FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/33UE/HNB/2024/0004** **CAM/33UE/HNB/2024/0006**
Property	**:**	**38 Highfield, King's Lynn PE30 4RD** **48 Westmark, King's Lynn PE30 4RQ**
Applicant	**:**	**Carmine Salamone**
Representative	**:**	**Ian Fisher, Solicitor**
Respondent	**:**	**Borough Council of King's Lynn and West Norfolk**
Representative	**:**	**Doug Scott, Counsel**
Type of application	**:**	**Appeal against a financial penalty – Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal members	**:**	**Judge K. Saward** **Judge M. Hunt**
Date of hearing	**:**	**10 February 2025**
Date of decision	**:**	**14 February 2025**

DECISION AND REASONS

Decisions of the Tribunal

(1) The Tribunal finds that all offences identified in Final Notices under section 72 and section 234 of the 2004 Act in respect of the properties at 38 Highfield and 48 Westmark have been established beyond reasonable doubt, and that no defence is made out. The Respondent was entitled to impose financial penalties upon the Applicant.

(2) The Final Notice dated 22 December 2023 for failure to license an HMO under section 72 of the Housing Act 2004 at 38 Highfield, King's Lynn is varied to reduce the financial penalty from £7,500 to £5,000.

(3) The appeal is dismissed, and the Tribunal confirms the financial penalties in the three Final Notices issued on 22 December 2023 for offences under section 234 of the Housing Act 2004 in relation to the property at 38 Highfield, King's Lynn.

(4) The Final Notice dated 22 December 2023 for failure to license an HMO under section 72 of the Housing Act 2004 at 48 Westmark, King's Lynn is varied to reduce the financial penalty from £7,500 to £5,000.

(5) The appeal is dismissed, and the Tribunal confirms the financial penalties in the four Final Notices issued on 22 December 2023 for offences under section 234 of the Housing Act 2004 in relation to the property at 48 Westmark, King's Lynn.

REASONS

The application

1. The Applicant is the freehold owner of the two properties at 38 Highfield and 48 Westmark in King's Lynn. Both properties are 2-storey mid-terraced houses of timber framed construction with a low-profile roof.

2. By application dated 4 January 2024 the Applicant appeals against financial penalties imposed by the Respondent Council in Final Notices dated 22 December 2023. The Final Notices were issued pursuant to section 249A of the Housing Act 2004 for alleged offences under sections 72 and 234 of the Housing Act 2004 ("the 2004 Act"). Separate case numbers have been allocated to the appeals relating to each property.

3. There is a total of nine Final Notices for housing offences alleged to have been committed on 23 January 2023 ("the relevant date"). Four Final Notices relating to 38 Highfield sought to impose financial penalties totalling £26,250. The financial penalties in five Final Notices for 48 Westmark total £31,250.

4. Whilst the cases have been heard together, the Tribunal has clearly determined them separately and considered each alleged offence in turn.

5. Directions were issued by the Tribunal on 19 September 2024. In response to those directions, the Tribunal received paginated and indexed bundles for both properties. An unsigned and undated statement was also submitted by the Applicant, Mr Salamone, with documents attached. The Council filed a written reply and appended a typed transcript of an interview with the Applicant on 23 February 2023.

6. No inspection of the properties took place, it being unnecessary in order to determine the issues before the Tribunal.

The Hearing

7. With the consent of the parties, the hearing took place remotely using the CVP platform. Both parties were legally represented. Evidence was heard from Mr Salamone, the Applicant, and Kay Childs-Scott, Housing Standards Officer, for the Council. The witnesses were cross-examined and answered questions from the Tribunal.

8. The Tribunal is making its own decisions rather than reviewing the Council's decisions. In accordance with paragraph 10(3) of Schedule 13A to the 2004 Act the appeals have been conducted as a re-hearing of the Council's decisions. In arriving at a determination, regard may be had to matters of which the Council was unaware. However, that does not permit the Tribunal to determine an appeal on the basis of reasons for imposing a financial penalty that have not been set out in the Council's final notice (*Maharaj v Liverpool City Council* [2022] UKUT 140 (LC)).

9. On appeal the Tribunal can confirm, vary or cancel the final notice, but it cannot vary the notice to increase the amount of the penalty.

10. Under section 249A(1) of the 2004 Act, a local authority may only impose a financial penalty if satisfied beyond reasonable doubt that a person's conduct amounts to a relevant housing offence. Therefore, the Tribunal must be satisfied to the same criminal standard of proof that an offence has been committed. In considering whether there is a defence, the lower 'balance of probabilities' test applies.

The Law

11. The procedure for financial penalties and appeals against them are set out in section 249A and Schedule 13A of the 2004 Act. In order to impose a financial penalty, there must be a "relevant housing offence" committed by the person served with the notice. Multiple "relevant housing offences" are alleged in these cases.

12. For each property, the Council alleges the offence of having control of or managing a house in multiple occupation ("HMO") without the required licence under section 72 of the 2004 Act.

13. In addition, the Council relies on section 234(3) of the 2004 Act and alleged offences by the Applicant in failing to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the 2006 Regulations"). In particular, the duty to provide information to occupiers (regulation 3), the duty to take safety measures (regulation 4), the duty to maintain common parts (regulation 7) and the duty to maintain living accommodation (regulation 8).

14. The Applicant is the manager of both properties for the purposes of sections 72 and 234 of the 2004 Act, as the person who receives rent or other payments from tenants or licensees in occupation (section 263(3)).

15. Extracts of relevant statutory provisions are appended to this decision.

The Issues

16. At the start of the hearing, the Applicant's Solicitor confirmed that no issues are taken regarding compliance with the procedural requirements in section 249A or Schedule 13A of the 2004 Act or the validity of the Notices of Intent issued on 5 July 2023 or the Final Notices. The Tribunal is satisfied of compliance.

17. The Applicant further admits that 38 Highfield was an unlicensed HMO at the relevant date and that the housing management offences were committed in relation to this property for breach of the 2006 Regulations, as alleged in the Final Notices. The ongoing dispute concerns the amount of financial penalties imposed and whether 48 Westmark is an HMO.

18. It was agreed that the issues for the Tribunal to determine are:

- Whether the Tribunal is satisfied beyond reasonable doubt that each relevant housing offence has been committed.

- If an offence is found to have been committed, whether, on the balance of probabilities the Applicant has a defence of 'reasonable excuse'.

- If not, whether the financial penalty has been properly imposed by reason of the requirements in section 249A of and paragraphs 1 to 8 of Schedule 13A of the 2004 Act.

- What is the appropriate level of penalty in the circumstances?

The Applicant's Case

19. The grounds of appeal set out in the applications are the same for both properties. The Applicant says that Housing Officers investigated four of his properties in King's Lynn and found that two were in breach of HMO regulations. These were "non intentional HMO's".

20. The Applicant considers that the financial penalties issued are grotesque and unjustifiable in amount. The total amount for the two properties combined had been £115,000 in the Notices of Intent. They have since been revised to a total of £57,500. The Applicant believes there is vast unfairness in the conclusion of these penalties. He refers to having fully co-operated with the Council the entire time in righting any wrongs.

21. Where HMO regulations have been breached, the Applicant maintains that he has proven they were unintentional. He is "not a seasoned law breaker". Other properties within the same Council area that the Applicant rents out are fully compliant single family unit households.

22. In terms of 38 Highfield, six people were found to be living there. Of those six, four were related by blood and one was a long-term family friend. One was living at the property temporarily due to being homeless in the winter.

23. In the unsigned statement, the Applicant elaborates that there was originally a tenant at 38 Highfield called Artur who occupied with his wife, their two children, plus the wife's brother. After the wife moved out, Artur's friend Slava moved in who was not a family member. The Applicant says this was without his consent although he admits that he "acquiesced in the situation". Another friend of Artur called Aleksander moved in during September 2022.

24. At the hearing, the Applicant accepted that 38 Highfield was an HMO but emphasised that it was unintentional. Previous enforcement action had been some years before and the Applicant intended to operate the properties as non-HMOs. At both properties this had been achieved with a single family occupying each.

25. In terms of the HMO management regulations, mitigation only was offered at the hearing and so denials contained within the statement are not reproduced here. The Applicant says that he visited 48 Westmark regularly and Edgars, Kieren and Miguel all knew his name and had his mobile number. The Applicant accepts that he is responsible for the shortcomings. He had voluntarily attended an interview under caution and then undertook a programme of improvements at both premises. Neither property is now an HMO.

The Respondent's Case

26. The witness statement of Ms Childs-Scott ("the Officer") explains how she met 3 unrelated tenants at 48 Westmark at her unannounced investigation visit on 17 January 2023, being Edgars and Madars (room 4) and Kieren (room 2). They individually told the Officer that there were 5 letting rooms and a shared communal kitchen and bathroom. She was told that Miguel (room 1) and Rumi (room 3) were out at work. The tenants told her that the rooms were found on social media and by word of mouth or referral from friends. Room 2 was the subject of a Prohibition Order, forbidding its use as a bedroom.

27. A formal investigation under notice to the landlord and tenants was conducted on 23 January 2023.

28. The Council describes the Applicant as an experienced professional landlord with many years' knowledge of managing tenanted properties including HMO's. It submits that the Applicant permitted the situation whereby both properties were unlicensed HMO's. He visited the premises and collected rents. The Council does not accept that the Applicant did not intend to create any HMO given his awareness of the persons present, their relationship with each other and his HMO experience. To support its case, the Council produced a transcript of the full PACE interview with the Applicant.

29. The provision of the Applicant's mobile telephone number was insufficient to assist visitors and was only provided to some occupiers. Firefighting equipment required inspection and servicing by a professional engineer. The Council does not believe that the Applicant possesses the relevant skills for those tasks.

Evidence Heard

The Applicant

30. The Applicant explained that 48 Westmark was let to a Mr Rodrigues who occupied the property with his girlfriend until 26 July 2022. Mr Rodrigues had broken the contract by sub-letting. When he left, two sub-tenants, Edgars and Miguel, had stayed behind. They had a friend, Aleksander, who stayed until moving to 38 Highfield in September 2022.

31. The Applicant acknowledged that when the Council first inspected 48 Westmark on 17 January 2023, there were 4 unrelated individuals living at the property, namely Kieren, Edgar, Miguel and Madars. Those same people were in occupation on 23 January 2023. Madars was a friend of Edgar, who "stayed for Christmas" sharing Edgars room without paying rent independently to the Applicant. The Applicant claimed that an individual by the name of Rumi, had only stayed at

48 Westmark for 2 nights in January time and was gone by 17 or 23 January 2023.

32. It was the Applicant's oral evidence that another person called Mantas had been at the property for 2 to 3 months without paying rent. Mantas was not resident when the Council visited in January 2023, having left "much earlier". Under cross-examination, the Applicant said he was unsure when Mantas had left, but it was probably a week or two before the Council inspected. The Applicant described Mantas as in and out of the property, staying with his girlfriend. When asked about inconsistencies in his oral evidence compared with his answers given under caution, the Applicant said the Mantas' room was locked with his stuff inside and he didn't know if he was coming back from his girlfriend.

33. It was put to the Applicant that his account did not tally with the witness statement of Kieren (dated 23 January 2023), who said "6 people live here, sometimes more". The Applicant responded that the witness statement was "totally incorrect" and "definitely a lie".

For the Council

34. In light of the Applicant's concessions, the oral evidence of Ms Childs-Scott focussed on 48 Westmark and computation of the financial penalties imposed for both properties.

35. Having concluded that 38 Highfield was an unauthorised HMO, the Officer stated that the Council decided to look at other properties owned by the Applicant. At the first visit on 17 January 2023, there were three people present: Kieren, Edgars and Madars. The Officer noted shared facilities. Individual doors were locked and the yale key lock style were indicative of those used in HMOs. The occupants were spoken to individually and it was established which rooms they occupied. No access was gained to rooms 1, 3 and 5.

36. The Officer conducted a further inspection on 23 January 2023. Kieren and Edgars were present. Kieren agreed to write a witness statement on a blank template in his own words. The roommates identified Rumi as occupying room 3, that he was not very friendly and that the room changed occupancy quite frequently. The Officer's handwritten notes are produced and were confirmed as contemporaneous. At the time, Rumi's name was not known and he is referenced in them as 'the Albanian man'.

37. The Officer explained that the Council's policy was used to ascertain the level of fine against each offence. The policy did not allow deductions and it was due to be replaced. After the Applicant's responses to the Notice of Intent, the Council had reassessed the scores. As there were so many offences and it was a large sum, the Council's new policy was applied to allow a 50% reduction, the maximum envisaged.

Consideration

Whether an HMO licence was required

38. Under section 72 (1) of the 2004 Act "a person commits an offence if he is a person having control of or managing an HMO which is required to be licenced under this Part but is not so licensed." There are 3 separate offences that may be committed (section 72(2)). In these appeals, the alleged offence is a failure to obtain a licence under section 72(2)(a). This offence does not require the person to have *knowingly* failed to obtain a licence.

39. It is undisputed that at the relevant date of 23 January 2023, the property at 38 Highfield was let as an HMO. It required a licence under section 61 of the 2004 Act and did not have one. The offence of failing to obtain a licence is one of strict liability subject to any statutory defence, to which we return.

40. The Applicant denies that 48 Westmark was an HMO at the relevant date. An HMO that is required to be licensed, is defined in section 55(2)(a) as "any HMO in the [local housing] authority's district which falls within any prescribed description of HMO".

41. The Licensing of Houses in Multiple Occupation (Prescribed Description) Order 2018/221 provides that an HMO is of a prescribed description for the purpose of section 55(2)(a) if it- (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets either (i) the standard test under section 254(2); (ii) the self-contained flat test under section 254(3) except for purpose-built flats situated in blocks comprising three or more self-contained flats; or (iii) the converted building test under section 254(4) of the Act.

42. Section 254 provides: (1)"For the purposes of this Act a building or part of a building is a "house in multiple occupation" if (a) it meets the conditions in subsection (2) ("the standard test") (b) it meets the condition in subsection (3) ("the self-contained flat test") (c) it meets the conditions in subsection (4) ("the converted building test").

43. It is the standard test that is applicable. It is undisputed that the requirements of section 254(2) are met. The point in issue is whether 48 Westmark was occupied by 5 or more persons at the relevant date.

44. In oral evidence, the Applicant acknowledged that there were 4 occupants of 48 Westmark on 23 January 2023. The Tribunal found the evidence of the Applicant to be vague and inconsistent on occupancy. Whilst Madars was said to have stayed temporarily for Christmas, it was admitted he remained at the house as one of four occupants on

23 January 2023. Despite the Applicant's insistence that Mantas was not resident in January 2023, this is contradicted by his replies given under caution when interviewed by Council officers on 23 February 2023. At that time, the Applicant identified 2 to 3 people living at 48 Westmark including Mantas. The Applicant referred to Mantas as the Latvian man who "says he's gonna move in with his girlfriend." These responses made a month after the relevant date make clear that Mantas was still in occupation.

45. At interview stage the Applicant claimed to have never had six people living at 48 Westmark "except to the fact that….. Edgars' room he had increased it by having the extra person." That extra person was confirmed in evidence as Madars.

46. Therefore, on the Applicant's own evidence given soon after the relevant date he had confirmed there were six occupants. That is consistent with the Officer's investigations on 17 January 2023. The Applicant's evidence has now changed.

47. Indeed, the Tribunal notes that in the application form of 4 January 2024, the Applicant complained only of the amount of the penalties for the two properties, described as "non intentional HMO's". The Applicant confirmed at the hearing that he is an experienced landlord who understands what an HMO is, having had HMOs in the past.

48. The Officer did not gain access to all rooms. There were locked rooms on each visit in January 2023. The Officer says she was told that there were 5 letting rooms with 6 occupants on 17 January 2023. In her witness statement the Officer states that on her second visit on 23 January 2023 tenants informed her that the occupant of room 3 (Rumi) had left after her unannounced visit. What the Officer was told is hearsay. Nevertheless, as the Applicant's Solicitor accepted, such evidence is not inadmissible in these proceedings. Of course, in isolation it carries limited weight, but it is part of the evidence to be considered as a whole.

49. The witness statement of Kieren does not give names or details, and he did not attend the hearing for his evidence to be cross-examined. To that extent it is of limited weight. However, the statement was made on the relevant date of 23 January 2023, and it is his own account, albeit brief. In specifying that 6 people were living at 48 Westmark, it does corroborate the number of occupants given by the Applicant himself.

50. Even if Mantas spent time away at his girlfriends, the evidence is that he still retained the room at 48 Westmark where his possessions were kept in the locked room to where he returned. There is nothing before the Tribunal, beyond the Applicant's assertion in these proceedings, that Mantas had ceased to use the house as his main residence.

51. The Tribunal notes that the internal layout was consistent with an HMO having shared facilities and lockable rooms, but focus must be on actual occupancy. It does not automatically follow that locked doors meant rooms were occupied, although it is consistent with an occupant wishing to keep their possessions secure. The Tribunal places no reliance on the new point made by the Officer that the Applicant left unoccupied rooms unlocked in another property, whereas doors at 48 Westmark were locked. Nor does the Tribunal rely upon the Officer's suggestion that "clumped" items in the bathroom, such as shower gels, and lots of pans in the kitchen indicated there were 5 or more occupants.

52. As it is, the Tribunal is satisfied beyond reasonable doubt that the rooms were in occupation with 5 people living in 4 households at the relevant date. There is compelling evidence from the interview transcript, which undermines the Applicant's case, along with other supporting evidence. Notwithstanding Rumi's departure, the evidence very firmly points to 5 occupants forming more than one household.

53. Having considered the evidence before it, the Tribunal finds that the Council has proven to the criminal standard of proof that 48 Westmark was an HMO. There was no temporary exemption notice in place, nor was it subject to an interim or final management order for the licence requirements to be inapplicable.

Whether offences were committed

54. Both properties were HMOs which were required to be licensed under section 61. Neither property was licensed. Two offences were therefore committed by the Applicant under section 72(1) of the 2004 Act.

55. The Applicant accepted at the hearing that in this eventuality of the Tribunal finding that 48 Westbrook is an HMO then all the housing offences identified in the Final Notices have also been committed under section 234 for failure to comply with the 2006 Regulations. By admission, all the housing offences have also been committed as identified in the Final Notices for 38 Highfield. The offence of failing to comply with a relevant regulation is one of strict liability, subject only to the statutory defence of 'reasonable excuse' under section 234(4).

56. The question turns to whether there was any defence.

Whether there is any defence

57. The Applicant does not rely upon any defence for the housing management offences under section 234(4) in respect of either property.

58. No defence to the section 72 offences are explicitly pleaded. Under section 72(5) it is a defence if the Applicant had 'reasonable excuse'.

59. The burden of proving a reasonable excuse falls on the defendant (i.e., the Applicant) and the defence need only be established on the balance of probability (*I R Management Services Ltd v Salford City Council* [2020] UKUT 81 (LC) at [27] and [28]).

60. The Tribunal took care to explore the Applicant's position given his references to unintentional HMOs and being mindful of the decision of the Upper Tribunal in *Thurrock Council v Khalid Daoudi* [2020] UKUT 209 (LC):

> [26] "I*gnorance of the need to obtain an HMO licence may be relevant in a financial penalty case in at least two different ways. There may be cases in which an ignorance of the facts which give rise to the duty to obtain a licence may provide a defence of reasonable excuse under section 72(5). In I R Management Services Ltd v Salford City Council [2020] UKUT 81 (LC) an experienced letting agent responsible for the management of a property comprising only two bedrooms mounted a reasonable excuse defence on grounds that he had been unaware that the property had come to be occupied by more than one household, making it an HMO. The FTT in that case was not persuaded of the letting agents' lack of knowledge but, if it had been, his ignorance of the need to obtain a licence in those circumstances would have been capable of supporting the statutory defence.*

61. The Upper Tribunal continued: "*It is also possible to imagine circumstances in which a landlord had a reasonable excuse for not appreciating that a property had come within a selective licensing regime (although it would be necessary for the landlord to have taken reasonable steps to keep informed).* ***Short of providing a defence, ignorance of the need to obtain a licence may be relevant to the issue of culpability*** *[emphasis added]. Although, as the Government's Guidance points out, a landlord is running a business and ought to be expected to understand the regulatory environment in which that business operates, not all businesses are the same. A decision maker might reasonably take the view that a landlord with only one property was less culpable than a landlord with a large portfolio."*

62. Further, at [27], the Upper Tribunal stated: "*No matter how genuine a person's ignorance of the need to obtain a licence, unless their failure was reasonable in all the circumstances, their ignorance cannot provide a complete defence.*"

63. After probing, the Applicant's Solicitor confirmed that 38 Highfield was an HMO whether created intentionally or not. It was confirmed that the Applicant conceded he was aware of the facts giving rise to the creation of an HMO, and that he had no reasonable excuse for allowing that situation to arise. The Applicant's arguments stem from how the matrixes were applied to individual offences and mitigation.

64. Having received the above confirmation, the Tribunal finds that no defence arises in respect of any of the offences.

The penalties

65. In light of our findings above, the Tribunal is satisfied that the financial penalties have been properly imposed by reason of the requirements in section 249A of and paragraphs 1 to 8 of Schedule 13A of the 2004 Act.

66. The point in issue is how the scoring has been undertaken in the matrix for each offence leading to the imposition of the penalties. The next question is whether the penalty imposed was for the right amount.

67. Under paragraph 12 of Schedule 13A of the 2004 Act regard must be had to the statutory guidance given by the Secretary of State about the exercise of functions in relation to civil penalties. The Guidance for Local Housing Authorities titled 'Civil penalties under the Housing and Planning Act 2016', encourages local authorities to develop their own policy on determining the appropriate level of civil penalty, which the Council has done.

68. Tribunals will generally be slow to criticise properly adopted policies. In reference to civil penalties, the Court of Appeal in *Sutton v Norwich CC* [2021] 1 W.L.R. 1691 said that an appellant tribunal is not entitled to overturn a penalty just because it would have imposed a different one. To interfere, the tribunal must conclude that the decision was an unreasonable one or wrong because of an identifiable flaw in the reasoning, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.

69. The Government Guidance lists factors to be considered to ensure that the penalty is set at an appropriate level. They are: (a) severity of the offence (b) culpability and track record of the offender (c) harm caused to the tenant (d) punishment of the offender (e) deter the offender from repeating the offence, and (f) deter others from committing similar offences.

70. The Council's policy uses a scoring penalties matrix against 4 dimensions: (1) deterrence and prevention; (2) removal of financial incentive; (3) offence and history; and (4) harm to tenants.

71. The Tribunal starts with the Council's policy in line with the Upper Tribunal decision in *London Borough of Waltham Forest v Marshall* [2020] UKUT 35 (LC), among other authorities. The decision is authority for the need to pay proper attention to the Council's decision and reasons behind it. Notably, it is the Applicant who has the burden of persuading the Tribunal to depart from the policy [54].

72. The Applicant considers the matrixes to have quite a lot of overlap, with double counting. By way of example, the Applicant referred to high scores on 'deterrence and prevention' made on the basis of track record that is already in the mix under 'history'. The outcome was described as "arithmetically crude" and lacking in nuance.

73. The Tribunal does not share those concerns. Inevitably there will be overlap where several offences have occurred, as in this instance. The workings were explained. The Council could have imposed penalties for each and every offence but concluded that it was disproportionate to do so, as there were so many. When examined, there are variances in how the matrixes have been scored depending upon the individual offence.

Section 72 (HMO licensing offences)

74. The financial penalty imposed for this offence is £7,500 per property with identical scoring across each. The Council's reasons for the penalty were that the Applicant is a professional landlord with multiple properties, including two HMOs, and that previous enforcement action in respect of the same properties has not been a deterrent.

75. The Applicant argues that he did not advertise or procure an HMO at 38 Highfield. It was not something he orchestrated but he did know about it. He maintains that the situation evolved and this impacts upon his culpability. The Council took the view that each HMO was deliberate.

76. The Council's policy identifies that the severity of the offence is based on an assessment of culpability, track record, portfolio size and risk of harm. Culpability is expressed as a key factor in determining the severity of an offence. The level of the penalty is set be calculating the culpability category, namely (i) very high (ii) high (iii) medium or (iv) low.

77. The narrative in the Government Guidance for considering 'culpability' provides that a higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

78. Looking at the specific scores in the matrix, the Tribunal considers the Council was clearly right to identify the Applicant as a multiple offender given the numerous and ongoing offences of moderate to large severity.

79. The two properties are not HMOs now, but the Council is understandably concerned to ensure that if the Applicant wants to convert them back in future, they will be fully compliant with the licensing regime. However, it is unclear why the Council had "little confidence" that a financial penalty will deter repeat offending. Of

course, levels of confidence are subjective, but they need to be based on sound reasons.

80. The Council produced a schedule of offences committed by the Applicant in 2013 and referred to convictions in 2024 (i.e., after the relevant date). Yet, none of the offences brought to our attention concerned a licensing failure. The Tribunal is satisfied that the Applicant did not intend to create an HMO having let to single households at the outset, but he did let it happen. From the evidence, he has been in regular contact with the Council to resolve the issue.

81. There were failures relating to two properties in these proceedings, which would justify low confidence, as it was not a single occurrence. To this limited extent and for this particular offence, the finding against the single factor of 'deterrence and prevention' was too harsh having regard to the full circumstances. For each property, a score of 10 rather than 15 should be applied. This would result in a final score of 60, for which the penalty fee is £10,000 to be reduced by 50%.

82. Therefore, the Tribunal determines that the Final Notices for 38 Highfield and 48 Westmark should both be varied to reduce the penalty from £7,500 per property to £5,000 for the section 72 offences.

Section 234 HMO regulation offences

83. The Tribunal can fully understand why the Council would have "little confidence that a financial penalty will deter repeat offending" for most of the HMO regulation offences. There are multiple offences identified across the properties. The Applicant is an experienced landlord for over a decade and had committed multiple housing management offences in 2013. From the evidence, both properties were in poor condition.

84. Across all the matrixes the Applicant benefited from being identified as a medium portfolio landlord. The number of properties disclosed in the proceedings indicates he fell within the large portfolio category having over 5 properties. Had this been known, the Council would have scored 5 points higher against each offence.

85. The Officer struggled to identify if and how mitigating factors were taken into account in applying the Council policy. Nevertheless, the Tribunal is satisfied from the closing submission that evidence exists of the Council taking into account the Applicant's personal circumstances as a carer for his brother, and other mitigation such as affordability, by cutting the financial penalties in half. The Council clearly responded to the Applicant's responses in taking this step.

86. The Council's policy specifies that when considering more than one financial penalty in consequence of an offender committing more than

one offence, it will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances, having regard to the offending behaviour as a whole.

87. In accordance with its new policy, the Council did exercise its discretion to reduce the penalty to the maximum policy limit of 50%. Not only that, it applied the reduction to every penalty. It did not need to do so.

Regulation 3

88. The regulation 3 offences concerned a failure of the Applicant to ensure that his name, address and any telephone contact number were clearly displayed at the HMO. The Council noted that none of the occupants across the two properties had written tenancy agreements with the Applicant's contact details. At 38 Highfield, two of the tenants were reliant upon a translator. Some tenants had the Applicants mobile number, but this did not suffice to meet the regulation. The matrixes score medium confidence in a financial penalty being a deterrent and that very little or no harm was caused. This is reflected in the lower penalty of £1,250 for each property. The Tribunal finds no cause to criticise the scoring.

Regulation 4

89. The failure of the manager to take safety measures under regulation 4 attracted a financial penalty of £12,500 for each property. This primarily concerned fire safety issues. It included lack of fire safety inspection and servicing, no smoke and fire detection in the high-risk kitchens, fire extinguishers had labels removed. The list continues with risk of fire spread and associated harm exacerbated by defects at each property. These are very serious offences. There is no evidence the Applicant possessed the necessary skills to inspect and service firefighting equipment. The Tribunal endorses the scoring matrixes.

Regulations 7 and 8

90. The regulation 7 and 8 offences for 38 Highfield resulted in a penalty of £5,000. Regulation 7 concerns maintenance of common parts, fixtures, fittings and appliances, which were found to be dirty along with a series of damaged and unhygienic areas. Regulation 8 concerns the duty of the manager to maintain living accommodation. Considerable condensation, damp and mould was found around windows in the bedrooms, communal bathroom and WC. The scoring gives medium confidence that a financial penalty will be a deterrent with some low-level harm.

91. There are two Final Notices under regulations 7 and 8 for 48 Westmark. The first is for £7,500 and identifies a long list of issues with defective

windows contributing to heat loss, draughts, risk of injury and harm and being unsafe as an alternative means of escape. Considerable condensation, damp and mould was also found on and around windows in individual rooms and shared common parts. The magnitude of issues and greater risks are reflected in the scoring levels of deterrence and harm to tenants.

92. The second Final Notice under regulations 7 and 8 is for £2,500 raises similar issues to those for 38 Highfield where the penalty was £5,000 but it is important to note that the breaches for 48 Westmark have been split into 2 notices.

93. Having carefully considered all three Final Notices relating to regulations 7 and 8 and the mitigation put forward, the Tribunal concurs with the scoring.

Conclusion

94. The Tribunal finds that all offences under section 72 and section 234 of the 2004 Act in respect of the properties at 38 Highfield and 48 Westmark have been established beyond reasonable doubt, and that no defence is made out. The Council was therefore entitled to impose financial penalties upon the Applicant.

95. The Tribunal determines that the Final Notices dated 22 December 2023 issued to the Applicant by the Council imposing a financial penalty of £7,500 under section 249A of the 2004 Act for an HMO licensing offence under section 72 are varied by reducing the amount to £5,000 in relation to each property.

96. The Tribunal determines that the Final Notices dated 22 December 2023 issued to the Applicant by the Council imposing financial penalties under section 249A of the 2004 Act for HMO management regulation offences under section 234 of the 2004 Act in relation to each property are confirmed.

97. In consequence of the above, the financial penalties for 38 Highfield are reduced from a total of £26,250 to £23,750. The financial penalties for 48 Westmark are reduced from a total of £31,250 to £28,750.

Name: Judge K. Saward Date: 14 February 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Housing Act 2004

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.

.....

249A Financial penalties for certain housing offences in England

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

(2) In this section "relevant housing offence" means an offence under—
(a) section 30 (failure to comply with improvement notice,
(b) section 72 (licensing of HMOs),
(c) section 95 (licensing of houses under Part 3),
(d) section 139(7) (failure to comply with overcrowding notice), or
(e) section 234 (management regulations in respect of HMOs).

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

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

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—
(a) the person has been convicted of the offence in respect of that

conduct, or
(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—
(a) the procedure for imposing financial penalties,
(b) appeals against financial penalties,
(c) enforcement of financial penalties, and
(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless– (a)
a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

(5) The appropriate national authority may by regulations provide for–

(a) any provision of this Part, or

(b) section 263 (in its operation for the purposes of any such provision), to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations.

A "section 257 HMO" is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)–

(a) references to a licence are to a licence under this Part,

(b) references to a licence holder are to be read accordingly, and

(c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");

b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) .....

258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless–

(a) they are all members of the same family, or
(b) their circumstances are circumstances of a description specified for the purposes of this *section in regulations made by the appropriate national authority.*

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if–

(a) those persons are married to [, or civil partners of, each other or live together as if they were a married couple or civil partners] 1 ;
(b) one of them is a relative of the other; or
(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes–

(a) a "couple" means two persons who [...]2 fall within subsection (3)(a);
(b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
(d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) "prescribed relationship" means any relationship of a description specified in the regulations.

263 Meaning of "person having control" and "person managing" etc.

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–
(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

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

9. .....

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.

11. .....

Guidance

12. A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A.

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

Duty of manager to provide information to occupier

3. The manager must ensure that—

(a) his name, address and any telephone contact number are made available to each household in the HMO;

(b) such details are clearly displayed in a prominent position in the HMO.

Duty of manager to take safety measures

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

(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.

(3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.

(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—

(a) the design of the HMO;
(b) the structural conditions in the HMO; and
(c) the number of occupiers in the HMO.

(5) In performing the duty imposed by paragraph (4) the manager must in particular—

(a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long it remains unsafe; and

(b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.

(6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.

Duty of manager to maintain common parts, fixtures, fittings and appliances

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;
(c) any stair coverings are safely fixed and kept in good repair;
(d) all windows and other means of ventilation within the common parts are kept in good repair;
(e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and
(f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.

(3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(4) The manager must ensure that—
(a) outbuildings, yards and forecourts which are used in common by two or more households living within the HMO are maintained in repair, clean condition and good order;
(b) any garden belonging to the HMO is kept in a safe and tidy condition; and
(c) boundary walls, fences and railings (including any basement area railings), in so far as they belong to the HMO, are kept and maintained in good and safe repair so as not to constitute a danger to occupiers.

(5) If any part of the HMO is not in use the manager shall ensure that such part, including any passage and staircase directly giving access to it, is kept reasonably clean and free from refuse and litter.

(6) In this regulation—
(a) "common parts" means—
(i) the entrance door to the HMO and the entrance doors leading to each unit of living accommodation within the HMO;
(ii) all such parts of the HMO as comprise staircases, passageways, corridors, halls, lobbies, entrances, balconies, porches and steps that are used by the occupiers of the units of living accommodation within the HMO to gain access to the entrance doors of their respective unit of living accommodation; and
(iii) any other part of an HMO the use of which is shared by two or more households living in the HMO, with the knowledge of the landlord.

Duty of manager to maintain living accommodation

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

(2) Subject to paragraphs (3) and (4), the manager must ensure, in relation to each part of the HMO that is used as living accommodation, that—
(a) the internal structure is maintained in good repair;
(b) any fixtures, fittings or appliances within the part are maintained in good repair and in clean working order; and
(c) every window and other means of ventilation are kept in good repair.

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

(4) The duties imposed under paragraphs (1) and (2) (b) do not apply in relation to furniture, fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

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