



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

Case References : **MAN/00BR/HNA/2022/0106**
MAN/00BN/HNA/2022/0090
MAN/00BR/HNA/2023/0068
MAN/00BR/HNA/2023/0069

Properties : **14, Strawberry Hill, Salford M6 6AH**
35, Riverbank Tower, Bridgewater Street,
Salford M3 7JY
11, Peterhead Walk, Salford M5 4HY

Applicant : **Mr Maros Kravec**

Respondent : **Salford City Council**

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

Tribunal Members : **Tribunal Judge C Wood**
Tribunal Member J Elliott

Date of Decision : **17 April 2025**

ORDER

Order

1. In accordance with paragraph 10(4) of Schedule 13A to the Housing Act 2004, the Tribunal orders as follows:
 - 1.1 14, Strawberry Hill, Salford M6 6AH:
 - (1) section 234 offence: breach of Regulation 4 of the Management Regulations: the final notice dated 7 December 2022 is varied by increasing the financial penalty from £22000 to £22500;
 - 1.2 35, Riverbank Tower, Bridgewater Street, Salford 3 7JY:
 - (1) section 72(1) offence: the final notice dated 13 October 2022 is varied by reducing the financial penalty from £7500 to £2500; and,
 - (2) section 234 offence: breach of Regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006, (“the Management Regulations”): the final notice dated 13 October 2022 is varied by increasing the financial penalty from £12500 to £16500;
 - 1.3 11, Peterhead Walk, Salford M5 4HY:
 - (1) section 72(1) offence: the final notice dated 29 September 2023 is varied by increasing the financial penalty from £16500 to £25500; and,
 - (2) section 234 offence: breach of Regulation 4 of the Management Regulations: the final notice dated 29 September 2023 imposing a financial penalty of £28500 is confirmed.
2. Each financial penalty is payable by the Applicant within 28 days of the date of this Order.

Application

3. By applications variously dated 9 November 2022, 27 December 2022 and 19 October 2023, (together “the Applications”), the Applicant appealed against five financial penalties of varying amounts imposed by the Respondent under section 249(a) of the Housing Act 2004, (“the 2004 Act”).
4. A hearing of the Applications took place on 4 and 5 February 2025 at the Tribunal premises at 1st Floor, Piccadilly Exchange, 2, Piccadilly Plaza, Manchester M1 4AH at which the following people attended:

Counsel for the Applicant, Mr Maros Kravec: Mr Christopher Hopkins

Counsel for the Respondent, Salford City Council: Mr Paul Whatley

Solicitor for the Respondent: Mr Paul Scott

Respondent's witnesses: Mr Christopher Gleave
Ms Sarah Hughes
Ms Liz Mann
Ms Gemma Chilton

Law and Guidance - Power to impose financial penalties

5. Section 249A of the 2004 Act enables a local housing authority to 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.
6. Relevant housing offences are listed in section 249A(2) of the 2004 Act. They include the offence under section 72(1) of being in control of or managing an HMO which is required to be licensed but is not so licensed, and under section 234(3) of the 2004 Act, of failing to comply with the Management Regulations.
7. Only one financial penalty under section 249A may be imposed on a person in respect of the same conduct. The amount of that penalty is determined by the local housing authority (but it may not exceed £30,000), and its imposition is an alternative to instituting criminal proceedings for the offence in question.

Procedural requirements

8. Schedule 13A to the 2004 Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under section 249A. Before imposing such a penalty on a person, the local housing authority must give him or her a notice of intent setting out:
 - the amount of the proposed financial penalty;
 - the reasons for proposing to impose it; and
 - information about the right to make representations.
9. Unless the conduct to which the financial penalty relates is continuing, that notice must be given before the end of the period of six months beginning on the first day on which the local housing authority has sufficient evidence of that conduct.
10. A person who is given a notice of intent has the right to make written representations to the local housing authority about the proposal to impose a financial penalty. Any such representations must be made within the period of 28 days beginning with the day after that on which the notice of intent was given. After the end of that period, the local housing authority must decide whether to impose a financial penalty and, if a penalty is to be imposed, its amount.

11. If the local housing authority decides to impose a financial penalty on a person, it must give that person a final notice setting out:
- the amount of the financial penalty;
 - the reasons for imposing it;
 - information about how to pay the penalty;
 - the period for payment of the penalty;
 - information about rights of appeal; and
 - the consequences of failure to comply with the notice.

Relevant guidance

12. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions in respect of the imposition of financial penalties. Such guidance (“the HCLG Guidance”) was issued by the Ministry of Housing, Communities and Local Government in April 2018: Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities. It states that local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case by case basis. The HCLG Guidance also states that local housing authorities should develop and document their own policy on determining the appropriate level of penalty in a particular case. However, it goes on to state: “Generally, we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord’s previous record of offending.”
13. The HCLG Guidance also sets out the following list of factors which local housing authorities should consider to help to ensure that financial penalties are set at an appropriate level:
- a. Severity of the offence.
 - b. Culpability and track record of the offender.
 - c. The harm caused to the tenant.
 - d. Punishment of the offender.
 - e. Deterrence of the offender from repeating the offence.
 - f. Deterrence of others from committing similar offences.
 - g. Removal of any financial benefit the offender may have obtained as a result of committing the offence.
14. In recognition of the expectation that local housing authorities will develop and document their own policies on financial penalties, on 20 February 2020 the Respondent adopted the Association of Greater Manchester Authorities (AGMA)

Policy on Civil (Financial) Penalties as an Alternative to Prosecution under the Housing and Planning Act 2016, (“the AGMA Policy”).

Appeals

15. A final notice given under Schedule 13A to the 2004 Act 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. However, this is subject to the right of the person to whom a final notice is given to appeal to the Tribunal (under paragraph 10 of Schedule 13A).
16. Such an appeal may be made against the decision to impose the penalty, or the amount of the penalty. It must be made within 28 days after the date on which the final notice was sent to the appellant. The final notice is then suspended until the appeal is finally determined or withdrawn.
17. The appeal is by way of a re-hearing of the local housing authority’s decision, but may be determined by the Tribunal having regard to matters of which the authority was unaware. The Tribunal may confirm, vary or cancel the final notice. However, the Tribunal may not vary a final notice so as to make it impose a financial penalty of more than the local housing authority could have imposed.

The Properties

18. The Applications relate to three separate properties, namely:
 - 18.1 14, Strawberry Hill, Salford M6 6AH
 - 18.2 35, Riverbank Tower, Bridgewater Street, Salford M3 7JY
 - 18.3 11, Peterhead Walk, Salford M5 4HY
19. In this Decision, the properties are referred to respectively as Strawberry Hill, Riverbank Tower and Peterhead Walk and, where appropriate, a “Property” and together “the Properties”.
20. At a Case Management Conference held on 30 September 2024, Counsel for both parties were in agreement that as different facts/issues arose in respect of each of the Properties and the related Applications, each of the Properties should be considered separately at the hearing.

Hearing

The Applicant’s Evidence

21. The hearing had originally been scheduled to last 4 days which, in part, reflected the number of the Applications, the complexity/particularity of the issues raised, the anticipated hybrid nature of the hearing as a consequence of the giving of oral

evidence by the Applicant and his witnesses remotely from Poland and, in the case of the witnesses, the presence of an interpreter.

22. By an application dated 31 January 2025, the Applicant explained why it had proved impossible for himself and any of his three witnesses to give oral evidence from Poland (namely, that none of them is resident in or a citizen of Poland) and, accordingly, sought permission for the admission of three witness statements from Michal Kravec Snr, (the Applicant's father), Michal Kravec Jnr, (the Applicant's brother) and Martin Drmola. As a result, the length of the hearing was significantly reduced.
23. No objection was received from the Respondent regarding the admissibility of the witness statements subject to the following points being taken into consideration:
 - 23.1 the weight to be attached to the evidence in the absence of independent corroborative evidence of factual statements; and,
 - 23.2 the inability of the Respondent to cross-examine the Applicant and any of his witnesses on their evidence.
24. The Tribunal agreed to admit this evidence. The weight which it attaches to the evidence is set out in paragraph 31(7) of this Decision.

Appeals against the Financial Penalty Notices ("FPNs")

25. Mr Whatley, Counsel for the Respondent, briefly summarised the Respondent's position in respect of each of the Properties as follows:
 - 25.1 Strawberry Hill: one FPN dated 7 December 2022 has been issued relating to an offence under s234(3) of the 2004 Act, namely, a breach of Regulation 4 of the Management Regulations. The date of the offence is confirmed as 17 May 2022. The Respondent describes the Property as a 4-bed bedsit-style HMO occupied by 3 persons at the date of the offence. The FPN was calculated at £22000 on the basis of a finding of high harm/high culpability.
 - 25.2 Riverbank Tower: the Property is a flat within a block owned/managed by Salix Homes.
 - (1) A single appeal was made in respect of two separate FPNs each dated 13 October 2022 relating to an offence under s234(3) of the 2004 Act, namely, a breach of Regulation 4 of the Management Regulations and an offence under section 72(1) of the 2004 Act of being in control of or managing an HMO which is required to be licensed but is not so licensed. In each case, the date of the offence is confirmed as 23 March 2022. The Respondent describes the Property as a 3-bed bedsit-style HMO occupied by 3 persons at the date of the offences. The FPN for the Regulation 4 offence is calculated at £12500 on the basis of a finding of low harm/high

culpability and the FPN for the licence offence is calculated at £7500 on the basis of a finding of low harm/medium culpability.

- (2) An issue has been raised in respect of the Property as to whether there is a relevant exemption from the licensing requirement under paragraph 2, Schedule 14 of the 2004 Act.

25.3 11, Peterhead Walk: two FPNs each dated 29 September 2023 have been issued again relating to an offence under s234(3) of the 2004 Act, namely, a breach of Regulation 4 of the Management Regulations, and an offence under section 72(1) of being in control of or managing an HMO which is required to be licensed but is not so licensed. In each case, the date of the offence is confirmed as 21 February 2023. The Respondent describes the Property as a 4-bed bedsit-style HMO occupied by 4 persons at the date of the offences. The FPN for the Regulation 4 offence is calculated at £28500 on the basis of a finding of high harm/high culpability and the FPN for the licence offence is calculated at £16500 on the basis of a finding of low harm/high culpability.

26. Cross-examination of the Respondent's witnesses

26.1 Cross-examination of the Respondent's witnesses focused on the following issues:

- (1) the lack of the Applicant's involvement with the Properties as evidenced by his non-attendance at any of the inspections, no in-person meetings having taken place between him and any of the tenants and the lease/tenancy agreements disposing of his interest in the Properties and/or that Michal Kravec was managing the Properties;
- (2) the Respondent's failure to produce evidence to the Applicant until after the issue of the FPNs which had affected his ability to make meaningful representations in response to the Notices of Intent;
- (3) the lack of authority to support the Respondent's claim that s263(3) of the 2004 Act allowed more than one person to be regarded as "a person managing", having regard to the identical enforcement action against Michal Kravec;
- (4) whether the Respondent has established that each of the Properties was an HMO as defined in s254 of the 2004 Act at the respective offence date and, in the case of Riverbank Tower, whether there was an applicable licence exemption; and,
- (5) whether the Respondent had acted in accordance with the AGMA Policy in assessing harm and culpability in respect of each of the offences, and, in respect of the aggregate quantum of the FPNs, proportionately and having given proper consideration to the Applicant's financial means.

26.2 The responses of the Respondent's witnesses are summarised as follows:

- (1) evidence has been presented in respect of each of the Properties of the Applicant's continued involvement after the dates of the purported disposal of his interests to Michal Kravec;
- (2) the Applicant was not prejudiced by the Respondent's alleged failure to produce evidence at an earlier date as much of the information contained in eg witness statements, bank statements was information that the Applicant was already aware of and/or was in his possession/control;
- (3) there is no authority for the proposition that only one person can be regarded as "managing premises";
- (4) the Respondent has provided ample evidence in respect of each of the Properties of its occupation by 3 or more persons at the date of offence;
- (5) there is sufficient evidence to support an inference being drawn that each of the tenants was occupying a Property as their "only and/or main residence";
- (6) the Applicant was fully apprised by the Respondent of the need for an HMO licence in respect of Riverbank Tower; and,
- (7) each of the FPNs has been properly calculated in accordance with the AGMA Policy, having regard, in particular but without limitation, that an assessment of harm does not require actual harm.

Closing Submissions

27. Counsels' oral closing submissions are summarised as follows:

27.1 Applicant

The following issues require consideration by the Tribunal:

- (1) questions of due process/procedure including whether the Respondent acted properly by limiting the disclosure of evidence to its reasons at the date of issue of each of the Notices of Intent and whether the Applicant has been prejudiced?
- (2) whether the evidence supports the Respondent's contention that the Applicant was "a person managing" each of the Properties at the respective offence dates. In this respect, it is appropriate for the Tribunal to draw inferences from the banking information, the lease agreements, the WhatsApp messages and emails and that both Michal Kravec Senior and Junior state that access to the Applicant's email address, WhatsApp account and his bank account was given to all family members;

- (3) further, if the Tribunal determines that the tenancy agreements are valid, then the only person who can be considered to be managing the premises must be Michal Kravec as the statutory provisions are clear that only one person can receive or be entitled to receive rent;
- (4) whether the Respondent has established that each of the Properties is an HMO including, without limitation, whether it has satisfied the “main and only residence” condition, and whether it is appropriate to distinguish the decision in *Opara v Olasemo* [2020] UKUT 96 (LC) on the basis that it concerns a rent repayment order where the ability of a lay tenant to investigate and bring the matter before a tribunal is very different from that of a local authority acting through its professional officers exercising significantly greater powers of investigation;
- (5) with regard to the Riverbank Property:
 - (i) is the exemption from the licensing requirement in Schedule 14, paragraph 2 of the 2004 Act applicable?
 - (ii) even if the exemption does not apply, is there a “reasonable excuse” defence available to the Applicant based on a reasonable belief that the exemption was applicable?
- (6) whether there is a further “reasonable excuse defence” in respect of all three Properties having regard to the lack of any direct involvement with the Properties by the Applicant since in or about 2017 and as evidenced by the various lease and tenancy agreements and the appointment of Martin Drmola as the manager of the Properties ;
- (7) whether the aggregate quantum of the FPNs can be regarded as proportionate and reasonable having regard to the provisions of the AGMA Policy and, in respect of the Riverbank Property, has the Respondent given proper consideration to paragraph 5.5 of in reducing the FPN.

27.2 Respondent

The following issues require consideration by the Tribunal:

- (1) evidence:
 - (i) the weight to be attached to the witness statements provided by the Applicant having regard, inter alia, issues of hearsay, the absence of 3rd party corroborative evidence and the absence of any opportunity for cross-examination;
 - (ii) the absence of any explanation regarding the circumstances surrounding the production of the various “joint statements” and their “pro forma” content;

- (iii) the timing of the production of the various tenancy/lease agreements by the Applicant;
 - (iv) apparent inconsistencies as between the various lease and tenancy agreements including, without limitation, the continued receipt of rent by the Applicant until 9 May 2022;
- (2) with regard to the issue whether the Applicant was “a person managing” the Properties within section 263(3) of the 2004 Act, there is no authority for the proposition that there can only be one person managing premises at any one time;
- (3) in respect of each of the Properties, the Respondent has established that the Applicant was, at the respective offence date, the owner and:
 - (i) Peterhead Walk: in the absence of any legal entitlement on the part of Michal Kravec Snr to receive the rents, he can only be doing so as trustee/agent for the Applicant;
 - (ii) Strawberry Hill and Riverbank Tower: if the Applicant has legally disposed of a leasehold interest in the Properties but has continued to receive the rents following that disposition, he can only be doing so as trustee/agent for the lessee.

In both circumstances, the Applicant comes within the definition of a manager in section 263(3) of the 2004 Act;

 - (iii) in the alternative, the agreements disposing of the Applicant’s leasehold interest in Strawberry Hill and Riverbank Tower and the tenancy agreements made by Michal Kravec in respect of all of the Properties are a sham designed to try to evidence a distance between the Applicant and each of the Properties and produced in evidence only once the Applicant recognised the likelihood of the Respondent taking enforcement action against him.
- (4) the Respondent is satisfied that the guidance provided in the Opara decision and in the decision of Williams v Horsham District Council [2004] EWCA Civ 39 in determining “only and/or main residence” is appropriate to these Applications and that the appropriate inference to be drawn in the circumstances is that in each case the respective Property is the “only and/or main residence” of the particular tenant;
- (5) Salix Homes cannot be regarded as being in control of or managing the Property at Riverbank Tower as the Property is a self-contained flat demised on a long lease in respect of which Salix Homes receives neither the rack rent nor rent from the occupiers. The exemption from classification as an HMO does not apply to the Property accordingly;

- (6) reasonable excuse defences:
- (i) Riverbank Tower: the email exchanges between the Respondent and the Applicant in March 2022 were clear in informing the Applicant that an HMO licence was needed, how to apply and in what circumstances a TEN could be sought. The possibility of an exemption was not raised by the Applicant until his email of 4 April 2022, after the inspection date of the Property. The Respondent is satisfied that in that context there is no reasonable defence excuse available to the Applicant on the basis that it was not reasonable for him to conclude by reference to the Respondent's website that an exemption was available. The Respondent notes that, to date, no licence application has been made for the Property.
 - (ii) There is evidence of the Applicant's ongoing involvement in detailed matters relating to the Properties after 2017 eg making a TEN application for Strawberry Hill, involvement in administrative matters eg waste collection, the receipt of rent up to 9 May 2022 and, following the purported disposal of his interest in Strawberry Hill and Riverbank Tower, correspondence relating to the Properties with various tenants by text/WhatsApp messages.
- (7) The Respondent is satisfied that, in all respects, the AGMA Policy has been applied correctly. With respect to the Riverbank Property, paragraph 5.5 is not applicable where an assessment of high culpability has been made.

Reasons

Procedural requirements

28. The Tribunal notes that the Applicant has not raised any issues regarding the procedural requirements in respect of the Notices and/or the FPNs, but it is satisfied that the Respondent has complied with the procedural requirements as required under Schedule 13A to the 2004 Act.
29. The Tribunal further notes that there is no statutory requirement upon the Respondent to provide evidence to a person which it may use in defence of an appeal against a FPN by that person at the time of the issue of a Notice of Intent and/or Final Notice.

Issues for determination by the Tribunal

30. In reaching its determinations set out in paragraphs 42 and 43, it was necessary for the Tribunal to consider the following matters:

30.1 is each of the Properties properly classified as an HMO?

- 30.2 is the Applicant to be regarded as “a person managing” the relevant premises?
- 30.3 does the Applicant have a reasonable excuse defence in respect of any of the offences?

Weight to be attached by the Tribunal to the Applicant’s evidence

31. In considering the matters listed in paragraph 30 above, the Tribunal had first to consider what, if any, weight it was to place on the Applicant’s evidence submitted in support of his application dated 31 January 2025.
- 31.1 In this respect, the Tribunal notes as follows:
- (1) the possibility of the Applicant and his witnesses giving evidence remotely from a jurisdiction outside of the UK was first discussed at the Case Management Conference held on 30 September 2024;
 - (2) the Applicant states in his application that this had proved impossible as neither the Applicant nor the witnesses were ordinarily resident in or citizens of Poland. The Applicant states that the Applicant and Mr Martin Drmola both live in Prague whilst Michal Kravec Senior and Junior both live in Slovakia;
 - (3) the Tribunal is aware that the Applicant is a lawyer with some stated expertise in English law and fluency in English. The Tribunal therefore considers that it is reasonable to assume that the Applicant was able to independently research how to make such an application to the Tribunal. Further the Tribunal is aware that the Applicant was provided with a copy of the Guidance Note for Parties: Giving Evidence from Abroad.
 - (4) Having regard to the Guidance, it appears that there would have been no bar to the Applicant and Mr Drmola giving evidence from Czechia and Michal Kravec Senior and Junior giving evidence from Slovakia.
 - (5) Notwithstanding the Applicant’s stated concern that the unavailability of himself and his witnesses at the hearing “may prevent the Appellant from fairly presenting his appeals”, there is no evidence that the Applicant made any attempt to make such application for himself and/or Mr Drmola from Czechia and/or Michal Kravec Senior and Junior from Slovakia.
 - (6) The Tribunal is therefore drawn to the conclusion that, rather than the Applicant being in any way “prevented....from fairly presenting his appeals”, he has chosen to make himself and his witnesses unavailable at the hearing, and thus unavailable for cross-examination by the Respondent and questioning by the Tribunal.

- (7) In view of that conclusion, the Tribunal determines that little weight should be attached to the Applicant's evidence or to the evidence of the Applicant's witnesses set out in their respective witness statements each dated 24 January 2025 to the extent that such evidence is not supported by 3rd party independent evidence or where the nature/content of agreements and/or the timing of their production raise questions which have not been answered.
32. The Tribunal is satisfied that the main purpose of the lease and tenancy agreements between the Applicant and Michal Kravec in respect of Strawberry Hill and Riverbank Tower was to try to create a distance between the Applicant and his involvement in the management of those Properties at the date of the offences. The timing of the production of these agreements suggests that these were produced retrospectively at a time when the Applicant was aware of the possibility of enforcement action by the Respondent. No evidence has been produced to explain why new backdated tenancy agreements were produced in the name of Michal Kravec or why the requests to occupants to change the bank payee details were made some 3 months after the date of the assignment of the leasehold interest to Michal Kravec. Further, no evidence has been produced to explain why the Applicant continued to receive the rents for these Properties after the date of that disposition. As such, the Tribunal is satisfied that the lease agreements are a sham and did not dispose of a leasehold interest in these Properties in favour of Michal Kravec and that they and the tenancy agreements created by Michal Kravec are to be disregarded.
33. Further, in respect of all of the Properties, the Tribunal accepts that there is evidence of the continuing involvement of the Applicant with various occupants after the date of the alleged disposition of his interest in the respective Property. A notable example of this is the Applicant's WhatsApp conversations with Mr Dwyer up to January 2023 concerning issues at Strawberry Hill. In this respect, the Tribunal is not persuaded that access given by the Applicant to other members of his family to use his mobile phone is evidence of him having ceased his involvement with the management of the Property and that messages to/from "Maros" are properly to be considered as having been sent to/by the Applicant.

Is each of the Properties an HMO within s254 of the 2004 Act?

34. Strawberry Hill:

- 34.1 The Tribunal is satisfied that, as at the offence date of 17 May 2022, 4 unrelated people were occupying the Property, namely, Messrs Kondraciuk, Dwyer, Oyeniran and Shaik. In reaching this determination, the Tribunal had regard to the following:
- (1) the presence of Messrs Kondraciuk and Dwyer at the Property during the inspection on 17 May 2022, and the references by each of them in their statements to 2 other occupants, named as "Tommy" and "Habib", who the Tribunal is satisfied are references to Messrs Oyeniran and Shaik;

- (2) the Applicant's bank statements showing payments on various dates during the period from 5 January 2022 to 6 May 2022 from each of Messrs Kondraciuk, Dwyer, Oyeniran and Shaik;
- (3) the bank statements of Michal Kravec showing payments from each of the above after the date of the last payment in each case to the Applicant; and,
- (4) the making of an application dated 24 March 2022 for a TEN in respect of the Property which suggests that, as at that date, the Applicant accepted that the Property was operating as an HMO. The evidence from the bank statements from that date until 17 May 2022 indicate that the same occupants were occupying the Property as at the date of the TEN application.

35. Riverbank Tower:

- 35.1 The Tribunal is satisfied that, as at the offence date of 23 March 2022, 4 unrelated people were occupying the Property, namely, Messrs Quinn, Badru, Zeya and Zakari. In reaching this determination, the Tribunal had regard to the following:
- (1) the presence of Messrs Quinn, Badru and Zeya at the Property during the inspection on 23 March 2022 and of Mr Zakari at the inspection on 26 July 2022;
 - (2) the Applicant's bank statements showing payments on various dates during the period from 6 January 2022 to 28 April 2022 from each of Messrs Quinn and Zakari;
 - (3) the bank statements of Michal Kravec showing payments from Messrs Quinn, Zakari and Zeya after the date of the last payment in each case to the Applicant; and,
 - (4) use of the Property address for the purpose of Mr Zeya being registered to vote.

36. Peterhead Walk:

- 36.1 The Tribunal is satisfied that, as at the offence date of 21 February 2023, 4 unrelated people were occupying the Property, namely, Messrs Valverde, Teklehrahan, Tason and Mihalache. In reaching this determination, the Tribunal had regard to the following:
- (1) the presence of Messrs Valverde and Teklehrahan at the Property during the inspection on 21 February 2023 and the contents of their statements stating, in each case, that they live with 3 other people;
 - (2) the evidence of occupation by Messrs Tason and Mihalache in the form of photographs of important documents eg ID card and passport of Mr Tason, and official correspondence addressed to Mr Mihalache at the Property;

- (3) the Applicant's bank statements showing payments on various dates during the period from 7 January 2022 to 6 May 2022 from each of Messrs Valverde, Teklehrahan, Tason and Milhalache; and,
- (4) the bank statements of Michal Kravec showing payments from Messrs Valverde, Teklehrahan, Tason and Milhalache after the date of the last payment in each case to the Applicant.

37. "Only or main residence"

37.1 The Tribunal is satisfied that, in determining whether or not each of the Properties was being occupied as the "only and main residence" of the occupants, it is appropriate to follow the Upper Tribunal's reasoning in the Opara decision and to draw inferences from the circumstances where direct evidence of the Property being the "main and only residence" of the occupants is not available to it. The Tribunal notes in similar "blunt terms" to those of Judge Elizabeth Cooke in the Opara decision, each of the Properties is low-value housing and it is reasonable to infer that the occupants are unlikely to have second homes. In this respect, the Tribunal accepts as a general statement, Ms Chilton's evidence that, in her experience, information regarding other/alternative accommodation is generally volunteered in these circumstances. The Tribunal is therefore satisfied that, in respect of each of the Properties, it was occupied by the occupants as their "only or main residence".

37.2 Further evidence in respect of Strawberry Hill and Peterhead Walk which the Tribunal has taken into account in this respect is as follows:

(1) Strawberry Hill :

- (i) Mr Kondraciuk being named as the person liable for the Council Tax on the Property;
- (ii) the evidence that each of Messrs Kondraciuk, Dwyer, Shaik and Oyeniran had used the Property address to make credit applications; and,
- (iii) the content of the WhatsApp messages between "Maros" and Ian Dwyer of various dates between August 2022 and January 2023 which concern various issues relating to his occupation of the Property. The Tribunal notes that where a problem with a wasp infestation in August 2022 was not satisfactorily resolved, Mr Dwyer tells him that he has been forced to sleep at his mother's house. Likewise, the messages appear to suggest that Mr Dwyer's signature of the Joint Statement with Michal Kravec was a condition of his receipt of a landlord's reference which Mr Dwyer required to secure alternative accommodation.

(2) Peterhead Walk:

- (i) Mr Gleave's evidence that, following the fire at the Property on 2 December 2023, Mr Teklehrahan was re-housed by the Respondent.

Is the Applicant to be regarded as "a person managing" the relevant premises within s253 of the 2004 Act?

38. In respect of each of Strawberry Hill and Peterhead Walk, the Tribunal notes the HM Land Registry evidence that the Applicant was the registered freehold owner at the relevant dates and, in respect of Riverbank Tower, the Tribunal notes that the Applicant was the registered leasehold owner at the relevant date.
39. In respect of the Properties, and having regard to the Tribunal's determination in paragraph 32 of this Decision in respect of Strawberry Hill and Riverbank Tower, the Tribunal is satisfied that, in each case, the receipt by Michal Kravec of the rents for these Properties after 9 May 2022 is as an agent or trustee for the Applicant within s263(3)(b) of the 2004 Act. As such, the Tribunal is satisfied that the Applicant falls within the definition of "a person managing" in respect of these Properties.
40. The Tribunal makes no determination as to whether Martin Drmola undertook some maintenance duties at the Properties but is satisfied that the existence of such an arrangement does not have any relevance on whether the Applicant was "a person managing the premises" within s263(3) of the 2004 Act as there is no suggestion that Mr Drmola was in receipt of rents from the Property or that the Applicant was in receipt of rents as agent or trustee for Mr Drmola.

Offences under s234(3) of the 2004 Act: breach of regulation 4 of the Management Regulations

41. In respect of each of the Properties, the Tribunal is satisfied that the Respondent has provided sufficient evidence in the form of photographs and in the witness statements of Mr Gleave of the breaches of Regulation 4 of the Management Regulations. In each case, the details of the breaches are set out in the Final Notices. In this respect, the Tribunal notes that the Applicant has not disputed the Respondent's evidence regarding the breaches themselves.
42. The Tribunal is therefore satisfied beyond reasonable doubt that, in respect of each of the Properties, the Applicant's conduct amounted to an offence under s234(3) of the 2004 Act, (breach of Regulation 4 of the Management Regulations), in each case, entitling the Respondent to impose a financial penalty under s249A of the 2004 Act.

Offences under s72(1) of the 2004 Act: failure to have an HMO licence, as required

43. In respect of each of Riverbank Tower and Peterhead Walk, in the absence of any evidence of an HMO licence having been granted in respect of the respective

Property at the relevant dates, the Tribunal is satisfied beyond reasonable doubt that the Applicant's conduct amounted to an offence under s72(1) of the 2004 Act, (failure to have an HMO licence as required), in each case, entitling the Respondent to impose a financial penalty under s249A of the 2004 Act.

Reasonable Excuse Defence

44. Riverbank Tower: the Tribunal accepts that, on the face of it, a lay person might consider that the exemption in Schedule 14, paragraph 2 of the 2004 Act is applicable to the Property. The Tribunal is satisfied that Salix Homes neither had control or was managing the Property at the relevant date and the exemption does not apply accordingly. The Tribunal notes that:
- (1) the Applicant has a degree in English law and it is reasonable to expect that, if not on first glance but having made reasonable enquiry, he would have understood why the exemption did not apply to the Property; and,
 - (2) whilst the correspondence between the Applicant and the Respondent did not explicitly explain why the exemption was inapplicable (presumably because it pre-dated the exemption being raised as an issue by the Applicant), it was clear in communicating to the Applicant that a licence was required for the Property. In assuming a contrary position, the Applicant should have been put on notice of the need for further enquiry as a result of the Respondent's clearly stated position.
45. Having regard to the above, the Tribunal is satisfied that, in the absence of any evidence of a reasonable belief on the Applicant's part that the exemption was applicable to the Property, there is no "reasonable excuse" defence to the s72(1) offence.
46. In view of the Tribunal's determination that the Applicant was "a person managing" the Properties at the relevant dates, the Tribunal is satisfied that there is no basis for a reasonable excuse defence based on the Applicant's claimed lack of involvement with the Properties.

Quantum of the FPNs

47. With regard to the assessment of harm in the calculation of the FPNs, the Tribunal is satisfied that it is in accordance with the AGMA Policy that no actual harm needs to have occurred.
48. The Tribunal notes that, save as referred to in paragraph 47 above, the Applicant has not challenged the individual assessments of the FPNs rather than, having regard to the aggregate amount of the FPNs, the Respondent has failed to act proportionately and reasonably as required by the AGMA Policy.

49. The Tribunal is satisfied that in the calculation of the FPN the following circumstances are relevant:
- 49.1 the FPNs relate to 3 separate properties, each of which was occupied as a bedsit-style HMO, the nature of which occupation involves inherent risks which require proper management;
 - 49.2 the s234 offences relate to the inadequacy of fire safety measures;
 - 49.3 the consequence of the failure to apply for an HMO licence where required means that there is no inspection of a property which would reveal the inadequacies seen at the inspections of the Properties; and,
 - 49.4 in the case of Peterhead Walk, a fire actually occurred.

Determinations

50. In accordance with paragraph 10(4) of Schedule 13A to the 2004 Act, the Tribunal determines as follows:
- 50.1 Strawberry Hill: s234 offence:
- (1) The Tribunal confirms the assessment of high harm/high culpability in the calculation of the FPN which should have been determined in accordance with the AGMA Policy at £22500, other than for what appears to have been an administrative error on the Respondent's part.
 - (2) The Tribunal therefore varies the FPN by increasing it from £22000 to £22500.
- 50.2 Riverbank Tower: s234 offence:
- (1) The Tribunal considers that:
 - (i) having regard to the nature of the defects identified in the context of the nature of the occupancy giving rise to a serious risk of harm to the occupants, the Respondent's assessment of low harm is perverse and not in accordance with the AGMA Policy and should be varied by an assessment of medium harm; and,
 - (ii) in the absence of evidence of recklessness, the Tribunal determines that the assessment of high culpability should be varied by an assessment of medium culpability.
 - (2) The Tribunal therefore varies the FPN by increasing it from £12500 to £16500.

50.3 Riverbank Tower: s72(1) offence:

- (1) The Tribunal notes as follows:
 - (i) it confirms the Respondent's assessment of low harm as it appears that this was a first offence;
 - (ii) in the absence of evidence of actual knowledge on the Applicant's part, it considers that an assessment of low culpability (ie negligence) rather than medium culpability is more appropriate.
- (2) The Tribunal therefore varies the FPN by reducing it from £7500 to £2500.

50.4 Peterhead Walk: s234 offence

- (1) The Tribunal confirms the FPN at £28500.

50.5 Peterhead Walk: s72(1) offence

- (1) The Tribunal considers that;
 - (i) having regard to the occurrence of a fire which might have been avoided had an inspection been undertaken (which would have been prompted by a licence application), the Tribunal determines that the assessment of low harm should be varied by an assessment of medium harm;
 - (ii) the Tribunal agrees with the assessment of very high culpability.
- (2) The Tribunal therefore varies the FPN by increasing it from £16500 to £25500.

51. Aggravating or Mitigating Factors

The Tribunal does not consider that there are any aggravating or mitigating factors to be taken into account in the calculation of the FPNs.

52. Financial Means of the Applicant

Whilst the Applicant made submissions regarding the relationship between the rental income from the Properties and the quantum of the FPNs, no evidence was presented to the Tribunal regarding the Applicant's financial means which could be taken into account.