



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

Case Reference : **MAN/32UB/HNA/2022/0091-0094**

Property : **123 and 125 Norfolk Street, Boston,
PE21 9TE**

**Applicants and
Appellants** : **(1)Mr Nigel William Harry Hobbs and
(2)Mr James Robert Hobbs**

Represented by : **Mr David John, Solicitor
Mr Stephen Hines, Barrister**

Respondent : **Boston Borough Council**

Type of Application : **Appeal Against a Financial Penalty,
section 249 A, section 95(1) and
Paragraph 10 of Schedule 13 A of The
Housing Act 2004.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mrs S. A. Kendall, BSc, MRICS.**

Date of Decision : **6 March 2024**

DECISION

Application and Background

1. Mr Nigel William Harry Hobbs and Mr James Robert Hobbs are "the Appellants" in this case. Nigel William Harry Hobbs is the father of James Robert Hobbs. It appears that they have been in a business association with each other for some time. This business has included the renting out of properties on a commercial basis. The company N.W. H. Hobbs Properties (dissolved on 5 December 2017) has the first Appellant recorded as being an officer of the company and he is described as a property developer. The current association is through Hobbs Homes.
2. The case involves civil financial penalties imposed by Boston Borough Council "the Respondent" on the Appellants in relation to both 123 and 125 Norfolk Street, Boston, PE21 9TE.
3. The case involves the management of two properties, 123 and 125 Norfolk Street, Boston, PE21 9TE. The Appellants' joint bundle contains a witness statement from the second Appellant, dated 15 September 2023, in which it is made clear that the Appellants do not seek to challenge the civil financial penalties imposed in relation to 123 Norfolk Street, Boston. These Civil financial penalties are:
 - Case reference MAN/32UB/HNA/2022/0091, Mr James Robert Hobbs, managing a HMO in breach of the Management of HMO Regulations 2006, two offences with a total financial penalty of £5,750. Contrary to Regulation 3(b) and 4(4)(a) of the Management of Houses in Multiple Occupation (England) Regulations 2006 "the Regulations" and section 234 of the Housing Act 2004 "the Act".
 - Case reference MAN/32UB/HNA/2022/0092, Mr Nigel William Harry Hobbs managing a HMO in breach of the Management of HMO's Regulations 2006, two offences with a total financial penalty of £5,750. Contrary to Regulation 3(b) and 4(4)(a) of the Management of Houses in Multiple Occupation (England) Regulations 2006 and section 234 of the Act.
4. As such the preparation of this case has centred on the remaining appeals against the financial penalties that relate to 125 Norfolk Street, Boston "the property". The remaining appeals relate to:
 - Case reference MAN/32UB/HNA/2022/0093, Mr Nigel William Harry Hobbs managing a HMO in breach of the Management of HMO's Regulations 2006, two offences with a total financial penalty of £5,500. Contrary to Regulation 3(b) and 4(4)(a) of the Management of Houses in Multiple Occupation (England)

Regulations 2006 and section 234 of the Act. Committed on 23 May 2022.

- Case reference MAN/32UB/HNA/2022/0094, Mr Nigel William Harry Hobbs managing a HMO that required a licence without having a licence. Financial penalty £15,000. Contrary to section 72 of the Housing Act 2004 “ the Act”. Committed on 23 May 2022.
5. Appellant (1) Mr Nigel William Harry Hobbs has, at all times relevant to this case, been the freeholder of 125 Norfolk Street, Boston, PE21 9TE.
 6. By four applications, dated 13 November 2022 the Appellants’ appealed against the issue of the four financial penalty notice referred to above, under sections 249 A and Paragraph 10 of Schedule 13 A of The Housing Act 2004, "the Act".
 7. The appeals are raised on the grounds that the Appellants submit that the property, was never intended to be run as a House in Multiple Occupation "HMO". It was by the actions of a tenant in failing to move out of the property that the property came within the definition of a HMO that required a licence and that amounts to a reasonable excuse so that the offence of failing to have an HMO licence was not committed. Further, for the same reasons the regulations were not breached. Alternatively, the financial penalties are too high, or should not have been imposed at all.
 8. Directions were issued on 18 May 2023. These indicate that the Tribunal will not inspect the property unless a party requests that this should be done. An inspection has not been requested by any party to the case.
 9. The Appellants’ have served four hearing bundles, one for each case reference. All four of those bundles contain the same indexed and paginated 21 page evidential bundle. There are then additional documents added, including application forms, correspondence, etc. so that the bundles provided to the Tribunal members are 108, 54, 54 and 55 pages in length. Other than the application forms the majority of these extra pages are of no evidential value.
 10. The Respondent has served one hearing bundle containing an indexed and paginated bundle of 455 pages and an additional statement from Arturs Serdjuks, dated 26 September 2023. Further, before the commencement of the paginated bundle there are 3 pages, an email serving the bundle, a note serving the bundle and a blank page. (This is specified because at the hearing Mr Hines, barrister for the Appellants, expressed concern that Tribunal members appeared to have additional pages in our bundles as opposed to his bundle).
 11. The written evidence is of substantial length and will only now be referred to where necessary during the determination of the issues in the case.

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.

Section 72 Offences in relation to licensing of HMOs

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

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

(a)for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b)for permitting the person to occupy the house, or

(c)for failing to comply with the condition,

as the case may be.

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

(7A)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B)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.

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.

Section 254 Meaning of “house in multiple occupation”

- (1)For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—
 - (a)it meets the conditions in subsection (2) (“the standard test”);
 - (b)it meets the conditions in subsection (3) (“the self-contained flat test”);
 - (c)it meets the conditions in subsection (4) (“the converted building test”);
 - (d)an HMO declaration is in force in respect of it under section 255; or
 - (e)it is a converted block of flats to which section 257 applies.
- (2)A building or a part of a building meets the standard test if—

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
 - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.
- (3) A part of a building meets the self-contained flat test if—
- (a) it consists of a self-contained flat; and
 - (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).
- (4) A building or a part of a building meets the converted building test if—
- (a) it is a converted building;
 - (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
 - (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - (d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
 - (e) their occupation of the living accommodation constitutes the only use of that accommodation; and

- (f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.
- (5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.
- (6) The appropriate national authority may by regulations—
- (a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
- (b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
- (c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.
- (7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.
- (8) In this section—
- “basic amenities” means—(a) a toilet, (b) personal washing facilities, or (c) cooking facilities;
- “converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;
- “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));
- “self-contained flat” means a separate set of premises (whether or not on the same floor)—(a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants.

The Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018

Description of HMOs prescribed by the Secretary of State

(In force from 1 October 2018 and replacing the 2006 Order)

Clause 4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

- (a) is occupied by five or more persons;
- (b) is occupied by persons living in two or more separate households; and
- (c) meets—
 - (i) the standard test under section 254(2) of the Act;
 - (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
 - (iii) the converted building test under section 254(4) of the Act.

Management of Houses in Multiple Occupation (England) Order 2006

Regulation 3. Duty of manager to provide information to occupier

The manager must ensure that—

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

Duty of manager to take safety measures

Regulation 4.—(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. Duty of manager to supply and maintain gas and electricity

Paragraph 10 of schedule 13A of the Housing Act 2004

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.

The hearing

12. The hearing via video platform commenced at 10am on Wednesday 6 March 2024. Persons present on behalf of the Appellants at the hearing are as detailed on page 1 of this Decision above. On behalf of the Respondent Housing Standards Officer Arturs Serdjuks and former Housing Standards Team Leader, Tom Amblin-Lightowler were present. (Officer Amblin-Lightowler having now left the Respondent's employ).
13. The Appellants confirmed that they withdraw their appeals against the offences relating to 123 Norfolk Street, Boston and that the financial penalties there imposed will stand. The Tribunal then turned to consider the cases relating to 125 Norfolk Street, Boston.
14. Statements served in the hearing bundles of the parties stand as the witness's evidence in chief.
15. Officer Serdjuks, the lead officer in the case gave evidence on behalf of the Respondent. The Land Registry confirms that Nigel William Harry Hobbs has been the proprietor of the property, that is a freehold, since 31 March 2016 (Respondent's bundle, page 27-29).
16. Council tax records have Nigel William Harry Hobbs recorded as being the owner of the property (Respondent's bundle, page 33).
17. The lodger agreement for a room in the property, dated 29 October 2021 with Aleksandrs Sorgins has N. W. H. Hobbs Properties (the then already dissolved company) as the landlord, signed on behalf of the landlord by James Robert Hobbs (Respondent's bundle, page 34-35). A bank account is given for payment of the rent, named as account for N. W. H. Hobbs Properties, but giving the bank account details of Nigel William Harry Hobbs.
18. On 4 April 2022 and 6 April 2022 the Respondent received a letter and then an email drawing the attention of the Respondent to the property. The organisations sending these messages and the content of the messages are not relevant to the case.
19. Officer Serdjuks made enquiries to establish the owner of the property and then on 26 April 2022 he carried out an unannounced inspection of the

property. The Officer spoke to two tenants who each occupied a room in the property, Mr Sorgins and Mr Harizanov, who are Latvian and Bulgarian, respectively, both paying rent. The Officer was told that a family of four had just moved out.

20. The property is a brick built Victorian semi-detached house comprised of a ground floor with a bedroom, shared kitchen, shared dining room, and a shared bathroom. The first floor has three bedrooms and a shared bathroom. The second story is not accessible as it has been closed off. The four bedrooms all have their own locks, each having a battery powered standalone fire alarm, as did the stairwell and the kitchen. Photographs were taken (Respondent's bundle, page 36 to 55).
21. On 23 May 2022 Officer Serdjuks made a further visit to the property with Officer Amblin-Lightowler. The Officers found that the tenants as of 16 April 2022 were still residing at the property, but they had been joined by a family of Bulgarian nationals, father Ivan Borisov, mother Franka Borisova and their teenage son. This family had no tenancy agreement but were paying rent and had been provided with details as to who it was to be paid to, namely N. W. H. Hobbs Properties, but with bank account details of Nigel William Harry Hobbs. This established that on this date there were five occupants of the property with three groups paying rent. The Officers suspected that the property was being managed as a HMO that required a licence. The property does not have a licence to be operated as a HMO.
22. The Officers saw that the property has no protected escape route in the event of a fire and that it does not have a hard wired and interlinked fire detection system as required by the LACORS Housing – Fire Safety, Guidance On Fire Safety Provisions For Certain Types Of Existing Housing guide issued by the Chartered Institution of Environmental Health and the Chief Fire Officers Association “the LACORS guide”.
23. On 24 May 2022 Nigel William Harry Hobbs was served with Notice of HMO declaration pursuant to section 255 of the Act (Respondent's bundle, page 60-63). The Notice declared that the property is an HMO, because it satisfies the standard test (section 254(2) of the Act). The Notice pointed out that if no appeal is made to this First-tier Tribunal by 23 June 2022 then the declaration would come into effect. No such appeal was made and as a result from 23 June 2022 the property is a HMO. The Tribunal notes however that this declaration post dates the date of the offences, being 23 May 2022.
24. On 17 June 2022 Officer Serdjuks again visited the property and saw that there were now 3 signs exhibited in the kitchen of the property that had not been there during his inspection on 23 May 2022. One of these signs did now provide the details of the manager of the property as being Hobbs Homes Ltd, giving the home address of the second Appellant and a mobile telephone number (Respondent's bundle, page 115). The other two frames contain house rules and kitchen and bathroom rules. Other hazards were

noticed, but dealt with informally, the Officer sending a schedule of the remedial action required to the Appellants.

25. On 27 June 2022, the evidence obtained by Officer Serdjuuks was reviewed and with the Officer forming the opinion, on behalf of the Respondent, that the property was being occupied by 5 persons forming 2 or more households, with three persons paying rent and that the standard test for a building being an HMO was satisfied.
26. On 1 August 2022 the Officer inspected the property again and saw that the other hazards that had been dealt with informally had been rectified.
27. On 19 July 2022 two notices were issued to Nigel William Harry Hobbs (Respondent's bundle, ASE/098) stating that the Respondent intended to issue a financial penalty in respect of three offences, committed on 23 May 2022 of:
 - having control or managing a HMO that required a licence and not having a licence, section 249A and 72 of the Act. Penalty £15,000.
 - having control or managing a HMO whilst the property was in breach of the Regulations, regulation 3(b) failure to display the managers name, address and telephone number in a prominent position. Section 234 and 249A of the Act. Penalty £500.
 - having control or managing a HMO whilst the property was in breach of the Regulations, regulation 4(4)(a) failure to take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to the design of the HMO. This relating to the lack of fire safety escape route and a hard wired, interlinked fire detection system. Section 234 and 249A of the Act. Penalty £5,000.
28. The financial penalties were calculated in accordance with the Respondent's civil penalty matrix. (Respondent's bundle, ASE/100). The Respondent's policy document, containing the matrix are available online.
29. The Appellant made representations on 6 September 2022 and these were considered. A decision being made that the representations did not alter the level of civil penalty to be imposed (Respondent's bundle, ASE/101).
30. On 19 October 2022 final notices of the imposition of the same financial penalties for the same offences were issued. (Respondent's bundle, ASE/102 and 103).
31. The Officer added that a lodger's agreement was not to be used unless the manager resided in the same building as the lodger.
32. The Officer was cross examined by Mr Hines on behalf of the Appellant. The purpose of the questions was to put to the Officer that the Appellant had a reasonable excuse for these offences in that they had only been committed because a tenant, Mr Sorgins, had failed to move out of the property when he said that he would move out. In the alternative that if the

offences had been committed then the financial penalties had been too high.

33. The Officer maintained that from the date that five persons had occupied the property it had become a licensable HMO and since there was no licence an offence was committed. The Appellant should not have permitted anyone else to move into the property until the tenant in question had actually moved out. The defence of having a reasonable excuse for permitting five persons to occupy the property did not apply. In relation to the questions put relating to the Officers subjective decisions as to where to place the offending in the matrix, the Officer was less confident in defending some of the decisions.
34. The Officer agreed that the Appellants had taken legal action to remove Mr Sorgins from the property. The Officer maintained that the Appellants had been told that they could apply for a temporary exemption from the requirement to have a licence (which could not be considered until it had been made and even then, might or might not be granted). No such application had been made, even though Nigel William Harry Hobbs stated in his representations to the Respondent that such an application had been made (Respondent's bundle, ASE/101) . In any event the property was declared to be a HMO on 24 May 2022 (section 255 of the Act) and this declaration had not been appealed against. Hence from 23 June 2022 the property is assumed to be a HMO, this post dates the section 72 offence, but where commission of that offence is being challenged the Tribunal would also expect the assumption pursuant to section 255 of the Act to be challenged.
35. The Officer referred to the Appellants' claim for possession and pointed out that paragraph 8 of the particulars of the claim indicated that the Appellants' wanted Mr Sorgins out of the room that he was occupying in the property because until he had gone the Appellants could not let the room out. Suggesting that the Appellants had intended to carry on running a licensable HMO without having a licence.
36. Officer Amblin-Lightowler gave evidence confirming that in his view on 23 May 2022 the property was a licensable HMO and did not have a licence. Further, the Regulations apply to a HMO whether or not it needs a licence. He was cross examined.
37. In relation to the defence of having a reasonable excuse the Officer said that the managers did not have to let the Borosov family into the property. He accepted that failure to permit the family to enter the property would probably have made them homeless, but it was the duty of the local authority to provide accommodation for homeless people and not the Appellants. It was the Appellants responsibility to ensure that he complied with the Act and Regulations relating to HMO's and the Appellant has failed to do so.

38. Further, Nigel William Harry Hobbs had created a situation that could lead to the property having too many occupants, by inviting the Borosov family of three to enter the property before he was sure that Mr Sorgins had actually left the property.
39. James Robert Hobbs gave evidence for his father. His statement being accepted as his evidence in chief. He asserted that the Borosov family of mother, father and son were cousins of the tenant Mr Harizanov, so that the four persons were one family group. He stated that his father had very little if anything to do with day to day management of the property. If Mr Sorgins had moved out when he was expected to, the property would have been occupied by 4 people, 2 groups paying rent, but all of them belonging to the same family. The Appellant had never intended the property to be a licensable HMO.
40. Mr Sorgins had finally been evicted from the property on 19 October 2022.
41. Nigel William Harry Hobbs had not provided a witness statement. He was present throughout the oral hearing. He was not called to give evidence.

Determination of the issues

42. The first issue to be considered is are the Tribunal members satisfied beyond any reasonable doubt that these three offences were committed on 23 May 2022.
43. Dealing first with offence under section 72 of the Act. The Tribunal is so satisfied that on 23 May 2022 there were 5 occupants of the property. The Borisov family of three who were paying rent. Mr Harizanov, who was paying rent and is a cousin of the Borisov family. Finally, Mr Sorgins, who is not related to the Borisov family and was paying rent.
44. The Tribunal considers the definition of a licensable HMO as prescribed by the Order of 2018 (see above in the law section of this Decision). There were 5 occupants. There were two households occupying the property. Three groups were paying rent. The standard test prescribed by section 254 (2) of the Act is satisfied (see above in the law section of this Decision). Due to presence of Mr Sorgins this property was a licensable HMO.
45. The Tribunal has seen land registry and council tax evidence that satisfies the Tribunal that Nigel William Harry Hobbs was the owner of the HMO. He has described himself as a property developer and was an officer of a property management company with his son. A lodger agreement was made out with the landlord being N. W. H. Hobbs Limited, a company with Nigel William Harry Hobbs, being an officer of the company (see paragraph 17, above).
46. The use of Nigel William Harry Hobbs bank account to receive rent from the property is probative that Nigel William Harry Hobbs was still actively involved in management of the property.

47. Is there a reasonable excuse for committing this offence, in that the Appellant could reasonably rely upon Mr Sorgins to quit the property when he had said that he would?
48. The Tribunal has been asked to consider some of the evidence given on behalf of the Respondent relating to the first visit by Officers to the property on 26 April 2022 as irrelevant to the commission to the offences on 23 May 2022 because it predates the offence. Namely, that in addition to the two single men resident at the property on that date a family of 4 had just moved out.
49. The Tribunal might have accepted this submission if it were not for the fact that the Appellant also seeks to persuade the Tribunal in the reasonable defence that is being raised that the Appellant had never intended this property to be used as an HMO so that the Act and Regulations relating to a HMO need not have been followed. As such the evidence that 6 persons were resident at the property on or about 19 April 2022 is highly probative that the part of the submission here described is not correct, because it is highly likely that on 19 April 2022 the same offence was being committed.
50. The Tribunal agrees with the Respondent that it was very unreasonable for the Appellant to invite the Borosov family to move into the property when the tenant Mr Sorgins had not already moved out of the property. As such the Appellant made the offence possible, whereas if he had acted reasonably, by making sure Mr Sorgins had quit the property before he arranged for others to move in, the offence could not have been committed. The defence of reasonable excuse for there being 5 residents in the property is not made out. The property did not have a licence. The Tribunal is satisfied beyond any reasonable doubt that Nigel William Harry Hobbs has committed the offence under section 72 of the Act.
51. In relation to the offence of failure to display the managers name, address and telephone number in a prominent position. The Tribunal accepts the Officers evidence that on 23 May 2022 the sign that did display this information on the next visit was not present. The Tribunal is satisfied beyond any reasonable doubt that Nigel William Harry Hobbs has committed the offence under Regulation 3(b) of the Regulation.
52. In relation to regulation 4(4)(a) of the Regulations, failure to take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to the design of the HMO. This relating to the lack of fire safety escape route and a hard wired, interlinked fire detection system. The Tribunal notes that this is a three storey building, the upper storey having been blocked off. The HMO has 4 bedrooms each of which has a door that has a door lock. There are shared facilities. There are a number of standalone battery powered fire detectors in bedrooms and at risk areas. There is no protected escape route and there is no hard wired, interlinked fire detection system.

53. The LACORS guide recommends that the larger the HMO the more fire safety precautions should be taken (LACORS, paragraph 22.3), with an interlinked system of alarms or detectors (LACORS, paragraph 22.9 gives a table of examples). The Tribunal determines that in the absence of a protected fire escape route, thereby increasing the risk of personal injury or death, a fire alarm system of high specification is necessary. Further, an escape route with 30 minute fire resistance is recommended in this type of HMO (LACORS guide, paragraph 9.7). The Tribunal determines that it is satisfied beyond any reasonable doubt that Nigel William Harry Hobbs has committed the offence under Regulation 4(4)(a) of the Regulations. He has failed to take all such measures as are reasonably required to protect the occupiers of the HMO from injury.
54. The Tribunal has not heard from Nigel William Harry Hobbs, but there are representations sent by him to the Respondent that were to be considered by the Respondent before issue of the final financial penalty notice (Respondent's bundle, ASE/101). In that document on page 2 especially, Nigel William Harry Hobbs refers to various works done on the property and the HMO Regulations and the Act. The Tribunal is satisfied that Nigel William Harry Hobbs had a good working knowledge of these requirements, as we expect from a property developer who is involved in owning and management of properties on a commercial basis.
55. Taking into account all of the above evidence, the Tribunal is satisfied beyond any reasonable doubt that the circumstances raised as a potential defence do not amount to a defence in relation to any of these offences.
56. The Tribunal is satisfied that the procedures required by the Act have all been followed.
57. Turning now to the level of the financial penalties imposed.
58. The Tribunal considers the evidence of Officer Serdjucs (first statement) where over 2 pages the officer sets out the way in which he considered the Respondent's civil penalty matrix. The Officer was cross examined and found it difficult to justify some of the subjective decisions that he made as he applied the objective criteria contained within the matrix.
59. Mr Hines asked the Tribunal to take a very different view of the subjective decisions, reducing the financial penalties, or in the case of the absence of the manager's details, replacing the financial penalty with a warning letter.
60. Mr Hines also submitted that the objective criteria within the matrix could result in the same issue being considered more than once. The Tribunal does not agree with this submission. The Tribunal expects the user of the matrix to use common sense.
61. In relation to the financial penalties we do agree with Mr Hines that as a matter of being fair and just they should be reduced.

62. The Tribunal now goes through the matrix (Respondent's bundle, ASE/100) and we substitute our determinations as to the subjective decisions in the matrix, where we decide that this is necessary.
63. In relation to all three offences, the Tribunal has the knowledge now, that Officer Serdjuks did not have, that the appeal against two of the sets of offences have been withdrawn. Nigel William Harry Hobbs will in any event have to pay a financial penalty, learning from his mistakes. We also note that during this case some additional hazards were found by the Officer and that these were rectified by informal means. This shows a desire to both cooperate with the Respondent and bring the property up to standard. As such we take the view that we have high confidence that a financial penalty will deter repeat offending and therefore all three offences will score a 1 in this part of the matrix, rather than the score of 5 as determined by the Officer.
64. Dealing with the remainder of the section 72 offence under the Act. We agree with the Officer in his determination of the next three factors and the final factor. We disagree with the Officer's assessment of the fifth factor and attribute 10 points to that (rather than 20 points). We consider this offending to have been a negligent act, failing to take reasonable care to ensure that the offence was not committed. That gives a total score of 55 (rather than 69). As a result we determine that the matrix calculation provides for a financial penalty of £10,000 (reduced from £15,000).
65. Turning then to the breach of regulation 4(4)(a) of the Regulations. We agree with the Officers determinations of factors 2, 3 and 4. We disagree with the Officer in factor 1, which we score as a 1 (for the same reasons as above). We also disagree with the Officer in factor 5, which we score at 10 (for the same reasons as above). This gives a total score of 37, applying the matrix that results in a financial penalty of £1,000 (reduced from £5,000).
66. Turning then to the breach of regulation 3(b) of the Regulations. We agree with all of the determinations as made by the Officer, except for factor 1 which we reduce to 1 (for the same reasons as above). This gives a total score of 14 (instead of 18), applying the matrix to this score still results in a financial penalty of £500.

The Decision

67. The Tribunal is satisfied beyond any reasonable doubt that on 23 May 2022 the property was an HMO that required a licence and that Nigel William Harry Hobbs let out the property without such a licence and has therefore committed the offence as detailed on the final notice to issue a civil penalty, pursuant to section 72 of the Housing Act 2004. The Tribunal decides to confirm the final financial penalty notice in this regard.
68. The Tribunal is also satisfied beyond any reasonable doubt that on 23 May 2022 the property was an HMO and was being managed in breach of regulation 3(b) and 4(4)(a) of the Management of Houses in Multiple Occupation (England) Regulations 2006, Nigel William Harry Hobbs

committing offences contrary to section 234 of the Act. The Tribunal decides to confirm the final financial penalty notice in this regard.

69. The Tribunal decides that the civil financial penalty imposed in relation to two of these offences must be varied to; £10,000 in respect of the offence that on 23 May 2022 the HMO was required to be licensed and was not so licensed contrary to section 72 of the Act and £1,000 in respect of the offence, that on 23 May 2022, under section 234 of the Act, the Appellant failed to comply with management regulations in respect of an HMO, Regulation 4(4)(a), duty of the manager to take safety measures. The Tribunal varies the final financial penalty notices to reflect this reduction in two of the financial penalties.
70. The Appellants' having withdrawn their appeals against two other sets of offences the Tribunal confirms the final financial penalty notices in respect of those matters (paragraph 3, above).
71. As a result the total financial penalty to be paid by Nigel William Harry Hobbs in relation to three final financial penalty notices is £17,250.
72. As a result the total financial penalty to be paid by James Robert Hobbs in relation to one final financial penalty notice is £5,750.
73. The Appellants are required to pay these penalties to the Respondent within 28 days of this Decision being sent to them.
74. 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

2 April 2024