, an individual would have to lean out of the window, a considerable distance in order to access the handle, when the window is fully open.
- The opening casement to the left-hand side kitchen window, has a sill height of 92.5cm. This is a third-floor window, with a significant drop onto hard and unforgiving pavement below. There is no restrictor stay to limit the opening distance of this window. The window can be opened to a distance of 27.5cm until it is stopped by the external cladding of the adjacent perpendicular external wall.

173. The Final Notice of a Financial Penalty for Cluster 315-323. Financial penalty of £7,200. The Notice was as follows:

Cluster 315 – 323 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- The kitchen floor covering is in a filthy condition indicative of a systematic lack of cleaning routine, with no clearly cleaning having

been undertaken for a considerable period of time. NOT ALLOWED BY THE TRIBUNAL

- A broken microwave is being stored on the floor in the corner of the kitchen. NOT ALLOWED BY THE TRIBUNAL; There is no allegation that the microwave in the kitchen was not working. Had that been the case the Tribunal would have found that an offence was committed. The allegation is that a broken microwave was left in the kitchen corner instead of being taken away. There is no evidence as to who left the microwave in this position.
- On section of laminate floor covering to the kitchen floor, adjacent to the kitchen sink is missing. A further two sections of the floor covering are loose and lifting.
- The kitchen sink leaking and causing dampness and damage to the base unit and floor below.
- The seal between the section of work top encompassing the kitchen sink and the tiled splash back of the wall is perished, allowing water to cause damage to the wall and base units below.
- The seals between the kitchen sinks and the work top have failed, allowing water to cause damage to the base units below.
- The base units below the kitchen sinks are in a filthy condition. NOT ALLOWED BY THE TRIBUNAL.
- The extractor hood is not functioning.
- One of the induction plates to the left-hand side induction hob is not working.
- The hobs are in a dirty condition. NOT ALLOWED BY THE TRIBUNAL.
- The skirting board, adjacent to the left-hand side kitchen window is badly affected by water damage and the floor surface is raised slightly in this area, again likely as a result of water damage.

174. The Final Notice of a Financial Penalty for Cluster 324-333. Financial penalty of £8,000. The Notice was as follows:

Cluster 324 – 333 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There were an insufficient number of signs indicating the location of the means of escape, with there being one above the main access door to the cluster and only one along the communal corridor. There was no signage, either on the door itself or along the communal corridor, to indicate that the emergency fire escape door, located at the opposite end of the communal corridor was indeed an alternative means of escape in the event of a fire. The only sign on the communal corridor pointed solely to the main access door. This sign was also located on the side of the corridor, which incorporated all the bedroom doors and so is not immediately clear upon exiting the bedrooms, as an individual would have to turn through 180° in order to see it, wasting precious time and likely increasing the chance of panic in an emergency situation.
- There is no self-closing device to the kitchen door, which would ordinarily ensure that this door was latched shut at all times, and acting as a sufficient barrier to the spread of fire and smoke into the communal corridor, enabling the occupants sufficient time to exit the cluster flat.
- None of the doors to the individual sleeping rooms have self-closing devices, significantly increasing the likelihood of the spread of fire and smoke, from these rooms into the communal corridor, if a fire were to occur within the rooms. The likelihood of a fire occurring within one of these rooms is significantly increased due to the use of portable heaters by the occupants, as the central heating system to the rooms is not functioning. NOT ALLOWED BY THE TRIBUNAL.
- The radiator in room 326 is not functioning as designed and not affording any warmth to the occupier. NOT ALLOWED BY THE TRIBUNAL.
- The heating to room 323 is not working and so preventing the occupant from heating their room. NOT ALLOWED BY THE TRIBUNAL.
- The heating to room 333 is not working properly, it begins to warm up but then stops working and so preventing the occupant from heating their room. NOT ALLOWED BY THE TRIBUNAL.

175. The Final Notice of a Financial Penalty for Cluster 324-333. Financial penalty of £5,040. The Notice was as follows:

Cluster 324 – 333 is one such ‘cluster flat’ located within St Mary's House 11 London Road, Sheffield, S2 4LA.

The Land Registry Title for St Mary's House 11 London Road, Sheffield, S2 4LA, shows that the building is owned by Mr Gunes Ata of Unit F1, Castle Trading Estate, Snedshill, Telford TF2 9NP, trading as Noble Design And Build. Therefore, Mr Gunes Ata, meets the definition of ‘person managing’ as specified in Section 263(3) of the Housing Act 2004.

During the inspections on 30 January 2023, 23 February 2023 and 19 April 2023, the Council were satisfied to the criminal threshold of proof that there were the following breaches of Regulation 7 of the Management of Houses in Multiple Occupation (England) Regulations 2006:

- There are several stains to the ceiling of the communal corridor, adjacent to the main access door to the cluster, that are likely as a result of a leak.
- The kitchen floor covering is damaged, covered in pockmarks, likely numbering into triple digits. It is also in a filthy condition, with dirt and grime, deeply embedded into the gaining of the floor covering, indicative of a systematic lack of cleaning over a prolonged period.
- The handle to the left-hand side opening casement window in the kitchen is missing, preventing the occupants from being able to operate the window.
- The handle to the middle opening casement window in the kitchen is very loose and will likely completely fail in the near future.
- The veneer surface to the face of the kitchen table is damaged.
- The thermostatic radiator valve (TRV) on the radiator in the kitchen is broken and hanging off the pipe.
- The base unit cupboards under the kitchen sink are in a filthy condition. NOT ALLOWED BY THE TRIBUNAL.
- Only one light in the extractor hood was working.
- One of the induction plates on the left-hand side induction hob was not working.
- The induction hob was in a dirty condition, clearly not having been cleaned for a significant period of time. NOT ALLOWED BY THE TRIBUNAL.

176. Having determined the extent of the offences that the Tribunal is satisfied beyond any reasonable doubt that the Applicant has committed, the Tribunal then turns to the determination of the correct amount of the financial penalty for each offence. The Tribunal considers the part of the Respondents Intervention and Enforcement Policy that provides the

framework for calculating such penalties (hearing bundle, pages 2655 to 2663). The Tribunal goes through this policy on civil penalties and considers the determinations as made by Officer Whitaker in calculating the civil penalties, the Civil Penalties Determination Record (hearing bundle, pages, 2664 to 2823). The Tribunal confirms that Officer Whitaker has applied the Respondent's civil penalties policy in his determination of the amount of the civil penalties.

177. The policy requires that some subjective decisions be made based on the objective guidance given. Ms Grey asked that careful consideration be given to these determinations, contending that many of them are wrong, suggesting alternative determinations in a 5 page spread sheet that the Tribunal also considers (this does not have a page reference having been handed to the Tribunal with the skeleton argument). Ms Grey submits that culpability has been wrongly assessed as high when it should be moderate. That harm has wrongly been assessed as moderate when it should be low. That the offences that remain to be considered contain allegations that are not proven. That insufficient reductions have been made for compliance by remedying faults detailed in the notices.
178. The Tribunal notes that Officer Whitaker carried out a number of inspections at the property and that he has noted in each Final Notice of Financial Penalty where the particular fault has been remedied between inspections. The Tribunal notes that in regulation 4 offences all the clusters were found to have no self-closers fitted to the kitchen doors. The Tribunal notes that in the same offences there are constituent parts to the offences relating to there being insufficient fire exit directions signs and an attempt was made to remedy this by adding more signs. Officer Whitaker took the view that the added signs were still not adequately visible and the Tribunal agrees with this. The Tribunal agrees that as such no reduction of penalty was required for the remedial work on the signs. However, there should have been a reduction for fitting self-closing devices to the kitchen doors and the Tribunal determines that it will make a reduction of £500 to the financial penalty where this is appropriate.
179. The Tribunal has carefully considered Ms Grey's submissions in relation to culpability but rejects them. In relation to culpability the Applicant is a professional landlord with a huge number of flats and properties on the rental market. The Tribunal determines that he has intentionally breached the Regulations. There has been a systematic, serious and deliberate failure to comply with the Applicants legal duties. This Tribunal agrees with Officer Whitaker that culpability is high.
180. In relation to harm to the occupier, the Tribunal assesses that to be medium because there has been an adverse effect on the occupiers of this property with at least a moderate risk of physical and psychological harm in

relation to the conditions in which these student tenants have been forced to live. The Tribunal agrees with Officer Whitaker that harm is moderate.

181. The Tribunal has already determined that the Applicant can avail himself of the statutory defence in relation to failing to clean certain items as alleged. The Tribunal determines that where a part of an offence is disallowed because of this, the Tribunal will reduce the financial penalty by £500. The Tribunal determines that £500 is appropriate in consideration of the fact that the overall financial penalty as calculated by Officer Whitaker is £158,660, so £500 per contributory part of the offences is a fair and just reduction to make in accordance with the Tribunal's overriding objective to be fair and just pursuant to Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
182. The Tribunal has disallowed other parts of offences for various reasons, either they are not made out as being offences at all, or because of a failure to apply the Regulations properly, or alleging an offence but under the wrong Regulation, or the fact that the Respondent has conceded that some allegations should not be proceeded with, or where the statutory defence is available to the Respondent. Where part of an offence is disallowed in this manner the Tribunal has determined that the fair, just and reasonable way to make a deduction from the financial penalty is to apportion the financial penalty to its constituent parts of the offence and then deduct that amount from the penalty.
183. The Applicant has a history of non-compliance in that there is written evidence of two prior convictions (hearing bundle, page 2668). The Tribunal agrees with Officer Whitaker that this is an aggravating feature and that a 10% increase in the financial penalty is fair, just and reasonable. The Tribunal also agrees with the view taken by Officer Whitaker as to a reduction in the financial penalty of 60% taking account of the factors listed at step 3 of the Officers determination of the appropriate financial penalties (hearing bundle pages 2668 to 2669).
184. An overall view of deductions that the Tribunal has determined that it should make are: Any part of an offence not allowed that alleges a failure to clean, deduct £500. Any part of an offence not allowed for other reasons, calculate the proportion of the financial penalty given to that part of the offence and deduct that amount. In any part of an offence that involves failure to fit a self-closing device to a kitchen door, deduct £500 to allow for the fact that they were fitted between the officer's inspections.
185. Dealing with the financial penalties in this way the Tribunal applying the Respondent's civil penalties policy calculates the penalties to be as follows.

186. Cluster rooms 324 to 333, contrary to Regulation 7, a penalty of £4,040.
187. Cluster rooms 324 to 333, contrary to Regulation 4, a penalty of £4,000.
188. Cluster rooms 315 to 323, contrary to Regulation 7, a penalty of £6,046.
189. Cluster rooms 315 to 323, contrary to Regulation 4, a penalty of £6,167.
190. Cluster rooms 309 to 314, contrary to Regulation 7 and contrary to Regulation 4. These alleged offences are cancelled as the appeal against them is not opposed.
191. Cluster rooms 301 to 308, contrary to Regulation 7, a penalty of £5,620.
192. Cluster rooms 301 to 308, contrary to Regulation 4, a penalty of £1,786.
193. Cluster rooms 225 to 234, contrary to Regulation 7, a penalty of £5,260.
194. Cluster rooms 225 to 234, contrary to Regulation 4, a penalty of £4,834.
195. Cluster rooms 216 to 224, contrary to Regulation 7, a penalty of £2,740.
196. Cluster rooms 216 to 224, contrary to Regulation 4, a penalty of £5,500.
197. Cluster rooms 210 to 215, contrary to Regulation 7, a penalty of £600.
198. Cluster rooms 210 to 215, contrary to Regulation 4, a penalty of £4,834.
199. Cluster rooms 201 to 209, contrary to Regulation 7, a penalty of £3,240.
200. Cluster rooms 201 to 209, contrary to Regulation 4, a penalty of £5,500.
201. Cluster rooms, 125 to 134, contrary to Regulation 7, a penalty of £5,980.
202. Cluster rooms 125 to 134, contrary to Regulation 4, a penalty of £5,500.
203. Cluster rooms 126 to 124, contrary to Regulation 7, a penalty of £5,700.
204. Cluster rooms 126 to 124, contrary to Regulation 4, a penalty of £5,500.
205. Cluster rooms 110 to 115, contrary to Regulation 7, a penalty of £1,740.
206. Cluster rooms 110 to 115, contrary to Regulation 4, a penalty of £4,834.
207. Cluster rooms 101 to 109, contrary to Regulation 7, a penalty of £3,250.
208. Cluster rooms 101 to 109, contrary to Regulation 4, a penalty of £4,352.
209. Total civil penalties to pay £97,023.

The Decision

210. The Tribunal decides that it is satisfied beyond any reasonable doubt that the Applicant has committed the offences of breaching the Regulations as detailed in paragraphs 153 to 175, above, contrary to Section 234 of The Housing Act 2004.
211. The Tribunal decides to cancel the Final Notices of Financial Penalties in relation to cluster rooms 309 to 314 as the Respond does not oppose the appeal in relation to these offences.
212. The Tribunal decides that it will vary the remaining Final Notices of Financial Penalties as is detailed in paragraphs 153 to 175, above, and then imposing the financial penalties as detailed in paragraphs 186 to 208, above.
213. Appeal against this Decision is to the Upper Tribunal. Any party wishing to appeal against this Decision has 28 days from the date that the Decision is sent to the parties in which to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds for the appeal, the paragraph numbers of the Decision appealed against, the particulars of such grounds and the result that the appellant seeks as a result of raising the appeal.

Judge C. P. Tonge

Date this Decision sent to the parties - 25 September 2024