



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

**Case reference** : **MAN/32UD/HNA/2023/0030 & 0031**

**Properties** : **11 Portland St, Lincoln LN5 7LG  
42 Vernon St, Lincoln LN5 7QR**

**Applicant** : **Mrs Mini Thomas**

**Representative** : **None**

**Respondent** : **City of Lincoln Council**

**Representative** : **Ms Mai Ward, Solicitor for the  
Respondent**

**Type of application** : **Appeal against financial penalties under  
section 249A and Schedule 13A of the  
Housing Act 2004**

**Tribunal member** : **Judge C Goodall  
Mr P Mountain**

**Date and place of  
hearing** : **28 May and 23 September 2024, by  
Video hearing**

**Date of decision** : **24 October 2024**

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**DECISION**

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## **Background**

1. On 16 March 2023, City of Lincoln Council (“the Council”) served three financial penalty notices on Mrs Mini Thomas (“the Applicant”), being:
  - a. A notice relating to 11 Portland Street, Lincoln (“Portland Street”), alleging commission of an offence under section 72(3) of the Housing Act 2004 (“the Act”), namely breach of conditions 2, 6, and 7 of Schedule 5 of the Applicant’s licence, and imposing a penalty of £22,215.81 in relation to the offence;
  - b. A notice also relating to Portland Street, alleging commission of an offence under section 234 of the Act, namely failure to comply with regulation 3(b) of the Management Regulations, and imposing a penalty of £3,665.78 in relation to the offence;
  - c. A notice relating to 42 Vernon Street, Lincoln (“Vernon Street”), alleging commission of an offence under section 234 of the Act, namely failure to comply with regulation 7(1) of the Management of Houses in Multiple Occupation (England) Regulations 2008 (“the Management Regulations”), and imposing a penalty of £7,119.23 in relation to the offence.
2. The Applicant appealed the notices. The appeal was heard over two days, being 28 May and 23 September 2024, by video. The Applicant was supported by her husband, Mr Baiju Varghese. The Council were represented by their solicitor, Ms Mai Ward. We heard evidence from the Applicant and from Ms Hannah Cann, and Mr Matthew Savage, from the Council. At the commencement of the hearing on 23 September 2024, the Applicant said that Mr Varghese would not attend the hearing. However, during that hearing, it became apparent that he was in fact in the room with the Applicant. From that point on, they sat together and were visible to all participants in the video hearing. The Applicant had supplied a bundle of documents running to 402 pages and the Council a bundle running to 1,292 pages for the Tribunal to consider.

## **Law**

3. The relevant provisions of the Act, so far as this application is concerned are as follows-

### **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.
- (2) A person commits an offence if—
  - (a) he is a person having control of or managing an HMO which is licensed under this Part,

- (b) he knowingly permits another person to occupy the house,
  - and
  - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
  - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
  - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
  - (a) a notification had been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
  - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for permitting the person to occupy the house, or
  - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

## **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 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—

...

- (b) section 72 (licensing of HMOs),

...

- (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.

...

**Schedule 13A of the Act provides:**

SCHEDULE 13A Financial penalties under section 249A

*Notice of intent*

- 1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a “notice of intent”).
- 2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.
- (2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—
- (a) at any time when the conduct is continuing, or
  - (b) within the period of 6 months beginning with the last day on which the conduct occurs.
- (3) For the purposes of this paragraph a person's conduct includes a failure to act.
- 3 The notice of intent must set out—
- (a) the amount of the proposed financial penalty,
  - (b) the reasons for proposing to impose the financial penalty, and
  - (c) information about the right to make representations under paragraph 4.

*Right to make representations*

- 4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.
- (2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

*Final notice*

- 5 After the end of the period for representations the local housing authority must—
- (a) decide whether to impose a financial penalty on the person, and

- (b) if it decides to impose a financial penalty, decide the amount of the penalty.
- 6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.
- 7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.
- 8 The final notice must set out—
  - (a) the amount of the financial penalty,
  - (b) the reasons for imposing the penalty,
  - (c) information about how to pay the penalty,
  - (d) the period for payment of the penalty,
  - (e) information about rights of appeal, and
  - (f) the consequences of failure to comply with the notice.

*Withdrawal or amendment of notice*

- 9 (1) A local housing authority may at any time—
  - (a) withdraw a notice of intent or final notice, or
  - (b) reduce the amount specified in a notice of intent or final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

*Appeals*

- 10 (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—
  - (a) the decision to impose the penalty, or
  - (b) the amount of the penalty.
- (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

- (3) An appeal under this paragraph—
    - (a) is to be a re-hearing of the local housing authority's decision, but
    - (b) may be determined having regard to matters of which the authority was unaware.
    - (4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.
    - (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.
- 4. The relevant parts of the Management of Houses in Multiple Occupation (England) Regulations 2008 are:
  - 3.** 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
  - 7.** (1) The manager must ensure that all common parts of the HMO are—
    - (a) maintained in good and clean decorative repair;
    - (b) maintained in a safe and working condition; and
    - (c) kept reasonably clear from obstruction.
  - ...
  - (2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—
    - (a) all handrails and banisters are at all times kept in good repair;
    - (b) such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided;
  - ...
  - (4) The manager must ensure that—



(a) outbuildings, yards and forecourts which are used in common by two or more households living within the HMO are maintained in repair, clean condition and good order;

(b) any garden belonging to the HMO is kept in a safe and tidy condition; and

(c) boundary walls, fences and railings (including any basement area railings), in so far as they belong to the HMO, are kept and maintained in good and safe repair so as not to constitute a danger to occupiers.

### **The Council's Civil Penalties Procedure & Guidance Policy**

5. The Council provided a copy of its procedure for assessing the amount of a financial penalty, which is dated October 2019. The procedure follows a four stage process:
  - a. Stage 1 - Determine the penalty band
  - b. Stage 2 - Determine whether and how much to add to a penalty as a result of the landlord's income and track record
  - c. Stage 3 - Add the two figures together
  - d. Stage 4 - Add any financial benefit the landlord has obtained from committing the offence.
6. Determining the penalty band is a two-step process, in which the Council assesses the Culpability of the offender against four categories of very high, high, medium, and low. Aggravating or mitigating factors can affect the allocation of culpability, so it is clearly a matter of judgement rather than pure calculation.
7. The second step is an assessment by the Council of the Seriousness of the Harm Risked. Offences are put within one of three levels, being levels A, B, and C.
8. Level A is for cases where the sum of the seriousness of harm risked that would meet the guidance for Class I and Class II harm outcomes in the Housing Health and Safety Rating System<sup>1</sup> is 5% or more, and there are relevant matters that increase the likelihood of harm occurring.
9. Level B is used where the seriousness of harm risked would meet the guidance for Class III and Class IV harm outcomes and the sum of the spread of harm outcomes for Class I and Class II in the 'Housing Health and Safety Rating System' is less than 5%.
10. Level C is for all other cases.
11. A two by two matrix then allocates a numerical score between 1 and 5, with an extra band called 5+, described as a penalty level, depending on the assessment of culpability and seriousness of harm risked. A table

then sets a penalty band for each penalty level. The penalty band for a 5 or 5+ penalty level is £15,000 - £30,000. A penalty level of 1 gives a penalty band between £600 and £1,200.

12. Stage 2 takes into account the landlord's weekly income, in order to add a proportion of it to the penalty. For penalty levels 5 and 5+, the policy considers all of the offender's income from whatever source. For other penalty levels, only income from the property where the offence occurred will normally be taken into account. The weekly income is then multiplied up by a factor that relates to the penalty level. For a 5+ penalty level, 600% of the weekly income is added to the amount selected as the appropriate penalty within the penalty band. For a penalty level of 1, 50% of the weekly income is added to the penalty. The appropriate percentages are graded within these percentages.
13. Stage 2 also provides that the penalty can be increased with a weighting increase to reflect the offender's track record. Nine questions are asked about convictions, enforcement proceedings, and similar. The answer to those questions produces a numerical score. The penalty is then increased by a determined percentage as set by a table of appropriate percentage increases against that numerical score. There was no weighting increase applied in these proceedings.
14. Stage 3 is merely a stage in which the penalty amounts from stages 1 and 2 are added together, but it does also cap the penalty, if the amounts added together exceed the upper limit of the penalty band, to that upper limit.
15. Stage 4 provides that the penalty will be increased by any financial benefit the landlord may have obtained by committing the crime. Calculation of the benefit is done on a case by case basis. Examples of how to calculate for certain offences are given. For breach of management regulations, the amount is intended to reflect the cost of any works required to avoid breaching the regulations. No example of the basis of calculation is provided for offence of breach of licence conditions.
16. In the introductory section of the Policy, the Council include a paragraph under the heading "The Totality Principle" which provides:

### **"1.7 The Totality Principle"**

Where several offences have been committed and a civil penalty could be imposed for each one, consideration will be given to whether it is just and proportionate to impose a penalty for each offence.

When calculating the penalty amounts for multiple offences there will inevitably be a cumulative effect and consideration will be given to ensure that the total amount of the civil penalties being imposed is proportionate to the offences involved.

Decisions as to whether to impose civil penalties for each offence, and if not which offences should be subject to penalties will be taken in discussion with the Council's Environmental Health and Safety Manager. Where a single more serious offence can be considered to encompass several less serious offences, this offence will normally be considered as the basis for the civil penalty."

### **The Council's case**

17. As well as issuing financial penalties in respect of alleged offences relating to Portland Street and Vernon Street, the Council have taken into account alleged offences relating to four other properties owned by the Applicant, namely:
  - a. 21 Cheviot Street, Lincoln, LN2 5JD ("Cheviot Street");
  - b. 52 Monks Road, Lincoln, LN2 5HY ("Monks Road");
  - c. 56 Ripon Street Lincoln, LN5 7NQ ("Ripon Street"); and
  - d. 61 Dixon Street Lincoln, LN5 8AQ ("Dixon Street").
18. There are therefore six properties for consideration. The Council's allegations in respect of each follow.

#### Portland St

19. The Council's main witness was Ms Hannah Cann, who is a Housing Standards and Enforcement Officer employed by the Council. She has a Higher Certificate in Housing Practice qualification with the Environmental Health Registration Board and has been a Member of the Chartered Institute of Environmental Health since 2016.
20. Portland Street is a six bedroom property over two three floors. Ms Cann confirmed that the Applicant applied for and was granted a licence under section 64 of the Act on 28 August 2020 to operate Portland Street as an HMO for a five year period.

#### Breach of condition 2 of Schedule 5 of the Applicant's licence dated 20 August 2020

21. Condition 2 is:

"Where primary access to a sleeping room is through a high risk room (i.e. communal kitchen or living room) an alternative suitable means of escape must be provided via a door or escape window directly to the outside. For this reason the licence holder shall ensure that the window to the ground floor rear bedroom 6 is a means of escape window.

The window should be readily openable and available at all times whilst the premises are occupied and only fitted with suitable hardware to allow easy egress without the use of a key.

Any window provided for emergency escape purposes should have an unobstructed openable area that is at least 0.33 square metres and have a minimum 450mm height and 450mm width. The bottom of the openable area should not be more than 1,100mm above the floor.

The licence holder shall ensure that:-

the room is only occupied by able bodied individuals with no specific high risk characteristics and who can reasonably be expected to exit via the window unaided;

there is no basement wall or other encumbrance beneath the window such as railings or a conservatory;

the ground below is level and free of obstructions;

the window should lead to a place of ultimate safety, clear of the building and **the door to the side passage which should be openable from the rear without the use of a key.**

**However if there is no practical way of avoiding escape into a courtyard or back garden from where there is no exit, it should be at least as deep as the building is high.**

The licence holder shall ensure that any occupier or future occupier of bedroom 6 is informed that the bedroom window is to be used as a means of escape in case of fire and ensure that the occupier knows how to operate the window to exit it.

A Fire Exit sign in shall be installed on or adjacent to the window to indicate that it is a fire escape window.

At the start of each tenancy, the layout of the furniture in the room should be such that easy access to the window is maintained.

All works are to be completed within one month of the commencement date of the licence.” [Emphasis in bold is the Tribunals]

22. Ms Cann carried out an inspection of Portland Street on 19 October 2022. During the inspection, she observed that the escape window from the ground floor rear bedroom opened onto a small, enclosed rear yard that was less deep than the two-storey building is high onto which the non-fire-resistant kitchen window opens. There was a UPVC door to the hallway of the HMO which required a key to open from the rear yard. Photographs and plans of the property, exit door and rear yard were provided.
23. The yard area measures very approximately 8m by 2.4m. The house walls bound it on three sides. Two of those house walls are of single storey height with flat roof above. The fourth side is a brick wall adjoining the neighbours garden of a height of around 2m.

24. The Council's case is that the two elements of Condition 2 highlighted in bold above had not been complied with on 19 October 2022. That is, they say, an offence under section 72(3) of the Act.

Breach of condition 6 of Schedule 5 of the Applicant's licence dated 20 August 2020

25. Condition 6 is:

"The licence holder shall rearrange the existing dining area adjacent to the kitchen, and the separate dining area, removing the partition wall and making good all surfaces disturbed to leave walls and floors in a sound and level condition, to provide one living / dining room with adequate natural light that is no less than 12 square metres. When calculating usable floor area, any space taken up by chimney breasts or similar may not be included, corridors into rooms with a width of 1200 metres (*sic*) or less may not be included apart from a nominal 0.64 square metres into which one door may open. All works are to be completed within 12 months of the commencement date of the licence."

26. During her inspection of Portland Street on 19 October 2022, Ms Cann observed that the partition wall had not been removed and the left hand separate dining room was being used to store building materials and waste and was kept locked. The narrow open plan dining area adjacent to the kitchen only provided dining chairs for 4 people, had little natural light, and with a width of less than 2 metres was more like a corridor into the kitchen than a reception room.
27. Ms Cann supplied floor plans for the Tribunal. These show the ground floor layout of Portland Street. Access from the street is into a corridor. The first room on the right hand side of the corridor cannot be accessed from the house as it is a separate commercial unit. Beyond that room is the stairwell, off which is a door to a small lobby. Accessed off the lobby are two rooms, one described as a dining room, and one as a dining/living room. There is a galley kitchen beyond, and a ground floor bedroom beyond that.
28. The dining room appears to be an inner room within the area encompassing both rooms. The dining room width is 2.072m, and the dining/living room width is 1.961m.
29. It is very clear to the Tribunal that compliance with condition 6 would significantly improve the utility of the whole space currently taken up with two room and would enable Portland Street to function much more effectively as an HMO.
30. The Council's case is that it is clear that condition 6 had not been complied with on 19 October 2022, around one year and two months after the deadline for compliance set out in the licence. That is an offence under section 72(3) of the Act.

Breach of condition 7 of Schedule 5 of the Applicant's licence dated 20 August 2020

31. Condition 7 is:

“The licence holder shall arrange for the property to be managed by a recognised and competent letting and management company who is a member of a property redress scheme, who has experience of managing houses in multiple occupation, and who is not associated with Mr Baiju Varghese. The licence holder shall supply the council with a copy of the lettings and management agreement, signed by the licence holder and the new manager, within 30 days of the commencement date of the licence.”

32. Ms Cann confirmed the background to this condition. The Council was aware that the Applicant's partner, Mr Baiju Varghese, had been convicted on 31 January 2020 of four offences relating to management of an HMO, and the Council believed he had direct involvement in the management of the Applicant's properties. In 2020, licensing applications for a number of the Applicant's properties were being sought. In respect of these applications, Ms Cann initially therefore wished to limit the licence terms to one year to exercise some control over the way the properties was managed.
33. The Applicant objected to the issue of one year licences, saying in an email dated 2 July 2020 that if Ms Cann was unhappy with a five year licence, she would consider letting her properties through an estate agent. On that basis, and with a restriction on Mr Varghese being involved in the management, Ms Cann agreed to issue a full five year licence containing condition 7.
34. On 27 October 2020, Ms Cann requested evidence of compliance with condition 7 in the form of a signed letting and management agreement as is required in the condition. No response was received so she exercised statutory powers requiring the Applicant to provide information. The Applicant responded to this by claiming that she had not been able to sign up with an agent due in part to the standard of her properties. Ms Cann's response was that she must comply with the condition. This resulted in the Applicant providing the Council with a signed lettings and management agreement with an agent called Pridea, dated 29 March 2021. This agreement was for management of all six properties under consideration in these proceedings.
35. On 6 June 2022, the Council sent an email to the Applicant, with a copy to Pridea, asking for copies of the annual gas safety certificates. Pridea responded to say they were not managing the Applicant's properties.
36. Pridea later confirmed to the Council that although there was some initial contact between themselves and the Applicant, Pridea only let and received rent for one room at Monks Road for a short period, and that all communication was with Mr Baiju Varghese.

37. The Council's case is that there has clearly been a flagrant breach of condition 7 in the Applicant's licence for Portland Road. The lettings and management arrangement should have been in place by the end of September 2020, and although an agreement was signed in March 2021, it was clearly not operated by the Applicant. That is an offence under section 72(3) of the Act. The appropriate financial penalty is £22,215.81.
38. The second penalty notice relating to Portland Street alleging breach of Regulation 3(b) of the Management Regulations.
39. Regulation 3 requires that the manager's name, address, and contact details are clearly displayed in a prominent position in the HMO.
40. On 19 October 2022, Ms Cann inspected Portland Street. She had originally intended to inspect on 14 September 2022, but the Applicant requested she delay the inspection as she had builders who needed to finish works, and the inspection was therefore postponed.
41. At the inspection, Ms Cann observed a notice board resting on the floor which contained six documents. They included a copy of the licence front page, an EPC certificate, what appears to be one page of an electrical inspection report, and a sheet headed "Contact Details". Three pieces of information were set out on the sheet:

Landlord – Mini Thomas

Work related calls – Olex [telephone number supplied]

All future contacts will be Pridea Lettings [telephone number supplied]

42. The Council's case is that this document clearly does not comply with Regulation 3(b). Failure to comply is an offence under section 234(3) of the Act. A financial penalty of £3,665.78 was imposed.

#### Vernon Street

43. Vernon Street is a six bedroom property over three storeys. The Council granted the Applicant a licence to operate Vernon Street as an HMO on 1 September 2020 for a maximum of seven occupants.
44. The Council allege breach of Regulation 7(1) of the Management Regulations.
45. Regulation 7 of the Regulations requires the landlord to ensure all common parts of a property are maintained in good repair and in a safe and working condition. This duty applies in particular to all handrails.
46. During her inspection of Vernon Street on 12 October 2022, Ms Cann observed that there were no handrails at all provided to the two flights of steep, narrow stairs, that the stairs were uncarpeted, which makes slips more likely, and that two steps on the first to second floor flight had damaged nosings.

47. Photographic evidence of the condition of the stairs was provided to the Tribunal, which were taken on 12 October 2022. These confirmed the absence of handrails on both flights of stairs from ground to first and from first to second floors. The Council's case is that failure to maintain a handrail for the stairs is an offence under section 234 of the Act. A financial penalty of £7,119.23 was imposed.

*Cheviot Street*

48. Cheviot Street is a four bedroom property over two storeys.
49. On 15 January 2021, the Council Licence granted an HMO licence for occupation by a maximum of eight occupants with a condition requiring professional management of the property. There were nine property specific conditions imposed, one of which (condition 9) was a condition in the same terms as condition 7 in the Portland Street licence. Others related to fire precautions and kitchen layouts.
50. Ms Cann inspected Cheviot Street on 7 September 2022. She noted that Management Regulation 3(b) did not appear to be complied with. She also investigated compliance with Condition 9 and concluded that it had been breached.

*Monks Road*

51. Monks Road is a six bedroom property over two floors.
52. On 15 January 2021, the Council granted an HMO licence for occupation by a maximum of 6 occupants in a maximum of 5 households.
53. The licence contains 9 conditions in Schedule 5, curiously numbered 1 – 14, with numbers 2 – 7 missing. Condition 14 appears first and is in the same terms as condition 7 in the Portland Street licence.
54. Ms Cann inspected Monks Road on 7 September 2022. As a result of her inspection and subsequent enquiries, she is of the view that the Applicant breached condition 14 of the licence, and also, by virtue of Ms Cann not being able to find a relevant notice giving the managers name, address, and contact telephone number, Regulation 3(b) of the Management Regulations.
55. So far as condition 14 is concerned, Monks Road is the one property in this case where there is some evidence that Pridea exercised some management functions, in that for a period of about 4 months only between August and December 2021, one tenant paid rent to Pridea.

*Ripon Street*

56. Ripon Street is a four bedroom house over two floors.
57. On 18 September 2020, the Council granted an HMO Licence for occupation by a maximum of five occupants in a maximum of four



households. granted 18 September 2020 with five conditions, including as condition 4 of the Property Specific Conditions in Schedule 5 a condition requiring professional management of the property in the same terms as condition 7 in the licence for Portland Street.

58. Ms Cann inspected the property on 19 October 2022. As a result of her inspection, her case is that the Applicant had on that date was in breach of Management Regulations 3(b), 7(1), and 7(4).
59. Breach of Regulation 3(b) was established to Ms Cann's satisfaction as she was not able to find any notice at the property that complied with that Regulation.
60. Breach of Regulation 7(1) arose because she observed that the bath in the ground floor rear bathroom had black mould staining to the tile grouting and sealant and a large chip to the enamel of the bath which makes the bath difficult to clean as well as being unsightly.
61. Breach of Regulation 7(4) arose because Ms Cann observed that at the rear of the yard was a large brick built outbuilding which was not locked. Inside the outbuilding was a large amount of old furniture, building materials and waste including loft insulation offcuts and the window of the outbuilding was in disrepair.
62. By virtue of the Applicant not putting into effect any management or lettings agreement with Pridea, Ms Cann also concluded that condition 4 of the licence had also been breached.

#### Dixon Street

63. Dixon Street is a five bedroom property over two floors.
64. On 12 November 2020 the Council granted an HMO licence for occupation by a maximum of six occupants in a maximum of five households with seven conditions including, as condition 6 of Schedule 5 a condition requiring professional management of the property in the same terms as condition 7 in the licence for Portland Street.
65. Ms Cann inspected the property on 12 October 2022. As a result of her inspection, she concluded that the Applicant had breached condition 6 of the Property Specific condition, and Regulations 3(b) and 7(4) of the Management Regulations.
66. The alleged breach of Regulation 3(b) arose as Ms Cann was unable to locate any notice at the property which complied with the Regulations.
67. The alleged breach of Regulation 7(4) arose because Ms Cann observed that at the rear of the yard was a brick built outbuilding and off this outbuilding was a cupboard containing the gas central heating boiler. Inside the outbuilding was a large amount of old furniture, building materials and junk including loft insulation offcuts and a stained double mattress that made access to the boiler room difficult.

Calculation of the financial penalties

68. Following her inspections of the six properties in September and October 2022, Ms Cann considered that the Applicant had committed fifteen offences, all being either breaches of licence conditions (an offence under section 72(3) of the Act) or breaches the Management Regulations (being breaches of section 234(3) of the Act).
69. She calculated what financial penalties might be sought by the Council for these offences. She prepared an internal note for consideration by the Directorate for Communities & Environment. That note summarised the offences and the prospective financial penalty that might be imposed in the following table:

HMO Address	Offence	Penalty (£)
Monks Road	S72(3)	6,795.01
Monks Road	S234(3), Reg 3	3,508.26
Cheviot Street	S72(3)	7,243.01
Cheviot Street	S234(3), Reg 3	3,568.26
Dixon Street	S72(3)	6,550.87
Dixon Street	S234(3), Reg 3	3,440.19
Dixon Street	S234(3), Reg 7	3,440.19
Vernon Street	S72(3)	22,375.71
Vernon Street	S234(3), Reg 3	3,671.54
Vernon Street	S234(3), Reg 7(1)	7,119.23
Portland Street	S72(3)	22,215.81
Portland Street	S234(3), Reg 3	3,665.78

Ripon Street	S72(3)	6,840
Ripon Street	S234(3), Reg 3	3,450.00
Ripon Street	S234(3), Reg 7(4)	3,450.00
<b>Total</b>		<b>107,333.86</b>

70. Ms Cann then wrote in her note that:

“7. Having determined the penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender, the total of all the penalties for each offence is not considered just and proportionate.

8. It would be appropriate to impose one penalty for the Section 72(3) offences because although the breaches of some licence conditions arose out of separate incidents, there is a great deal of overlap, and the total of the two most serious penalties is disproportionate. A single penalty in relation to the most serious offence would reflect the totality of the offending under that section for the six HMOs. The penalties for 42 Vernon Street and 11 Portland Street have a similar level of seriousness. The licence condition in relation to providing an escape route from fire is more clearly worded in the licence for 11 Portland Street and so it is proposed that this penalty is selected at £22,215.81.

9. It would be appropriate to impose one penalty for the Section 234(3), Regulation 3 offences relating to failure to display the manager’s contact details which reflects the totality of the breaches of that regulation, because the offences arose out of the same incident. These are all the same level of seriousness, all that changes is the income from the HMO leading to slight variations. It is recommended that 11 Portland Street at £3,665.78 is selected as the evidence of misleading information displayed in that HMO is particularly compelling.

10. Having considered imposing three separate penalties for each of the Section 234(3) Regulation 7 offences that arose out of separate incidents, the total £14,009.42 is considered disproportionate to the level of offending. A single penalty for the most serious offence in relation to 42 Vernon Street of £7,119.23 would reflect the totality of the offending.

11. The proposed civil penalties after considering the Totality Principle are

HMO address	Offence	Penalty
11 Portland Street	Section 72(3)	£22,215.81
11 Portland Street	Section 234(3), Reg	£3,665.78
42 Vernon Street	Section 234(3), Reg 7(1)	£7,119.23
		Total £33,000.82”

71. The note was considered and approved by Mr Simon Colbourn, Assistant Director, on 20 January 2023. Notice of intention to impose the financial penalties was then given to the Applicant. Final Notices were issued on 16 March 2023.
72. Calculations explaining how the figures were arrived at were provided to the Tribunal. The calculations for the three penalties under consideration are shown below:

Portland St – Breach of licence conditions – s72(3) of the Act

	Penalty band	Amount (£)
Stage 1 - Culpability - High, Seriousness of harm risked – A	5	15,000.00
Stage 2 – weekly rental income	443.85	
Percentage uplift – 400%		1,775.40
Stage 4 – Financial benefit	Cost of works and savings on management fees	5,440.41
<b>Total</b>		<b>22,215.81</b>

Portland St – Breach of Regulation 3 of the Management Regulations

	Penalty band	Amount (£)
Stage 1 – Culpability – High, Seriousness of harm risked – C	3	3,000.00

Stage 2 – weekly rental income	443.85	
Percentage uplift – 150%		665.78
Stage 4 – Financial benefit		0.00
<b>Total</b>		<b>3,665.78</b>

*Vernon St – Breach of Regulations 7 of the Management Regulations*

	Penalty band	Amount (£)
Stage 1 – Culpability – Medium, Seriousness of harm risked – A	4	6,000.00
Stage 2 – weekly rental income	447.69	
Percentage uplift – 250%		1,119.23
Stage 4 – Financial benefit		0.00
<b>Total</b>		<b>7,119.23</b>

**The Applicant's case**

73. The first point in the Applicant's written statement of case is that at the time Ms Cann carried out her inspections in September and October 2022, refurbishments were being carried out in all six of her HMO properties as well as in two other properties (which the Tribunal assumes are properties owned or managed by her associates). She said her builders chose which house on which to work on a day by day basis, dependent upon whether the tenants were out at work. She therefore asked Ms Cann to delay her inspections. She said the builders needed about 3 weeks for each property to complete their work.
74. Regarding Condition 2 in the Portland Street licence, the Applicant said there was always a light aluminium ladder positioned towards the flat roofed outbuilding at the rear of the property. Access out of the yard could have been achieved through the garden of the neighbouring property, using the ladder.

75. Regarding the allegation of failure to maintain a handrail in the stairwell of Vernon St, the Applicant said the old handrail had been removed as part of the building works.
76. On the question of engagement of an agent to manage her properties, the Applicant confirmed that she had signed an agreement with Pridea. She gave no dates, and the Tribunal assumes this is the agreement dated 29 March 2021 referred to in paragraph [34] above. Her case is that Pridea wrote to all her tenants, but the tenants were not willing to engage with that firm, as most of her tenants were from Eastern Europe, they were not well educated, they were unable to speak or understand English, and they struggled to read, write or speak it. They were unable to transfer money to the agency.
77. The Applicant said she could not force her tenants to engage through Pridea and she did not want to evict them as it was really difficult for them to find good accommodation. Nevertheless, so far as they were able to, they tried to use Pridea as their agent.
78. The statement of case deals with a number of other issues including saying that the Applicant considered she had been treated unfairly by the Council, and that the requirements contained in the licence conditions should not have been imposed. Those points are not summarised in this determination because in the Tribunal's view they are not germane to the question of whether the Applicant has committed offences under sections 72 and/or 234 of the Act.
79. At the hearing day in May 2024, the Applicant confirmed in oral evidence that:
  - a. Her view, obtained by talking to lawyers, was that the Council were not allowed to inspect her properties whilst works were being carried out;
  - b. Regarding the yard area at the rear of Portland Street, she pointed out that most of the requirements contained in condition 2 of the licence had been complied with. She accepted that the external door required a key to open, but she disputed that the depth of the yard was less than the height of the building;
  - c. She had not complied with the requirement in condition 6 of the licence for Portland Street;
  - d. She had not complied with the requirement to provide a notice containing her name, address, and contact telephone number at her properties;
  - e. Confirming the points made in her written statement to the effect that she had tried to put a lettings and management agreement in place for her properties, she said her tenants were not willing to work with the manager. She referred the Tribunal to correspondence from Pridea asking for documents prior to them

taking over management and said that all of those documents had been provided to them, evidencing that she had made an effort to comply with the condition. She felt that Pridea lost interest at the point that the Council contacted them to confirm that a management agreement was in place;

- f. It was not fair to add the money that would have been paid to Pridea to her penalties as she had incurred a cost (in terms of the hours of time she had spent on management) in managing the properties herself;
  - g. Regarding the handrail at Vernon Street, at the time of Ms Cann's inspection, the handrail had been off, and the carpets had been taken up so that the stairwell could be re-plastered and redecorated. She had provided photographs in her bundle (pages 371 and 372) which she said had been taken in December 2023, of the reinstated handrail and carpets.
80. Shortly prior to the adjourned hearing day in September 2024, the Applicant provided a further statement. Its purpose was to clarify a few things that arose during the first hearing day. It contained the statement:
- “Regarding the work of the 11 Portland Street dining room, what I was trying to say was that the extra dining room was already converted into a single living room.”
81. This statement caused some confusion due to the Applicant's admission in May that the dining room conversion had **not** taken place when Ms Cann visited on 19 October 2022. On being questioned by the Judge, the Applicant eventually accepted that work had not started on the removal of the partition by 19 October 2022. Her position was that the work had been completed by December 2022 and she had informed the Council by letter to that effect.
82. The letter that the Applicant had written to the Council concerning the works is in fact dated 25 November 2022. It confirms that the dining space was occupied by builders at the time of Ms Cann's inspection. It does not confirm that the conversion work required by condition 6 has been carried out. Rather, it contains this statement:
- “The property already got a large kitchen and dining space, we can provide this as an extra dining space for the HMO compliance instead of making one room.”
83. The Applicant's overall point on the imposition of financial penalties was that there should be no penalty at all. She feels she is being harassed by the Council due to them having a personal issue with her husband.
84. After the hearing, the Tribunal invited the Applicant to provide any financial information she wished to disclose to the Tribunal to be taken into account when determining the appropriate financial penalty. She provided that information by email on 30 September 2024.

## **Discussion and determination**

85. As a preliminary point, we address the issue of how we are to deal with the allegations in respect of Cheviot Street, Monks Road, Ripon Street, and Dixon Street (the Non-Penalised Properties”). As is apparent, the Council provided us with material which it sought to rely on to establish the commission of criminal offences in relation to those properties.
86. However, the Council, of its own volition did not impose financial penalties for those offences because it itself applied the Totality Principle and decided it would be disproportionate to seek financial penalties for them. In our view this was a perfectly proper decision.
87. As was debated with Ms Cann at the hearing, it might have been open to the Council to seek penalties for all alleged offences. That might have then required the Tribunal to consider how the Totality Principle should be applied, had the Applicant appealed on the grounds that the penalties in total were excessive.
88. But as the Council pursued a different course, the question of whether the Tribunal has to consider the Totality Principle in relation to the remaining financial penalty notices, does not, in our view, arise. Indeed, it is highly arguable that the question of whether offences were committed in respect of the Non-Penalised Properties is even before us. The time limit for either a prosecution or the imposition of a financial penalty in respect of them has passed, so no action can now be taken in respect of those allegations.
89. In our view we do not need to determine whether the offences in respect of the Non-Penalised Properties are made out, and we decline to do so.
90. In respect of Portland Street and Vernon Street, the first consideration for the Tribunal is whether it is satisfied beyond reasonable doubt that the Applicant has committed the three offences on which the three financial penalties are based. We consider each in turn:
  - a. Portland Street – section 72(3) – breach of licence conditions
    - i. Condition 2 – work to avoid danger of fire in bedroom 6
      1. When read carefully, this condition requires the Applicant to comply with 13 requirements.
      2. The only requirement the Council allege has not been complied with is the requirement to ensure that the door to the side passage is openable from the outside without needing to use a key.
      3. On her own admission, the Applicant accepts that she did not comply with this requirement. To that extent,



we find that the offence is made out. The Applicant has not offered an excuse, and we cannot conceive of a reasonable excuse for non-compliance.

4. In so far as the Council allege that there is a failure to ensure that the yard is as deep as the building is high, we make no finding. It is difficult to conceive what action the Applicant could or should have taken to achieve this that is realistic or practical. She would not have been able to reduce the wall heights or increase the yard area.

ii. Condition 6 – work to remove inner dining area

1. Our view is that the work required in this condition was eminently achievable and would have considerably improved the property. We find that it had not been carried out within the time scale required by the condition, as the Applicant admitted.
2. No serious reasonable excuse was offered by the Applicant, and we cannot conceive that there can be an excuse. We have considered whether Covid might have affected the timescales, but this was not seriously put forward by the Applicant, and in our view the delay of well over a year cannot be justified by this excuse.
3. We are in no doubt that this condition has been breached.

iii. Condition 7 – engagement of professional agent

1. The evidence is clear that the Applicant has failed to comply with this condition by the deadline of 19 September 2020. Although a management agreement with Pridea was signed on 29 March 2021, this was only done following Ms Cann chasing compliance with condition 7 in March 2021. And it is abundantly clear that the agreement was never operated by the Applicant, save for one tenant for one property, which was not Portland Street.
2. We have considered whether the difficulties the Applicant experienced in persuading her tenants to operate through the agent could constitute a reasonable excuse for failure to comply with the condition. We do not think so.
3. A landlord is entitled to require his or her tenants to respond to and engage with any agent he or she

appoints. We do not consider, whatever the nature or wishes of the tenants were, that an agent would be unable to manage a property if given appropriate support by the landlord. It is much more likely, in our view, that the Applicant did not want the management agreement to succeed.

4. We find that condition 7 has been breached.

b. Portland Street – Breach of Regulation 3(b) of the Management Regulations

- i. The Applicant admitted that the notices she put up in the property did not comply with Regulation 3(b).
- ii. We cannot conceive that there can be any excuse. This is the simplest of regulations to comply with.
- iii. We find that this breach of the Management Regulations is made out.

c. Vernon Street – breach of Regulation 7(1)

- i. The allegation is the failure to ensure that a handrail in good repair was present on the stairwell of the property coupled with a suggestion that the nosings on the stairs were not in good repair.
- ii. We are satisfied on the evidence that there was no handrail on 12 October 2022. We also find that the nosings were in poor condition; the photographic evidence on page 631 of the Council's bundle clearly shows that two steps have partially rotted nosings.
- iii. We find that the handrails are most likely to have been removed by 14 September 2022, the date that the Applicant requested the Council to postpone inspection due to workmen being in the property. That request was only made because the Council contacted the Applicant to say it wished to inspect. The date of commencement of works, and the likely date of removal of the handrail could well have been well before 14 September 2022.
- iv. It is likely, and we so find, that there would have been a handrail in place when the licence was originally granted and until workmen removed it for renovation, as had it not been, the Council would have made it a condition of the licence that one be installed.
- v. We think it unlikely that the handrail was replaced on the evening of 12 October 2022 as alleged by the Applicant. We

found the Applicant's evidence generally to be unreliable and were not inclined to believe a statement that appeared to be designed to suggest the Council's concern had been resolved on the very day their inspection had taken place.

- vi. However, we did not see any reason not to accept that the handrail had been reinstated and the nosings repaired eventually, as claimed by the Applicant. We are unable to determine a date of that repair and reinstatement.
  - vii. On the evidence we had available to us, our finding is that there was no handrail present on the stairs for Vernon Street between at least 14 September and 12 October 2022, and probably for some days beyond that.
  - viii. We need to address the question of whether there was a reasonable excuse for the handrail to be missing. It is our view that removing the handrail for the purposes of replastering and redecorating the stairwell would be a reasonable excuse.
  - ix. Our difficulty is that the Applicant failed to provide any convincing evidence of the timing and conduct of the building works. Her evidence never went beyond her assertion that builders were carrying out works on around eight properties and they worked on them as and when, to suit the tenants.
  - x. Our view is that the reasonable excuse defence can only work for a reasonable period during which the work needed to be carried out. We consider that it may have been reasonable for the handrail to be off the stairwell for around a week, to allow plastering, drying out, and decoration.
  - xi. We therefore find that there would have been a reasonable excuse for the handrail to be off the stairwell for around one week in autumn 2022. We are in no doubt that the handrail had been removed for at least one month. We therefore find that Regulation 7(1) had been breached.
91. Our conclusions in the preceding paragraphs are that the offences alleged in the Financial Penalty Notices are all made out to the extent set out.
92. We now turn to consideration of what financial penalty to impose for the offences. Our task is as set out in paragraph 10 of Schedule 13A of the Act. We conduct a rehearing, and we may confirm, vary or quash the penalties imposed by the Council.
93. We are to start from the Council's policy which underlies the decision to issue the Financial Penalty Notices and apply it as if we are standing in

the shoes of the original decision-maker, giving proper consideration to arguments that we should depart from the policy; that, in doing so, we are required to pay proper attention to the decision under challenge and the reasoning behind it, although we can and should depart from the policy in certain circumstances, such as where it had been applied too rigidly; that the burden lies with the Applicant to persuade the tribunal to depart from the policy and, in considering that matter, the tribunal has to look at the objectives of the policy and ask itself whether those objectives would be met if the policy were not followed; and that, further, the tribunal is carrying out a rehearing, not a review, and while the original decision of an elected authority carried a lot of weight, the tribunal could vary the decision if, having given it that special weight, it disagreed with the Council's conclusion (taken, in essence, from the headnote to the report at [2020] 1 WLR 3187 of the case of *Waltham Forest London Borough council v Marshall*)

94. We have three particular issues with the Council's policy, which is summarised in paragraphs 5 – 16 above:
  - a. Firstly, in selecting a penalty band (Stage 1), the Council only consider two factors – culpability and seriousness of harm risked. As has been pointed out in paragraph 54 of *Leicester City Council v Morjaria* [2023] UKUT 129 (LC), these criteria contrast with the criteria set out in the Guidance on Civil Penalties published by the Ministry of Housing, Communities and Local Government in April 2018, which identifies three criteria of severity, culpability and track record, and harm caused to the tenant (including the potential to cause harm).
  - b. There are seven criteria in total in the Government Guidance. The later four criteria are arguably taken into account in Stages 2 – 4 of the Council's policy. Culpability is a separate factor in the Council's policy. But it seems to us, to borrow the phrase used in *Morjaria*, that the Council's second test conflates severity and harm together inappropriately. There may well be a breach of a severe nature that causes, or is unlikely to cause, much harm. We consider that the Council's policy does not allow sufficient flexibility to adjust a penalty to reflect this distinction between severity and harm;
  - c. Secondly, the methodology to be used to assess seriousness of harm risked when fixing a penalty band does not work well when, as in this case, there are multiple classes of harm at play within one offence. An offence under section 72 of the Act may involve multiple defaults (as in this case) which can have significant differences and relate to different HHSRS hazards, yet the policy only allows one judgement to be made as to whether to allocate to class A, B, or C;
  - d. Additionally, the criteria for selection of the level of seriousness of harm risked does not take account of the period of time that a tenant has been at risk. There is a huge distinction between whether

there has been a serious risk of harm to a tenant between being exposed to a risk for one day as opposed to, say, three years. The criteria does not allow for any variation in the selection of the class to reflect the length of time of the breach;

- e. Thirdly, in relation to Stage 2, we consider that when two or more allegations are rolled up in one financial penalty for one property, to increase the penalty by a percentage of the offender's weekly income for each allegation involves an element of double penalty.
95. Looking at each offence, we now set out our conclusions on the appropriate financial penalty to impose:
- a. Portland Street – breach of licence conditions – s72(3)
    - i. We note that there are three breaches, and in our view they do not all merit the same scores when applying the Council's policy;
    - ii. We generally agree that culpability should be regarded as high. We think note should be taken of the simplicity by which the Applicant could have complied with condition 2; simply replacing the door latch with a latch openable from the outside, and we strongly suspect that failure to comply is not a deliberate decision to flout the condition. It is more likely to be lack of appropriate attention to the detail of the condition, which in all other respects the Applicant complied with;
    - iii. So far as failure to comply with condition 6 is concerned, we do regard that as a deliberate and flagrant failure to comply with the condition;
    - iv. Regarding condition 7, again, we think this breach is clearly intentional and eventually flagrant. The Applicant has been so influenced by her belief that the imposition of the condition was unjust (even though she offered it), that her heart was clearly not in complying with it. Her remedy was to apply for a variation of the licence rather than ignore the condition. To a very limited extent only, we give her some credit for going so far as to enter into discussions with Pridea rather than entirely fail to seek an agent;
    - v. The next step is to determine the seriousness of the harm risked. We refer to our criticisms of the Council policy on this element set out above. We prefer to address the question of what harm the tenants might have come to without the conditions being complied with without being straightjacketed into a numerical assessment of this criteria by selecting a numeral in the HHSRS Operating Guidance;

- vi. Our view is that all the precautions required in condition 2 to keep an occupant of Room 6 safe in the event of fire were taken with the exception of ensuring that the occupant could easily escape through the back door and along the corridor in the house. But at least the occupant would have been able to escape from the building itself (which poses the greater danger) into the yard area, and we agree that there would have been a reasonable prospect that escape over the yard wall would have been possible. Whilst the breach of this condition is serious, it is not as serious as it would have been if other components of the condition had also not been complied with;
- vii. We do not think the tenants, who tended to be young people employed in the agricultural business would have suffered very much harm at all by having to eat in small groups as opposed to a larger dining area, desirable though that might have been;
- viii. Finally, we think no harm would have been experienced by the tenants by the lack of a managing agent;
- ix. We therefore assess the level of seriousness of harm risked as level B. The penalty level is therefore level 4, for which the starting amount for the penalty is £6,000 rather than £15,000;
- x. We agree that the Council's policy should be followed for Stage 2. The penalty should be increased by 250% of the Applicants weekly income which was not contested at the sum of £443.85. £1,775.40 is therefore added to the starting amount of £6,000.00 to make £7,775.40.
- xi. We also agree that the Council's financial benefit calculation is correct so that a further £5,440.41 should be added to the penalty;
- xii. We do not agree with the Applicant's view that she should be allowed to keep the sum she saved by not engaging an agent as she has done the work and should receive some reward for doing so. The whole point of the exercise being undertaken is to punish the Applicant for her crime. She must bear the consequence of her actions. She did save herself some money by not employing an agent and that saving should be clawed back via the financial penalty policy;
- xiii. Our decision on the financial penalty to be imposed on the Applicant for committing the offence of failing to comply with her licence conditions contrary to section 72(3) of the

Act is that we vary the amount of the penalty from £22,215.81 to £12,550.03.

b. Portland Street – breach of Management Regulation 3(b)

- i. The Council categorised this breach as “High” for culpability, on the basis, partly, of deliberate concealment of the activity, the provision of false information, and repeatedly delaying the investigation. That this is a first offence was taken into account as a mitigating factor.
- ii. Our view is that this regulation is about the display of information, not the conduct of the Applicant. The required information was either present or it was not.
- iii. In fact, certain information was displayed, as set out in paragraph 41 above. The landlord’s name was stated and a contact telephone number, though we heard no evidence on who Olex is, and whether this may have been a contact telephone number for the manager. The missing information was the manager’s address.
- iv. The display board was on the floor. We think that was because of building works (including redecoration) being carried out and we consider that the requirement to display the information in a prominent position was met. Certainly, it was not submitted by the Council that there was a problem with the location of the notice board.
- v. Whilst undoubtedly a breach of the Regulations, our view is that the culpability level is “Low” bearing in mind that there was some attempt to comply with the Regulation.
- vi. We agree that seriousness of harm risked was correctly assessed at Level C. The starting penalty level is therefore £600.00.
- vii. As foreshadowed in paragraph 94e above, we do not regard it as appropriate to add an additional penalty at Stage 2 where more than one penalty is being imposed for one property. The Applicant has already been penalised with a Stage 2 addition in the penalty for the section 72(3) offence.
- viii. We therefore will not add to the penalty for breach of Regulation 3 a further amount for Stage 2. There was no financial benefit to the Applicant from this breach, so no further sum to add at Stage 4.
- ix. Our determination is that a financial penalty of £600.00 is appropriate for breach of this Regulation. We vary the

Penalty Notice to impose a penalty of £600.00 in place of the sum of £3,665.78.

c. Vernon Street – breach of Management Regulation 7(1)

- i. The main mitigating factor in the Applicant's favour in this case is that the failure to provide a handrail and a safe set of stairs is only alleged for a short period. The Council have limited their allegation, in their penalty calculation document, to a period of "at least four weeks" during which the stairs were potentially unsafe. We agree that the evidence is limited to a period of around four weeks.
  - ii. We also think that for a short period during those 4 weeks, no offence would have been committed as it would have been reasonable to remove the handrail whilst replastering and redecoration took place.
  - iii. However, having thought carefully about whether to make adjustments to the financial penalty imposed by the Council for this breach, we have decided not to do so. We think the financial penalty imposed is fair and proportionate in all the circumstances.
  - iv. We confirm the financial penalty for this offence in the sum of £7,119.23.
96. We have considered whether any adjustment of the penalty should be made to take account of the Applicant's ability to pay on the basis of the financial information she provided. We have looked carefully at that information and concluded that nothing provided indicates that the Applicant will not be able to afford to pay the financial penalty we impose in this case.

**Summary**

97. The Financial Penalty Notice dated 16 March 2023 imposing a penalty of £22,215.81 for an offence under section 72(3) of the Housing Act 2004 in relation to the property at 11 Portland Street, Lincoln LN5 7LG is varied by reducing the amount of the penalty to £12,550.03.
98. The Financial Penalty Notice dated 16 March 2023 imposing a penalty of £3,665.78 for an offence under section 234 of the Housing Act 2004 for breach of Regulation 3(b) of the Management of Houses in Multiple Occupation (England) Regulations 2008 in relation to the property at 11 Portland Street, Lincoln LN5 7LG is varied by reducing the amount of the penalty to £600.00.
99. The Financial Penalty Notice dated 16 March 2023 imposing a penalty of £7,119.23 for an offence under section 234 of the Housing Act 2004 for breach of Regulation 7(1) of the Management of Houses in Multiple



Occupation (England) Regulations 2008 in relation to the property at 42 Vernon Street, Lincoln LN5 7QR is confirmed.

### **Appeal**

100. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall  
First-tier Tribunal (Property Chamber)