

FIRST TIER PROPERTY CHAMBER DECISION



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

**Case Reference** : **CHI/00HX/HNA/2023/0029**

**Property** : **67 County Road, Swindon,  
Wiltshire, SN1 2EE**

**Applicant** : **Kevin Gerald Medlam**

**Respondent** : **Swindon Borough Council**

**Representative** : **Mr. McCabe  
Solicitor**

**Type of Application** : **Appeal against a financial  
penalty - Section 249A &  
Schedule 13A to the Housing  
Act 2004**

**Tribunal** : **Judge T.Hingston  
B. Bourne MRICS  
J. Dalal**

**Date of Decision** : **23d October 2024**

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DECISION  
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**The Tribunal determines that the appeal in this case should be allowed. The Financial Penalty, with its four elements, is therefore cancelled, as explained below.**

## **BACKGROUND AND RELEVANT CHRONOLOGY**

- 1.** This case is an Appeal against a financial penalty imposed under Section 249A of the Housing Act 2004.
- 2.** The property in question, 67 County Road, Swindon SN1 2EE, is a three-storey mid-terraced property with 5 bedrooms. The four bedrooms on the first and second floors all have en-suite bathrooms, and the second floor is a self-contained flat with a living area, bathroom and kitchen. There is a shared lounge and kitchen/diner on the ground floor, then a shared kitchen and another bathroom on the first floor.
- 3.** The property is a licensable House in Multiple Occupation (HMO) and was first licensed on 17/07/2006. The most recent licence was valid from 16/02/2018 and expired on 22nd of January 2023.
- 4.** The freeholder and landlord of the property is Mr. Kevin Medlam, and the tenants (who each have an Assured Shorthold tenancy agreement) are as follows:  
Bedroom 1, ground floor: Jeremy Harris (unoccupied: used as a store-room by tenants Jeremy Harris and Geraldine Coleman, who share Bedroom 2.)  
Bedroom 2, ground floor: Geraldine Coleman.  
Bedroom 3, first floor: Peter Hayes.  
Bedroom 4, first floor: Sinnayia Thavarajah.  
Bedroom 5, second floor: Ali Khan.
- 5.** On 7<sup>th</sup> November 2022, a letter from Swindon Borough Council (SBC) was posted to the Licence Holder and Manager of the property, Mr. Medlam, to remind him that the current HMO licence was due to expire in January (the date given was the 21<sup>st</sup>). The letter informed Mr. Medlam that an inspection would be carried out on the 30<sup>th</sup> of January 2023.
- 6.** On the 13<sup>th</sup> of December 2022 Ross Carter, Environmental Health Enforcement Officer with SBC, emailed Mr. Medlam reiterating that the HMO licence was due to expire on the 21<sup>st</sup> of January 2023 (when in fact it was the 22<sup>nd</sup> of January) and reminding him of the Inspection appointment on the 30<sup>th</sup> of January.
- 7.** Mr. Medlam replied the same day, saying that he was looking forward to the inspection, mentioning that it was his first time '*...with sole ownership*', offering to provide the necessary certificates and documentation, and stating '*...if there are any additional requirements, I would really appreciate your input.*' On the 14<sup>th</sup> of December Mr. Carter responded that the certificates and documents could be checked at the time of the inspection.
- 8.** In the event, neither Mr. Medlam nor Mr Carter were able to keep the original inspection appointment, due to ill health. The visit was re-scheduled for the 13<sup>th</sup> of February.

**9.** On the 13<sup>th</sup> of February 2023 the first inspection took place. All the requisite certificates were provided as arranged: all were in order, including the Fire Safety Risk Assessment. At the inspection Ross Carter informed Mr. Medlam that the HMO licence had in fact expired, and Mr. Medlam immediately put in his application for a new licence that day.

**10.** At the end of the inspection a follow-up visit was arranged for the next day (14<sup>th</sup> of February), but as Mr. Medlam had immediately remedied the one urgent issue (where one fuse was missing in the fuse-board), Mr. Carter wrote an email stating: *'Thank you for sending over the fixed fuse board. This all looks good to me and we won't need to visit the property this afternoon. Thank you for sorting this all out. The HMO application has also been received. I will send out a schedule of works for the other issues within the property this week.'*

**11.** In fact it was 5 weeks before Mr. Medlam received a letter and 'Schedule of Works' from Mr. Carter, on the 21<sup>st</sup> of March 2023 (see Page 194 of the bundle). The letter stated that, further to the inspection on 13<sup>th</sup> February, Mr. Carter had identified a number of '*strict liability*' breaches of the HMO (England) Regulations of 2006 and remedial works were required: to be completed within 3 weeks before a further visit on the 13<sup>th</sup> of April 2023. If the works were not completed within the set timescale, service of an Enforcement Notice would be considered.

**12.** The attached Schedule of Works (Page 196 of the bundle, hereafter referred to as 'the March Schedule') set out alleged breaches of the Regulations and statutory requirements, summarised as follows:

1) 6 x breaches of Regulation 4, the 'Duty of a Manager to take safety measures', in respect of: -

First floor Smoke alarm sounder (said to be '*...not sounding*').

Heat detector in first floor kitchen

Fire extinguishers

Ground floor cupboard under the stairs

Under stairs area, and

Cold smoke seals and intumescent strips on the fire doors.

2) 4 x breaches of Regulation 7, the Duty of a Manager to maintain the fixtures, fittings and appliances in the common parts, in respect of: -

'*Accumulations*' in the front and rear yards

Guttering at rear first floor level (said to need clearing out)

Water damage to wallpaper in first floor hallway, and

Carpet on second floor staircase to be cleaned or renewed.

3) 4 x breaches of Regulation 8, the Duty of a Manager to maintain the living accommodation, in respect of: -

Broken window handle in Bedroom 4 en-suite

Black mould in Bedroom 2 en-suite

Disconnected bathroom facilities in Bedroom 3 en-suite, and

Damage to ceilings from water leaks in bedrooms 1 and 2.

4) A breach of Section 72 of the Housing Act 2004, which requires a landlord to maintain a current HMO licence in respect of the property.

**13.** In addition, three ‘Hazards’ were identified under the ‘Housing Health and Safety Rating System (HHSRS), as follows:-

There were electric sockets directly above the cooker in the first floor kitchen

There was a washing machine in a cupboard on the first floor landing, and

There was a smoke alarm required in Bedroom 5.

**14.** On the 27<sup>th</sup> of March Mr. Medlam left a voicemail for Mr. Carter, acknowledging receipt of the above communication and expressing his willingness to commence the works.

**15.** On the 3<sup>rd</sup> of April Mr. Medlam emailed Mr. Carter, asking his advice as to the remedies for the washing-machine in the cupboard, and as to whether a smoke detector was required in the other cupboard containing the electricity consumer unit.

**16.** On the 13<sup>th</sup> of April Mr. Carter carried out a compliance inspection, together with a colleague Ms. Emily Woodley.

**17.** All items from the Schedule of works had been completed satisfactorily, save for 3 minor details (as set out in Mr. Carter’s email of the same date, Page 200):-

i) Ensure door to bedroom 1 closes properly – ground floor front.

ii) Replace seal on door to bedroom 2 – ground floor middle.

iii) Install a smoke detector in bedroom 5 – second floor.

**18.** Later that same day, 13<sup>th</sup> April 2023, Mr. Medlam sent an email in reply, with photographs attached, to show that the 3 remaining items had been dealt with immediately.

**19.** On the 18<sup>th</sup> of April Mr. Carter and Ms Susan Green (Team Leader at SBC) conducted a tape-recorded interview under caution with Mr. Medlam.

**20.** On the 8<sup>th</sup> of August 2023 the Respondent Council served a ‘Notice of Intent to Impose a Financial Penalty’ on Mr. Medlam. He was given 28 days to respond.

**21.** On the 1<sup>st</sup> of September Mr Medlam sent his Response, raising a number of material points in his defence.

**22.** On the 16<sup>th</sup> of October Ms. Green replied to Mr. Medlam. It was stated that there were: -

*‘...no relevant matters that we can consider to alter the Civil Penalty amounts at this time.’*

**23.** On the 16<sup>th</sup> of November 2023 the Council sent Mr. Medlam the ‘Final Notice of Civil Penalty.’ The total Financial penalty for the alleged breaches of statute and regulations was £11,400.

**24.** On the 8<sup>th</sup> of December 2023 Mr. Medlam lodged his Appeal with the Tribunal against the Financial Penalty.

**25.** Directions were given, and the matter was listed for hearing on the 24<sup>th</sup> of September 2024.

## **RELEVANT LAW**

**26.** See attached Appendix.

## **THE HEARING**

**27.** The hearing was held at Havant Justice Centre, with the Tribunal sitting in person. The Appellant landlord Mr. Medlam (who was assisted by his friend Mr. Nick Hayes), the Housing Officer Mr. Ross Carter and the Solicitor for the Respondent Council, Mr. McCabe, all attended by video link.

**28.** In accordance with Schedule 13A of the Housing Act 2004, the Appeal against a financial penalty is a re-hearing of the local housing authority's decision, but '*...may be determined having regard to matters of which the authority was unaware.*'

**29.** The Tribunal has power to confirm, vary or cancel the Financial Penalty, which in this case is made up of four separate elements.

**30.** In considering the case the Tribunal had regard to the Department of Communities and Local Government Guidance as to Civil Penalties (under the Housing and Planning Act 2016).

**31.** The Respondent also referred to their own 'Swindon Borough Council Guidance on Determining the amount of a Civil Penalty' (as set out in the 'Notes' to the Final Notice, Page 14 of the bundle).

## **PRELIMINARY PROCEDURAL ISSUES**

**32.** The Appellant raised a number of procedural issues, including alleged failures by the Respondent to comply with the Tribunal Directions and failures to include signatures and case numbers on some of the documentation. Mr. Medlam also referred to the Council's refusal to provide him with copies of the inspection photographs and the recording of his interview.

**33.** The Tribunal carefully considered each of the points raised, and determined that some of the alleged failures arose from a misreading of the Directions, and others did not cause any prejudice or disadvantage to the Appellant. The purpose of the Directions is not primarily punitive, it is to support the overriding objective as set out in the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013, i.e. '*... to enable the Tribunal to deal with cases fairly and justly.*'

**34.** In the circumstances the Tribunal found that the procedures had been satisfactorily complied with and the matter could proceed without further delay.

## **RESPONDENT'S CASE**

**35.** On Behalf of the Council, Mr. McCabe acknowledged that the burden of proof was on the Respondent to establish firstly to the criminal standard ('beyond reasonable doubt') that the Appellant Mr. Medlam had committed relevant housing offences, before proceeding to the question of what penalties were appropriate.

**36.** The Respondent's case was set out in the Notices, in the Statement of Reasons, in oral evidence given (and submissions made) at the hearing, and in relevant documents and exhibits.

**37.** Mr. McCabe conceded that the Licence in this case expired on the 22<sup>nd</sup> of January 2023, and not on the 21<sup>st</sup> January as stated in the Council's correspondence.

**38.** Mr. Carter gave evidence, and enlarged upon the contents of his witness statement at Page 136 of the bundle. In respect of the various breaches of regulations as set out in his Schedule of Works of 21<sup>st</sup> March 2023 (the 'March Schedule') and of the licensing requirements, the evidence was as follows:

**39. Duty of Manager to take Safety Measures (6 alleged breaches of Regulation 4)**

**1) Fire alarms and system.**

(a) Mr. Carter stated that the 'sounder' on the first floor landing was not loud enough. From the adjacent bathroom with the door closed the alarm could be heard, but in his professional opinion it was not sufficiently loud. However, no sound-measuring device was used and he personally had not gone into that bathroom.

(b) Mr. Carter acknowledged that the March Schedule (Page 196) stated that this particular sounder was '*not sounding*' and it needed to be fixed '*immediately*'. This was incorrect.

(c) He was unable to recall whether there was a 'sounder' on the second floor, but the sounder on the ground floor (next to the fire alarm control panel) was 'very loud' and could be heard at the top of the building.

(d) Although there had been a 'fault' light showing on the control panel at some stage during the testing, Mr. Carter did not remember whether the light was showing at the outset, or whether he had asked Mr. Medlam about it. He agreed, however, that the light went out after the test and they were satisfied that it was working properly.

(e) Mr. Carter's evidence was that Mr. Medlam did not know how to operate or test the fire alarm system correctly, and that although the landlord said that the system was checked either twice or four times a year by the electrician (details provided), he would have expected it to be tested every month. Despite this conversation, the Council 'Civil Penalty calculation sheet' states (at Page 178) that: - '*There was no evidence of regular visits to the property and testing of the fire detection system.*'

**2) Heat detector.**

There was a heat detector hanging from its wires in the ceiling of the first floor shared kitchen.

**3) Fire extinguisher.**

It was said that Fire extinguishers should either be serviced regularly and occupants trained to use them, or they should be removed. There was no obligation to provide them. Mr. Carter said that he thought the fire extinguisher in the property had not been tested since 2021, but there was no evidence before the Tribunal to this effect. Mr. Carter's contemporaneous notes of the visit (Page 188) simply record that Mr. Medlam stated they '*...had not been recently serviced*'.

4) Ground floor cupboard under stairs.

Mr. Carter stated that the ground floor cupboard should be emptied, locked and/or sealed shut, or alternatively fully fire-proofed and linked to the fire alarm system.

5) Other under-stairs cupboard.

The March Schedule required Mr. Medlam to '*...remove all stored combustible materials from the escape route and under stairs area.*'

6) Fire doors etc.

(a) Mr. Carter stated that the doors in the property did have suitable self-closers and fire seals, but some of the intumescent strips along the edges had paint on them, which would have compromised their effectiveness. In the original March Schedule Mr. Medlam was required to: '*...examine all cold smoke seals and intumescent strips...*' and '*...replace those that are worn or have been painted over*'.

(b) Mr. Carter accepted that the later Schedule, attached to the Notice of Intent of 8<sup>th</sup> August 2023 (Page 17) wrongly states that: '**All of the cold smoke seals and intumescent strips of the fire doors were painted over**'. In evidence he could not say whether in fact that applied to *all* the doors, or whether any of them were 'completely covered over.'

**40. Other fire safety issues.**

Mr. Carter referred to other defects which he had identified at the property, including hazards assessed under the HHSRS.

(a) The hatch to the loft in the roof was not safely locked and secured to prevent fire spreading upwards, and the patched hole in the kitchen ceiling (shown in the photograph at page 171) was not sufficiently sealed around the edges to provide effective fire separation.

(b) Fire Plan – explanation.

In respect of the 'Fire Plan' of the property, exhibited at Page 160 of the bundle, Mr. Carter stated that it had been drawn up by a colleague and was not to scale, but its purpose was to show fire safety devices and measures. He could not comment on alleged inaccuracies.

The circular symbol with the letters 'DS1' inside it indicates a smoke detector, the circle with 'DS0' inside it indicates an 'optical' smoke detector, the triangle with a 'B' in it indicates a fire blanket, and the bold circle with a 3 below it indicates emergency lighting.

(c) Fuse-box.

Mr. Carter gave evidence that there was a fuse missing from the consumer panel in the under-stairs cupboard (Photos at page 182/3). At the first inspection on 13<sup>th</sup> February 2023 he had assessed this as a 'Category 1 major electrical hazard' under the HHSRS, and he scheduled a follow-up visit for the next day. However, as Mr Medlam had fixed the problem immediately by attaching a 'cover plate', there was no need to attend. This item was not included in the 'March Schedule' because it had been resolved.

(d) Electric sockets above cooker.

As per the photograph at Page 179, the electric cooker (with a 4-ring hob) in the first floor kitchen was positioned directly in front of and below a double power socket. Although it appeared that this hazard had not been picked up during previous inspections, Mr. Carter said that he could not comment on previous visits: he speculated that perhaps the cooker had been moved in the interim.

(e) It was said that there was no smoke detector in Bedroom 5.

(f) Washing-machine cupboard.

There was a washing machine located in the cupboard at the head of the staircase on the first floor. Mr. Carter stated that any fire originating in this area could affect the means of escape down the stairs, and a fire door and smoke alarm should be fitted.

#### **41. Assessment of Culpability and Harm for Regulation 4 offences:**

##### Culpability - High

In the 'Notice of Intent' at Page 18 of the bundle, Mr. Medlam's Culpability is assessed as 'High' for these breaches of the regulations, which were described as 'poor management'. It was said that although there was a Grade A mains-wired interlinked smoke detection system in the property, Mr. Medlam had '*...failed to put in place appropriate fire safety measures that were recognised legal requirements or regulations*', and had '*...allowed the risks to persist over a long period of time*'.

It was also noted that Mr. Medlam acknowledged that he did not enter the rooms of residents on a regular basis in order to check and inspect the individual smoke alarms.

##### Harm - B

The 'hazard' score in respect of these breaches was assessed as Category 2, and the risk of Harm from fire was put at level B, particularly in the light of the absence of a smoke alarm in Bedroom 5 which is furthest from the means of escape. At Page 23 of the bundle it is stated that the '*harm outcomes were increased...*' because there was a '*...a defective alarm system.*'

#### **42. Duty of Manager to maintain common parts (4 alleged breaches of Regulation 7.)**

##### 1) 'Accumulations' in the front and rear yards

(a) Mr. Carter gave evidence that waste in the front and rear gardens could pose a health and safety risk or attract pests. However, he accepted that the items of waste shown in photographs at Pages 173 and 174 were not in the way of anyone passing through the garden/yard(s).

##### 2) Guttering at rear first floor level

The original March Schedule required Mr. Medlam to 'clear out' the guttering at the rear of the property (shown in the photograph at Page 166). In evidence to the Tribunal Mr. Carter suggested that there was vegetation or moss growing in the gutter, which could 'potentially' have caused a leak and dampness to the interior walls. When questioned about this, he conceded that he had not actually inspected the guttering and the walls were dry at the time of his inspection.

##### 3) Water damage to wallpaper in first floor hallway



Mr. Medlam was required to redecorate this hallway. In oral evidence to the Tribunal Mr. Carter said that the wall (where the wallpaper was shown bulging or loose in photographs at Pages 176-178) was dry at the time of his visit in February, and any water leak appeared to have happened in the past and been resolved, but he was concerned that the previous issue '*...may have caused mould growth in the future*'.

4) Carpet on second floor staircase to be cleaned or renewed.

Mr. Carter stated that the carpet showed ingrained dirt and some fading and 'disrepair'. Although there was no mention of 'rips' or potential trip hazards in the March Schedule, and no damage or tears were shown in the photograph, Mr. Carter told the Tribunal that there were some 'small rips'.

**43. Assessment of Culpability and Harm for Regulation 7 offences.**

Culpability – Medium.

Mr. Medlam's culpability for breaches of Regulation 7 was assessed as 'Medium'. It was said (Page 36) that there were systems in place to manage the risks, but these were not sufficiently implemented or adhered to. The Council found that there was a '*lack of clarity*' as to the frequency of the landlord's visits to the property.

Harm – C.

Assessed at Level C (see P. 37 and p. 40). There was no hazard rating possible under the HHSRS, and it was acknowledged that there was no risk of serious harm to the occupants. The Council commented that the internal damp and mould and the accumulations of waste in the garden '*...will impact the mental well-being of tenants...*' but '*...this is difficult to attribute to risk.*' (Page 293)

**44. Duty of Manager to Maintain Living Accommodation (4 alleged breaches of Regulation 8).**

1) Broken window handle in Bedroom 4 en-suite

The March Schedule required the handle to be replaced so that the window could be opened and closed.

2) Black mould in Bedroom 2 en-suite

There are photos of the mould in this bathroom at Pages 167 and 168. Mr. Carter agreed that the mould could have been caused by lack of ventilation, but he speculated that it could have been due to penetrating damp and/or water leaking under the roof tiles. In his view the mould had accumulated over a period of at least 2 months and Mr. Medlam had not been proactively checking the accommodation as he should have done.

3) Disconnected bathroom facilities in Bedroom 3 en-suite

Mr. Carter accepted that this bathroom was in the process of being renovated. Initially the landlord had been criticised by the Council for not having produced details of building contractors, invoices etc., but during the hearing Mr. Carter accepted that he *had* discussed the works with Mr. Medlam, and he was aware that Mr. Medlam was doing the works himself. His main complaint seemed to be that Mr. Medlam was unable to give a date when he thought that the renovations would be finished. When the officer's attention was drawn to the fact that the tenant Mr. Peter Hayes had exclusive use of the bathroom on the landing next to his bedroom whilst his en-suite was out of action (as per his sworn statement at Page 135), whilst all other tenants had

their own en-suite facilities, Mr. Carter merely commented that other tenants did potentially have access to that bathroom and could theoretically have used it.

4) Damage to ceilings from water leaks in bedrooms 1 and 2.

Bedroom 1 (photos at 163 and 164): Mr. Carter agreed that there is a rectangular hole which has been cut in the ceiling, showing exposed pipes above, and that this hole could be part of the renovation work to the en-suite bathroom of Bedroom 3 above.

Bedroom 2 (photo at Page 165): there is a small blister in the Artex on the ceiling near the window, with a tiny hole in the centre of it. It was said that Mr. Medlam actually drew the officer's attention to this defect.

**45. Assessment of Culpability and Harm in respect of breaches of Regulation 8.**

Culpability. - High

Mr. Medlam's culpability for breaches of Regulation 8 was assessed as High. It was said that Mr. Medlam had failed to put in place measures that were recognised legal requirements or regulations, and had allowed risks, breaches or offences to persist over a long period of time.

Harm – Level C.

As stated at Page 53, the '*...breaches do not score highly enough*' to generate an HHSRS 'hazard' rating, and there was '*low impact*' on amenity and well-being.

**46. Breach of Section 72 Housing Act 2004 – Unlicensed HMO.**

There was no dispute that the HMO licence for this property expired on the 22<sup>nd</sup> of January 2023, and the application for renewal was not made until the 13<sup>th</sup> of February 2023.

47. Mr. Carter stated that several reminders had been sent to the landlord about the need to renew his licence, and instructions had been given as to the new online application process.

48. In his evidence to the Tribunal Mr. Carter said that the Council had a duty to inspect properties '*...in order to issue licences*', and that the scheduled inspection was set up '*... because the licence was due to expire*'. He agreed that it would be best practice to wait until the inspection had taken place before the licence was issued.

**49. Assesment of Culpability and Harm in respect of the offence under Section 72 as above.**

Culpability - Medium

At Page 68 it is stated that Mr. Medlam fell short of his legal duties in respect of the licence, but that the offence fell between 'high' and 'low' culpability.

Harm - level C

It was accepted that any risk to health, safety and well-being of tenants and visitors as a result of this offence was low.

Mr. Carter agreed that none of the tenants had made any complaint to the Council, either about the issues which he had identified or about anything else.

50. In terms of compliance, Mr. Carter agreed that the Appellant had completed all the items on the Schedule of Works within the set timescale.

**51.** At Page 97 of the bundle, in the ‘Statement of Reasons’, the Respondent Council states that:

*‘All enforcement actions and decisions were made in accordance with all relevant legislation, including Housing and Planning Act 2016, the Housing Act 2004, The Management of Houses in Multiple Occupation (England) Regulations 2006 and relevant current guidance; Civil Penalties under Housing and Planning Act, Guidance for Local Authorities issued by the Ministry of Housing, Communities and Local Government.*

*All local enforcement Policies and guidance documents were followed throughout this process, including Swindon Borough Council's Private Sector Housing Enforcement Policy 2019 and Swindon Borough Council Private Sector Housing Guidance on Determining the Amount of a Civil Penalty 2021 .’*

**52.** At Page 98 (Statement of Reasons) the following ‘available actions’ are set out as options in response to the alleged housing offences: -

To take no action

Informal action

Formal caution

Civil Penalty, or

Prosecution in the Magistrate’s Court .

**53.** The Respondent Council concluded that the breaches of regulations and the offence under Section 72 had been ‘proven beyond reasonable doubt’, and they stated that because there were ‘... a number of Category 1 and 2 hazards assessed under the Housing Health and Safety Rating System...’ it was considered that ‘no action’ or informal action ‘...would not deter the applicant from committing similar offences in the future.’ Mr Carter told the Tribunal that there were ‘too many breaches’ for informal action to be appropriate.

**54.** A formal caution was considered, but this option ‘... was deemed not appropriate in this instance as the applicant had not accepted responsibility for committing the offence.’

**55.** Repeated (and incorrect) references were made to all of the alleged breaches being ‘strict liability offences’. No consideration appears to have been given to the statutory defence of ‘Reasonable excuse’, which is available in respect of both regulatory and Housing Act offences.

**56.** At Page 100 it was stated that: ‘In all cases, the decision to impose a Civil Penalty and the amount of that Penalty is made following a Civil Penalty panel (of relevant Team Leaders and Service Managers) in consultation with the Council’s Law and Democratic Services Department and with reference to Statutory Guidance.’

**57.** The panel in this case decided that a Civil Penalty was justified in each of the four areas, and the Council then went on to determine what the amount of those penalties should be.

**58.** It was said that: ‘In line with Government Guidance and Swindon Borough Council’s guidance in determining a Civil Penalty the following matters were considered:’ -

The severity of the offences

The culpability and track record of the offender  
The harm caused to the tenants  
The punishment of the offender  
Whether it will deter the offender from repeating the offence  
Whether it will deter others from committing the offence  
Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

**59.** After all the other factors had been considered and applied, the Council policy required them to set a penalty: *'...which removes the financial benefit that has been gained from committing the offence.'* The five-stage process aimed at achieving this outcome was explained at Pages 101 et seq.

**60.** Finally, the 'Penalty Band calculator' and 'Minimum Penalty Amounts' tables (as at Page 105) were used to work out the appropriate amount of the penalties.

**61.** In short, the penalties determined for the different offences were as follows:

Breaches of Regulation 4 - 'Safety measures'	...£6,000
Breaches of Regulation 7 - 'Common parts'	... £1,200
Breaches of Regulation 8 - 'Living accommodation'	...£3,000
HMO licence offence under the Housing Act	...£1,200
TOTAL	£11,400

## **62. Response to the Appellant's Statement of Case for the Tribunal**

In the 'Response' document at Page 127 et seq., Susan Green (Team Leader) for the Council stated as follows :-

i) The purpose of the inspection was to check amenities and standards within the HMO: - *'...as part of the HMO renewal process'*.

ii) The Council's case was that Mr. Medlam did not visit the property as often, or inspect it as thoroughly, as he should have done. Mr. Carter's notes of the first inspection recorded that Mr. Medlam said he only visited 'every 6 months'. It was further noted that Mr. Medlam did not generally go into the individual bedrooms of the tenants, and it was argued on behalf of the Council that the Covid pandemic ended in 2021 so visits should have been more frequent thereafter.

iii) The Council conceded that they had made mistakes about the number of occupants of the property (as set out on the renewed Licence), and about the date when the licence expired, and that there may have been inaccuracies in the Fire Plan which needed to be corrected.

iv) It was said that the fact that certain supposed 'defects' had been ignored during previous inspections was irrelevant, and that it was the landlord's duty to check the premises (and the interior of the bedrooms) even though the tenants had not reported any problems. Again, at Page 128/129 it was said incorrectly that these were 'strict liability' offences.

v) In respect of the breach of Regulation 8 - 'En-suite bathroom disconnected' (Bedroom 3), Ms. Green stated (at Page 129, Paragraph 26) that: - *'The Appellant did not mention the renovations at the time of the inspection and did not indicate how long these works were going to take.'*

In fact, it is immediately obvious from the photographs that renovations were in progress, and during the hearing Mr. Carter said that there was ‘evidence of construction work’ in the bathroom and he *had* discussed the work with Mr. Medlam, although Mr. Medlam could not say when it would be completed. When asked whether Mr. Medlam had been helpful and cooperative during the inspection, Mr. Carter stated that the landlord was answering their questions and he felt that he was being honest. The Council’s position was that it was not made sufficiently clear to them that Mr. Medlam was doing the work himself.

vi) In respect of the HMO licence offence, it was said (at Page 131 paragraph 55) that *‘Since the adoption of a new HMO Licensing process in 2018, Swindon borough Council have completed inspections of HMOs at the point of the HMO application being received, on year 1 of the Licence, and at the HMO renewal Date (minus 3 months)’.*

The Council maintained that Mr. Medlam had been given ample notice and warnings about the need to renew his licence, and that the Council *‘would not manage the property for him.’*

It was also suggested that Mr. Medlam had not asked for help with the process.

vii) In respect of mould in the property, it was said (Page 131 paragraph 60) *‘There was evidence of penetrating damp in the property and blocked guttering.’*

viii) In conclusion it was said that Mr. Medlam was in breach of the licence conditions, which provided that: - *‘The Licence Holder must ensure that the house is maintained free from serious disrepair, and to a standard commensurate with properties in the immediate locale.’*

### **63. Other matters raised by the Appellant**

i) Photographs of the first Inspection:

Mr. Carter stated that the Council had no obligation to provide copies of the photographs to Mr. Medlam.

ii) Recording of the Police and Criminal Evidence Act interview on 18<sup>th</sup> April 2023:  
The Council’s position was that the recording of the interview would only be provided if a criminal prosecution was instigated.

iii) In response to Mr. Medlam’s argument that he had completed all required works within the time allowed, Ms. Green replied (in her letter of 16<sup>th</sup> October 2023) that the regulations should be complied with at all times and not just in response to an inspector’s visit. She stated that:-

*‘...the defects evidenced a lack of adequate maintenance...’*

iv) It was also asserted that:-

*‘The planned maintenance of the bathroom has not been evidenced with contractor bookings or invoices.’*

v) There was no reference at all to Mr. Peter Hayes’ letter to the Council (of 28<sup>th</sup> August 2023, at Page 399) in which he stated clearly that Mr. Medlam was undertaking the works to the bathroom himself, with his full knowledge and agreement.

### **APPELLANT’S CASE**

**64.** Mr Medlam's case was set out in his 'Statement of Case' dated 5<sup>th</sup> August 2024 (Page 86 of the bundle), in his 'Response to the Notice of Intent' dated 1<sup>st</sup> September 2023 (at Page 391), in his annotated replies to Ms. Green's letter of 16<sup>th</sup> October 2023 (Page 402) and his 'Concise Reply' to the Respondent's case (Page 406).

**65.** In addition Mr. Medlam submitted copies of emails and other documentation to the Tribunal, including character references from Mr. Robert Sharman and Mr. Peter Herowych, and the witness statement of the tenant of Bedroom 3, Mr. Peter Hayes.

**66.** Mr Medlam gave oral evidence at the hearing, and submissions were made on his behalf by Mr. Nick Hayes.

**67.** On behalf of Mr. Medlam it was pointed out that there were a large number of errors and inaccuracies in the Respondent Council's case, and it was argued that these flaws should lead to a finding that the case against Mr. Medlam had not been proved 'beyond reasonable doubt.'

**68.** The Tribunal's attention was drawn (among other items) in particular to the following: -

i) 13 alleged inaccuracies on the 'Fire Plan'.

ii) Errors made by SBC as to the number of occupants of the property when renewing the HMO Licence

iii) Incorrect date given for expiry of the Licence

iv) An Invoice sent out by SBC prior to the Notice of Intent, and

v) A further Invoice sent to Mr. Medlam in error on 4<sup>th</sup> January 2024 despite the pending Appeal.

**69.** In response to the different categories of alleged 'housing offences' from the 'March Schedule', adopting the same order as in the Respondent's case above, Mr. Medlam's case was as follows: -

**70. Duty of Manager to take Safety Measures (6 alleged breaches of Regulation 4)**

1) Fire alarms and system.

Mr. Medlam's evidence was that the fire alarm sounders were so loud that the neighbours complained. He stated that the sounder on the first floor was working properly, but he replaced it anyway in order to satisfy the Housing Officer.

Mr. Medlam said that there was no fault with the main control panel, but a 'fault' light only appeared after repeated testing on the 13<sup>th</sup> of February. When the inspection finished and he re-set it there was no fault light and the system was working correctly.

2) Heat Detector.

The heat detector in the first floor kitchen was hanging but still fully operational: it could clearly be seen that the ceiling was being re-plastered during the current renovations and the detector was re-attached shortly afterwards as planned.

3) Fire extinguisher.

Mr Medlam acknowledged that he should have removed the fire extinguisher: he did so immediately after the first inspection.

4) Ground floor cupboard under stairs.

Mr Medlam conceded that the cupboard with the consumer unit/fuse-box in it was full of combustible items, which were removed immediately after the inspection. He stated that this cupboard was always kept locked and had only been unlocked for the Officer's visit.

5) Other cupboard under stairs

Mr. Medlam had immediately emptied and locked this cupboard after the inspection as advised.

6) Fire doors etc.

The Tribunal's attention was drawn to the photographs of the edges of the fire doors, in which it appears that there may have been some worn sections and possibly some specks of white paint on the intumescent strips. Mr. Medlam gave evidence that it was totally untrue to suggest that '*All the strips had been painted over.*' The replacement strips were very cheap to buy and easily fitted, and he replaced them all as soon as this matter was brought to his attention.

**71. Other Fire safety issues.**

a) Loft hatch and kitchen ceiling.

Mr. Medlam did not dispute the need for a lock to the hatch, which was fitted immediately. The replacement patch to the kitchen ceiling was just awaiting plastering as part of the ongoing renovations: the work was completed before the compliance inspection.

b) Fire plan.

It was said that there were many inaccuracies on the SBC fire plan.

c) Fuse box.

Mr. Medlam explained that there was 1 fuse blank/missing, but it was easily rectified with a small 'cover plate' costing 22 pence. The cupboard was generally kept locked with a 'star key' and tenants did not have access. This issue had *not* been raised by the electrician at the EICR inspection in January 2023, and there was only a 'buzz-board' behind the consumer unit: no wires were accessible through the gap.

d) Cooker and sockets above.

Mr. Medlam stated that the cooker and sockets had been in that position throughout his management, and the safety issue had not been picked up during previous inspections. However, he remedied the problem immediately.

e) Smoke detector in Bedroom 5.

There *was* a smoke detector (as shown on the SBC Fire plan) in the bedroom, but apparently it was a heat detector which was required. Mr. Medlam said that this was remedied immediately after the compliance inspection.

f) Washing machine cupboard.

Initially Mr. Medlam had misunderstood the concerns about this cupboard: he thought it was being suggested that the means of escape from fire was through the small window behind the washing machine. However, once he realised that a fire in the cupboard could affect the escape route down the staircase, he took preventative measures.

Mr. Medlam said that the door to this cupboard was in fact a fire door, but it did not have intumescent strips and it was not kept locked. It had not been mentioned at previous inspections and he had never been advised in the past that it needed a smoke alarm. After the inspection he sought advice from Mr. Carter as to exactly what was required, and the 'hazard' was dealt with immediately.

## **72. Duty of Manager to maintain common parts (4 alleged breaches of Regulation 7.)**

### **1) 'Accumulations' in front and rear yards.**

Mr. Medlam's evidence was that in fact these areas were used exclusively by the couple who share the ground floor, although the tenancy agreements do not specifically say so. The 'waste' was theirs, and they cleared it up immediately after the inspection.

### **2) Guttering at rear first floor level.**

Mr. Medlam stated that the gutter was not blocked nor full of growing vegetation: there had been some damp on the interior wall and/or ceiling, not as a result of blocked guttering but because of exceptionally strong winds which had blown rainwater in under the tiles. The water mark had not been noticed or reported by the tenants, but it had been re-painted after the inspection.

### **3) Water damage to wallpaper in first floor hallway**

SBC documents suggested that the wallpaper had been affected by water from the bathroom above, but Mr. Medlam's evidence was that in fact there had been a plumbing issue with the pipework to the kitchen. The redecoration was due to be done as part of the Bedroom 3 renovations and was promptly completed after the inspection.

### **4) Carpet on second floor staircase to be cleaned or renewed.**

It was accepted that the carpet on the staircase up to the top flat was dirty: Mr. Medlam had replaced it immediately after the inspection .

## **73. Duty of Manager to Maintain Living Accommodation (4 alleged breaches of Regulation 8).**

### **1) Broken window handle in Bedroom 4 en-suite**

Mr. Medlam asserted that the window still functioned, but there was some difficulty in fully locking it. The tenant had not reported the issue and apparently did not consider that it was a problem, but the handle was replaced immediately after the inspection.

### **2) Black mould in Bedroom 2 en-suite**

Again, this had not been brought to the landlord's attention, but he had treated the mould and repainted the bathroom within the timescale.

### **3) Disconnected bathroom facilities in Bedroom 3 en-suite**

The tenant of Bedroom 3 is Peter Hayes, who wrote a letter to SBC (as referred to above) and also produced a witness statement confirming that the renovations to his



en-suite bathroom were being carried out by Mr. Medlam with his approval and full agreement. Mr. Hayes made it clear that he had 'exclusive' use of the bathroom on the first floor next to his bedroom whilst the work was ongoing, so he was not without bathroom facilities at any time.

Mr. Medlam stated that he was carrying out the works with Nick Hayes and a builder who sometimes assisted them: they had started a couple of weeks before Mr. Carter's first visit, and concluded all renovations before the compliance inspection.

#### 4) Damage to ceilings from water leaks in bedrooms 1 and 2.

In bedroom 1 (which is used as a store-room by the ground floor tenants) the hole in the ceiling was cut in order to access pipes for the bathroom renovations in Bedroom 3's en-suite above. It was duly closed and redecorated as the job was completed.

In bedroom 2 the damp mark was extremely small: the tenant had not noticed it but it was repaired and redecorated promptly.

#### **74. Breach of Section 72 Housing Act 2004 – Unlicensed HMO.**

Mr. Medlam had never disputed that the licence was due to expire in January 2023 – on the 22<sup>nd</sup>, not the 21<sup>st</sup>.

His case was that it was the first time that he had taken on the responsibility of applying for the licence renewal, as his business partner and co-owner Peter Herowych had always done it in the past, and he was unsure of the process.

75. Mr Medlam stated that he mistakenly assumed that the inspection was being undertaken *before* any licence renewal could be considered. The letter he received from Mr. Carter of the 7<sup>th</sup> of November 2023 (Page 158) set the date for the inspection at 30<sup>th</sup> of January 2023, and stated that:-

*'During this inspection a full audit will be completed and any queries regarding your HMO Licence application can be raised during this visit.'*

76. The letter informed him that he *could* apply for his licence online, and that he would need to produce Gas Safety certificates etc., but he did not realise that he should do this before the inspection: he said that it was an honest mistake and he had not appreciated that the latter part of the letter was warning him that he *must* make his application prior to the inspection.

77. The email which Mr. Medlam received from Mr. Carter on the 13<sup>th</sup> of December (Page 161) simply contained two sentences: -

*'I hope that you are well. This is just to remind you that the HMO licence...is due to expire on the 21.01.23.*

*An inspection of your HMO will be completed on 30.01.23 at 13.00.'*

The letter did not state specifically that the application for a new licence had to be lodged beforehand.

78. That same day Mr. Medlam replied, as referred to in the Chronology above, saying: *'Looking forward to your visit.*

*As this is my first time with sole ownership I understand that I will be required to produce certain documentation'* (which he listed accordingly).

He concluded with the comment that: -

*'If there is any additional requirements, I would really appreciate your input.'*

**79.** Throughout the contacts between Mr. Medlam and Mr. Carter during November and December 2022, and into January 2023, Mr. Medlam stated that he was still under the erroneous impression that the inspection was part of the licence renewal process, and he thought that he did not need to make the application in advance. He assumed that he would pay the renewal fee after the inspection.

**80.** In terms of the new and different method of applying online and a possible lack of clarity as to the process, when Mr. Medlam referred to this during the interview Susan Green appeared to sympathise with his confusion and said: *'I know where you're coming from...'*

**81.** Mr. Medlam made his application as soon as Mr. Carter pointed out his mistake, at the visit on 13<sup>th</sup> February.

**82.** Mr. Medlam also made the point that, if the inspection had gone ahead on the original scheduled date of 30<sup>th</sup> January, the licence application would have been lodged only 8 days after the expiry of the previous licence. In the event, despite the late application, the Council had only charged Mr. Medlam the fee for a renewal rather than for a fresh licence.

**83.** For the above reasons it was submitted that Mr. Medlam had a 'Reasonable excuse' for not applying for the licence in time.

**84.** In summary, Mr. Medlam stated that he had apparently misunderstood the relationship between Council and landlord, and he had previously believed that it was a co-operative and mutually beneficial arrangement in which the Council would advise landlords as to matters which needed to be addressed, and landlords would respond accordingly. By way of illustration of this point Mr. Medlam produced a letter (at Page 414 of the bundle) from SBC Housing Officer Joseph Cerisola, dated 6<sup>th</sup> September 2011, in which Mr. Cerisola wrote to Mr. Herowych referring to his inspection of the property, listing the matters which required attention, and concluding with the phrase:-

*'Should you require any further advice or assistance please contact me.'*

There was no question of enforcement action nor mention of any penalty in that correspondence.

### **85. Culpability – general comments.**

During the interview Mr. Medlam had answered all questions, acknowledged his failings and errors, and confirmed that all required works had been completed within the timescale. He even expressed his gratitude that the Council had corrected him on the process of re-licensing.

**86.** The only point which Mr. Medlam took issue with was the question of how often he visited the property, because he denied that he had ever told Mr. Carter that he only visited 'every 6 months'. This would have been a 'stupid' thing for him to have said, and the unchallenged witness statement of tenant Peter Hayes confirms that Mr. Medlam visits the property regularly, weekly or several times a week.

**87.** Mr Medlam's evidence at the hearing was that he lived only a few minutes' walk away from the property and that he would often call in as he was passing, at least once

a week, to check on things, tidy up, cut the hedges and so on. He said that his contact details were on the board in the hallway and he could be contacted 24 hours a day: he was always willing to carry out any necessary repairs and regularly asked the tenants if there was anything that needed doing.

**88.** Under the tenancy agreements the tenants were required to report any issues to the landlord, but Mr. Medlam said that he did not regularly seek access in order to check inside the bedrooms, partly because of continuing caution after the Covid pandemic and partly out of respect for the tenants' privacy. He cared about the tenants and did not want to lose them, as many of them had been living in the property for a number of years.

**89.** Tenant Peter Hayes (as above) describes Mr. Medlam as '*a good landlord*' who always responds to any concerns that he may have.

**90.** Character witness - and Mr. Medlam's business partner - Peter Herowych (Page 134 of the bundle) states that the good relationship between them (as landlords) and the tenants of this property is evidenced by the fact that more than 80% of the current tenants have been in residence at the address for over 8 years. Mr. Herowych also confirms that they believed that they were working 'in conjunction with' SBC for the benefit of the tenants. In the past, during his management of the property, lists of required works were given and completed from time to time, but there was never a necessity for (or suggestion of) any penalty.

**91.** Although Mr. Medlam had been a property owner for some 20 years, the evidence was that his business partner Mr. Herowych had dealt with most of the paperwork, including HMO licence applications, until recently.

**92.** In the course of the formal interview Mr. Medlam agreed that perhaps his management of the property in recent years had not been adequate. However, he explained that due to personal circumstances (he had been helping to care for his elderly mother for some time, and still had some concerns for his father after her death in April 2022, as well as helping with Covid-related charities) he had not been able to be as proactive as he should have been. However, at all times he expressed a willingness to address any issues and concerns which the Council might have about his role as landlord, and he stated that in future he would ensure that he inspected the rooms more often and would arrange regular testing of the fire alarm system.

**93.** In conclusion, Mr. Medlam's case was that the enforcement officer's evidence was not of a sufficiently high standard for investigation of criminal offences, and they had not proved the allegations beyond reasonable doubt. He felt that he had been unfairly treated by the Council and that their evidence was full of inaccuracies, errors and 'lies'.

## **TRIBUNAL FINDINGS AND DETERMINATION**

### **A: HAVE THE OFFENCES BEEN PROVED BEYOND REASONABLE DOUBT?**

**94.** Dealing with the four different categories of alleged housing offences in the same order as above, the Tribunal findings were as follows:-

#### **95. Duty of Manager to take Safety Measures (6 breaches of Reg. 4)**

1) Fire alarms and system

a) At the conclusion of the hearing the evidence was clear and both parties agreed that the integrated fire alarm system was in fact working correctly. It was therefore false to state that there was a '*defective alarm system*' as the Council did in their case statement. This element of the offence is not proved beyond reasonable doubt – **Not proved.**

b) The Tribunal found that the Council's evidence that the first-floor 'sunder' was not working at all/or was not loud enough was inconsistent, unsupported by any testing equipment and unreliable. In respect of this element of the offence the case is not proved beyond reasonable doubt. **Not proved.**

2) Heat detector

The heat detector was hanging from the kitchen ceiling but there is no evidence that it was not working. The Tribunal found that, in the course of recent renovation and re-plastering work, there was a 'reasonable excuse' for the detector not being fixed to the ceiling at the time of the inspection. **Not proved.**

3) Fire extinguisher

The evidence as to when the extinguisher had last been tested was unclear.

Mr. Medlam admitted that he had not arranged for the tenants to be trained in using it, but there was no requirement to have extinguishers at all and therefore it was removed. The Tribunal found that a technical offence had been committed in this particular instance and Mr. Medlam's 'oversight' was not a reasonable excuse for failing to deal with it. **Proved.**

4) Ground floor cupboard

The Tribunal found that this was a technical breach of the regulations, but it could be remedied easily and quickly. **Proved.**

5) Other cupboards

The Tribunal found as in point 4) above. **Proved.**

6) Fire doors – intumescent strips.

The Tribunal noted that proper, self-closing fire doors were fitted throughout the property in accordance with the Regulations. The evidence as to the condition of the intumescent strips along the edges of the doors was inconsistent (whether they were *all* compromised, and whether some of them were completely painted over or not) and the photographs were of poor quality.

The Tribunal found that this element of the offence was not proved to the requisite standard. Mr. Medlam replaced all strips immediately in any event. **Not proved.**

**95. Other Fire Safety issues.**

a) Loft hatch and patch on kitchen ceiling.

There was no dispute that the loft hatch needed a lock. It could be easily and quickly fixed. **Proved.**

The kitchen ceiling was clearly in the process of being repaired, and the Tribunal found that Mr. Medlam had a reasonable excuse for not having completely sealed it by the time of the inspection, so this element of the offence was found **Not proved.**

b) Fire plan

The Tribunal noted that the fire plan was inaccurate. Although Mr. Medlam had refused the Council's offer to revise the plan during a further visit, the Tribunal found that the errors were indicative of a lack of precision in preparing this case to the criminal standard.

c) Fuse box

Given the evidence on the subject of the 'gap' or blank in the fuse unit, and in the light of their own knowledge and experience, the Tribunal was not satisfied that this issue amounted to a 'Category 1 hazard' under the HHSRS. No live wires could be touched even if a person were to try and insert a tool of some kind into the gap, and the evidence was that the cupboard was kept locked (with no access for the tenants) in any event. The Tribunal also noted that there had been an electrical inspection only 2 weeks before Mr. Carter's visit (which apparently had not highlighted the issue), and that Mr. Medlam fixed a cover in place within 24 hours of the matter being drawn to his attention. It was found that Mr. Medlam had a reasonable excuse for this oversight **Not proved.**

d) Cooker

The Tribunal was satisfied that the positioning of the cooker and power sockets did pose a hazard: Mr. Medlam recognised the problem and remedied it as soon as possible, but he was found to be in breach of the regulations in this respect. **Proved.**

The Tribunal found that there was no 'reasonable excuse' for Mr. Medlam's failure to recognise the potential risks. However, if previous inspections had not highlighted this particular hazard, that fact was relevant to Mr. Medlam's Culpability because if he had been given the impression that the arrangement was acceptable it was more understandable that he had not taken action to change it.

e) Smoke detector in Bedroom 5

Mr. Medlam's unchallenged evidence was that there *was* a smoke detector in Bedroom 5, as shown by the circle symbol with the 'Ds1' in it on the Council's own fire plan. There also appears to be an 'optical' detector in the living area of the flat, but Mr. Medlam stated that he was told he needed to put a heat detector in the bedroom as well. As this matter was not cleared up before the compliance re-inspection on the 13<sup>th</sup> of April, there was a technical breach of the regulations. **Proved.**

f) Washing machine cupboard

The Tribunal accepted Mr. Medlam's evidence that previous HMO inspections had failed to refer to the position of the washing machine as a potential hazard. In the light of this unusual arrangement, and of his evidence that the door *was* a proper fire door, it was found that Mr. Medlam had a reasonable excuse for this particular breach of the regulations. **Not proved.**

The Tribunal also noted Mr. Medlam's willingness to make the cupboard compliant and his questions to the officer as to what steps he needed to take: it was clear that he was taking his responsibilities seriously and reacting accordingly.

## **96. Culpability and Harm for breaches of Fire Safety Regulations:**

### Culpability.

The Tribunal had regard to the statutory guidance and the Council's Policy on enforcement, but it was not accepted that Mr. Medlam's culpability for breaches of Regulation 4 was 'High'.

There was a working, appropriate fire alarm system in the property and the evidence was that a qualified electrician checked it regularly. The main issues, and breaches which were found proved, related to the position of the cooker, the lock on the loft hatch, the failure to remove a fire extinguisher, the emptying of cupboards and the absence of additional heat detectors in one bedroom and one washing-machine cupboard. Mr. Medlam was also criticised for not entering the individual bedrooms regularly and for not having more frequent fire alarm checks. All of these issues were accepted by Mr. Medlam and they were easily and willingly remedied.

The Tribunal found that Mr. Medlam's culpability in this category was '**Low**'.

### Harm

The Tribunal agreed that the potential harm as a result of these failures was **Level B** according to the Council's rating system.

## **97. Duty of Manager to maintain common parts (4 alleged breaches of Regulation 7.)**

### 1) Accumulations in front and rear yards.

The Tribunal accepted the evidence that the items of waste had been left in the communal areas by the long-term ground-floor tenants, and that they were the only occupants who used the outside area. There was no evidence of any obstruction to or impact upon any of the other residents, and the clearing-up was dealt with promptly after the visit. In the particular circumstances no offence was made out. **Not proved.**

### 2) Guttering at the rear, first floor.

Despite Mr. Carter's claims, no vegetation or moss was visible in the photographs, and there was insufficient evidence to suggest that the gutters were in fact blocked.

At Page 131 of the bundle, paragraph 60 of the Council's 'Statement of Reasons' it was said that there was '*...evidence of penetrating damp in the property and blocked guttering...*'. The Tribunal found that this statement was factually incorrect and there was insufficient evidence to establish that either of these issues were present.

**Not proved.**

### 3) Walls in hallway.

The Tribunal noted the evidence that these walls were dry at the time of Mr. Carter's visit, even though he attended the property during the dampest time of year, in February.

It was accepted that the disfigured wallpaper had been caused by a leak which had been resolved some time ago, and that Mr. Medlam was planning to redecorate in the course of his renovation work. There was no evidence of mould despite Mr. Carter's suggestion that it might become an issue.

The Tribunal found that the marks and distortions shown in the photographs were cosmetic only, and Mr. Medlam was not in breach of the regulations on this point. **Not proved.**

### 4) Stained and dirty carpet on staircase to second floor.

The Tribunal did not find it proved to the requisite standard that there was any damage to this carpet, but it was admitted that it was dirty and stained. Mr. Medlam stated

that the dirt was caused by the second floor tenant's actions but his failure to address this issue amounted to a minor breach of the regulations, and there was no reasonable excuse put forward for it.

**Proved.**

### **98. Culpability and Harm for breach of regulations in relation to Common parts:**

#### Culpability:

The Council had assessed Mr. Medlam's culpability for the alleged breaches of this regulation as 'Medium'.

At Page 109, in the Statement of Reasons, SBC stated that:-

*'The breaches are in communal spaces. The appellant (property manager) has stated he inspects these areas and has a system to ensure they are safe and although the breaches are witnessed the manager has completed the necessary works to remedy the issues and had systems in place.'*

It was also said that there was '*...a lack of clarity about the frequency of Mr. Medlam's visits to the property*', but the Tribunal accepted the evidence of Mr. Medlam – as corroborated by tenant Peter Hayes – that he visited at least once per week.

The Tribunal did not find that the stained carpet was 'unsafe', and assessed Mr. Medlam's culpability in this respect as **Low**.

#### Harm

At Page 40 (in the Final penalty Notice) it was said that:- *'The condition of the dwelling with regards damp and mould and condition of the garden will impact the mental wellbeing of the tenants,,, but this is difficult to attribute to risk.'* No HHSRS rating was possible, and Harm was assessed in the lowest category at Level C.

Given that there was no 'damp or mould' found in respect of any of these alleged breaches or offences, and that there was no evidence whatsoever of impact on the mental well-being of any of the tenants, the Tribunal also assessed the level of harm as **Level C**.

### **99. Duty of Manager to Maintain Living Accommodation (4 alleged breaches of Regulation 8).**

#### 1) Broken window handle in Bedroom 4 en-suite

The Tribunal accepted the evidence that this window closer still functioned adequately and the tenant had no problem with it, but this is mitigation rather than a 'reasonable excuse' for the disrepair: **Proved**.

#### 2) Mould in Bedroom 2 en-suite bathroom.

The Tribunal found that the mould was due to a lack of ventilation and there was no evidence of penetrating damp. In the circumstances there was no breach of the regulations by the landlord: **Not proved**.

#### 3) Bathroom disconnected in Bedroom 3 en-suite.

The Tribunal accepted Mr. Medlam's evidence that he had recently undertaken the renovations to this bathroom with the tenant's approval. The tenant in question, Peter Hayes, confirmed in his unchallenged witness statement that he was happy with the works and that he had exclusive use of the bathroom next door. No offence is made out: **Not proved**.

#### 4) Leaks to ceilings in Bedrooms 1 and 2.

The evidence was that Bedroom 1 was used as a store-room by the long-term tenants, and the hole in the corner had been cut (and was being dealt with) as part and parcel of the repairs and renovations to the bathroom above. In the circumstances there is no breach of the regulations in respect of this hole. **Not proved.**

The small blister in the Artex ceiling of Bedroom 2 was historical and ‘de minimus’, and the Tribunal did not find that it amounted to a breach of the regulatory requirement to maintain living accommodation. **Not proved.**

### **100. Culpability and Harm for breach of regulations relating to the Living accommodation.**

#### Culpability:

The Council had assessed Mr Medlam’s culpability in this respect as ‘High’. However, the Tribunal only found that the case was proved to the requisite standard in respect of one item in this list – the broken window handle. There was no evidence at all as to how long the problem had persisted, and given the Tenancy agreement which requires the tenant to notify the landlord of any defect, and the fact that this was not a ‘serious failure’ on the part of Mr. Medlam, his culpability was found by the Tribunal to be **Low.**

#### Harm:

The Council considered that the alleged breaches in this bracket had a ‘low impact’ on the amenity and well-being of the tenants, and assessed any harm at Level C.

The uncontested evidence from Mr. Medlam was that the window (which is on the first floor) still functioned reasonably well, and that the tenant had no issue with it, so the Harm is assessed by the Tribunal at Level C.

### **101. Breach of Section 72 Housing Act 2004 – Unlicensed HMO.**

i) Mr Medlam fully admitted his fault in this matter from the outset. His case was that the failure to apply for a new licence in time was a genuine and honest mistake on his part, and therefore he had a reasonable excuse for not complying with the statute.

ii) The Council has repeatedly mis-stated the law in respect of this offence by suggesting that it is an offence of ‘strict liability’, whereas in fact there is a defence under Section 72(4) if the person has a ‘reasonable excuse’ for their failure.

iii) The Tribunal found that the Council’s letter of the 7<sup>th</sup> November 2022 was ambiguous and misleading, and that both that letter and the communications thereafter were genuinely misunderstood by Mr. Medlam.

iv) The Tribunal found that Mr. Medlam had no previous experience of re-licensing applications (as he readily admitted), that he had asked for guidance, and that it was reasonable for him to assume that the inspection was indeed a ‘pre-licence inspection’ and an integral part of the process.

v) The following pieces of evidence were noted in particular:

At Page 98 in the Statement of Reasons the Council refer to the officer’s visit as a ‘*pre-licence inspection.*’



At Page 127 – The Council’s ‘Response’ to Applicant, Point 5, it is said that:- *‘The purpose of the inspection was to check amenities and standards within the HMO as part of the HMO renewal process’.*

vi) It was therefore understandable that Mr Medlam should have failed to appreciate that the application had to be made before any inspection took place. It was not explained to him that, if he had made his application for a renewed licence in November 2022, the ‘clock would have stopped’ (in terms of licence expiry) until after the inspection – whenever that might be.

vii) In the light of the above findings, and having considered all the available evidence on this topic, the Tribunal determined that Mr. Medlam had a ‘reasonable excuse’ for not making the application in time and therefore the Section 72 offence was ‘**Not proved.**’

### **Other findings.**

**102.** The Tribunal found that it was unhelpful and unnecessary for the Council to have refused to provide Mr. Medlam with a copy of the recording of his interview, particularly when he had been told at the outset that he could have one.

**103.** The Tribunal also found that copies of the photographs of the inspection could and should have been provided on request.

**104.** The Tribunal made no finding that the Council or its officers had ‘lied’ in respect of any of the issues in this case, but there were numerous errors and misleading statements in their evidence and in some instances Mr. Medlam’s answers in interview had been misquoted.

### **B - APPROPRIATE ACTION**

**105.** Having determined that the Appellant Mr. Medlam was Guilty of a small number of offences, the Tribunal went on to consider what was the appropriate course of action.

**106.** At Page 356 of SBC’s Policy on enforcement, the 5 options for disposal or resolution are listed as: -

No action  
Informal action  
Formal caution  
Civil penalty  
Prosecution

#### **107. No action -**

The Council concluded that some action was required to address the potential hazards and defects at the property.

The Tribunal agreed with this conclusion.

#### **108. Informal Action -**

It was said that it could be appropriate to attempt an informal remedy in some cases:

*'Where non-compliance is minor, or hazards less serious, or the responsible person is expected to comply', in which case: -  
'Officers may seek an undertaking (pre-formal process) to complete works, within a short timescale, if appropriate ...'*

**109.** SBC's Enforcement Policy, (at Page 345 point 6.3) states that: *'In some cases the Council may follow a pre-formal process in which it will seek to work with landlords and agents to reduce hazards. This will only be followed where the responsible person is willing to undertake to complete all required works quickly, as required, where that route is expected to provide a quicker resolution than formal action.'*

**110.** At Paragraph 54 of the Statement of Reasons it was said that Mr. Medlam *'...had not accepted responsibility'*, but this statement is clearly false.

**111.** The Tribunal also found that the Council had no justification or grounds for stating that Informal action: -

*'...would not deter Mr. Medlam from committing further offences in the future.'* (Page 99)

They had conceded (at Page 326, in Susan Green's reply to Mr. Medlam's letter of 1<sup>st</sup> September 2023): -

*'...You completed all the works within the schedule...within the timescale afforded'*

**112.** The Tribunal found that **Informal Action** was the most appropriate way of dealing with Mr. Medlam's case, in particular because of the following factors: -

- i) his full acceptance of fault and admission of responsibility from the outset
- ii) his good character and lack of previous offending (as further confirmed by the character references, by the unequivocal endorsement from one of his tenants, and by the undisputed fact that most of his tenants had lived in the property for many years)
- iii) his expressed willingness to deal with the issues immediately (as later evidenced by his full compliance within the timescales)
- iv) the relatively small number of breaches and offences which were proved to the criminal standard
- v) the lack of financial benefit as a result of the offending, and
- vi) the limited impact on health outcomes for the tenants as a result of the failures on his part.

### **113. Formal Caution-**

The Council had not even considered a Formal Caution, despite their own policy to the effect that it should be considered where a landlord accepts responsibility and agrees to a Caution. As above the Tribunal found that Informal action was more appropriate.

### **111. Financial Penalty-**

In justifying their decision to impose financial penalties, the Council had incorrectly stated that: -

*'there were 'a number of Category 1 and 2 hazards' at the property. In fact the only questionable Category 1 hazard (the gap in the fuse box) was dealt with immediately and was not included even in the Schedule of Works*

**112.** The Council went on to impose financial penalties for all of the alleged offences, even though that was the second most serious sanction on the list of disposals, and was effectively an alternative to prosecution.

**113.** SBC's policy states that the primary aims of financial penalties are to:-  
Change the behaviour of the landlord.

Eliminate any financial gain or benefit arising out of non-compliance with the regulations.

Be proportionate to the nature of the breach of the regulations and the potential harm outcomes.

Aim to deter future non-compliance.

Reimburse the costs incurred by the Council in undertaking works in default.

**114.** The Tribunal found that the Council were unjustified in determining that a Financial Penalty was appropriate, after Mr. Medlam had made full admissions in the interview.

## **CONCLUSION.**

**115.** In conclusion, the Tribunal found that Mr. Medlam had committed the following housing offences: -

- 1) Failure to dispose of an unnecessary fire extinguisher
- 2) Having 2 under-stairs cupboards with combustible items in them
- 3) Failing to fix a lock to the loft-hatch
- 4) Allowing a cooker to remain placed in front of power sockets
- 5) Having only one kind of smoke/heat detector in bedroom 5
- 6) Not replacing a stained carpet on one section of the communal staircase, and
- 7) Not replacing a broken window-handle in Bedroom 4's en-suite.

**116.** The Tribunal assessed Mr. Medlam's Culpability as 'Low', and any potential Harm at Category C in respect of all items except the cooker.

**117.** The Tribunal determines that these relatively minor breaches should all have been dealt with informally, and therefore all the Financial Penalties are cancelled.

## **APPEALS**

### **Right to Appeal**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) as this will enable the First-tier Tribunal to deal with it more efficiently.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.