FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/HNA/2025/0658**
Property	**:**	**3 Crescent Grove Mitcham CR4 4BL**
Appellant	**:**	**Locate Properties Limited**
Representative	**:**	**Mr S Mir (director)**
Respondent	**:**	**London Borough of Merton**
Representative	**:**	**Mr E Brunton**
Type of application	**:**	**Appeal against a financial penalty - Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal	**:**	**Judge Pittaway** **Mr A Harris LLM FRICS FCIR**
Date of hearing	**:**	**23 October 2025**
Date of decision	**:**	**29 October 2025**

Decision

1. The Tribunal finds that on 25 July 2025 the Appellant, having committed an offence under s72(1) of the Housing Act 2004 (the '**2004 Act**') of having control of or managing an HMO which is required to be licensed but which was not so licensed, did not have a reasonable excuse under s72(5) of the 2004 Act.

2. The Tribunal finds that on 25 July 2025 the Appellant committed an offence in failing to comply with Regulations 3, 4, 7 and 8 of the Management of Houses in Multiple Occupation (England) Regulations 2006.

3. The Tribunal finds that the appropriate financial penalty on the Appellant to be £10,000.00

Application

4. By an application dated 6 February 2025 the Appellant seeks to challenge the imposition by the London Borough of Merton ('**Merton'**) of a financial penalty of £12,500 imposed in relation to its failure to have a mandatory HMO for 3 Crescent Grove Mitcham CR4 4BL (the '**Property'**) and its failure to comply with Regulations 3, 4, 7 and 8 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (the **'Regulations**').

The hearing

5. This matter was heard on 23 October 2025.

6. At the hearing the Appellant was represented by Mr S Mir, a director of the Appellant, and the Respondent was represented by Mr Fitzsimons of counsel.

7. At the hearing the Tribunal had before it

    - Two bundles, of 40 and 34 pages from the Appellant
    - A bundle of a bundle of 186 pages from the Respondent.
    - A copy of Merton's Civil Penalties and Rent Repayment Orders policy
    - A skeleton argument from Mr Fitzsimons and a skeleton argument from Mr Mir.

8. At the hearing the Tribunal heard evidence from Mr Adebayo and Mr Khan, Enforcement Officers of Merton, Ms Patel the Interim Head of Housing Enforcement at Merton and Mr Mir. It heard submissions from Mr Mir and Mr Fitzsimons.

Background and agreed facts

9. The Property is described in the application as a three bedroom, two reception house.

10. The Appellant is the manager of the Property of the property. Mr Mir is a director of the Appellant and the freeholder of the Property.

11. On 17 December 2024 the Respondent served notice of intent to impose a financial penalty **('Notice of Intent**') of £16,500 on Mr Mir, as a director of the Appellant, citing that on 25 July 2024 he was committing the offence of controlling a property which required a 'House in Multiple Occupation License' but which was not so licensed, and the offence of failing to comply with Regulations 3, 4, 7 and 8 of the Regulations.

12. On 28 January 2025 the Respondent served on Mr Mir, as a director of the Appellant a Final Notice of the Imposition of a Civil Penalty of £12,500.

13. On 6 February 2025 the Appellant appealed the imposition of this penalty.

14. Mr Mir accepted that the Property should have had a mandatory HMO.

15. Mr Mir made the application to the Tribunal in the name of Locate Properties Limited. The Notice of Intent and Final Notice were both served on Mr Mir as a director of Locate Properties Limited. The Tribunal has therefore treated the person to be considered for the purposes of calculating the penalty to be Locate Properties Limited.

Issues

16. The issues before the Tribunal therefore were

- Having committed the offence of failing to obtain a mandatory HMO did the Appellant have a reasonable excuse?
- Did the Appellant commit the offence of failing to comply with Regulations 3, 4, 7 and 8 of the Regulations?

- If an offence had been committed, without a reasonable excuse, what was the appropriate penalty?

Reasons for the tribunal's decision

17. The Tribunal reached its decision after considering the witnesses' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence.

18. As appropriate this evidence is referred to below.

19. This decision does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this does not imply that any points raised, or documents not specifically mentioned, were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

20. The relevant law is set out in the Appendix to this decision.

Did the Appellant have a reasonable excuse for not having a mandatory HMO

21. Section 72(5) of the 2004 Act provides that in proceedings against a person for an offence under Section 72(1) of the 2004 Act it is a defence that he had a reasonable excuse for having control of or managing the house in the circumstances mentioned in subsection (1).

22. Mr Mir submitted that he did not knowingly manage an unlicensed HMO. Letters sent to him and to the Appellant before July 2024 had not been received by him due to postal difficulties and an email addressed to him must have gone unread.

23. The Tribunal heard evidence from Mr Mir that he had applied for an HMO as soon as he was informed that the Property required one. He submitted that he had been unaware that the Property required a mandatory HMO, as different local authorities had different requirements. He had believed that where a property only had two storeys a licence was not required. He accepted that he should have investigated the situation, and had not checked, stating that the Merton website was complicated. Mr Mir confirmed that he had not checked the relevant legislation.

24. Mr Mir confirmed that he had been a managing agent for over 22 years but had not come across mandatory HMOs during that period. He accepted that he should

probably have contacted Merton to confirm the position and that he should have known the position as to mandatory HMO licences.

25. Mr Fitzsimons submitted that the offence under s72(1) is one of strict liability and while 'reasonable excuse' should be construed broadly ignorance is no excuse *Palmview Estates Ltd v Thurrock Council* [2022] 1WLR 1896. The burden of establishing such a defence is on the person asserting it, not the authority, *IR Management Ltd v Salford CC* [2020] HLR 24, and that to be guilty of the offence there is no requirement that a person knows that a property needs to be licensed. Mr Fitzsimons submitted that reference to the legislation or to Merton's website would have made it clear to the Respondent that the Property required a mandatory HMO licence and a company that is in the business of property management should have carried out such due diligence.

26. The Tribunal has reviewed the evidence before it and the Appellant's submissions as to whether it had a reasonable excuse, and finds that, as a company in the business of managing properties for over 22 years, it did not have a reasonable excuse for not having a mandatory HMO licence.

27. In reaching its decision the Tribunal has had regard to paragraph 81 of the decision in *Perrin v HMRC* [2018] UKUT 156 (TCC) approved by Deputy Chamber President Martin Rodger KC in *Marigold and others v Wells* [2023] UKUT 33 (LC)

"81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"

28. The Tribunal has also had regard to paragraph 47 of the decision in *AA v Rodriguez & ors*[2021] UKUT 0274 (LC)

> *'47. The view has generally been taken that it is the responsibility of someone who wishes to let their property to find out whether any relevant regulatory restrictions exist and that ignorance of the need for a licence will not normally provide a reasonable excuse (although it may be relevant to culpability and therefore to the amount of a financial penalty to be imposed under section 249A). But there is no hard and fast rule and, just as much as any other defence, a reasonable excuse defence based on ignorance of the need for licensing will always require a careful evaluation of all the relevant facts.'*

Did the Appellant commit the offence of failing to comply with Regulations 3, 4, 7 and 8 of the Regulations?

29. Regulation 3 of the Regulations requires the manager to ensure that his name address and contact number are clearly displayed in a prominent position in the HMO. Mr Mir agreed that they had not been.

30. Regulation 4 requires that all means of escape from fire in the HMO are free from obstruction and in good order and repair and that the manager ensures that any fire fighting equipment and fire alarms are maintained in good working order. Mr Khan gave evidence that when he visited the property on 25 July the under-stair cupboard was not fitted with 30-minute fire rated boards to ensure a protected means of escape and the cupboard and its door were not fire resistant. Mr Khan gave evidence that there was a non-functioning smoke detector on the first floor landing and that there was no smoke alarm installed in the ground floor hallway. Mr Mir disagreed that the smoke detector on the first floor landing was not functioning, submitting that the Respondent had not proved it was not working. Mr Khan stated that they had tested the button and also undertaken a smoke test.

31. Regulation 7 (1) of the Regulations requires the manager to ensure that all common parts of the HMO are maintained in good clean and decorative repair, maintained in safe and working condition and kept reasonably clear from obstruction. Regulation 8(2) requires the manager to ensure that in relation to the living accommodation of the HMO the internal structure is maintained in good repair, that fixtures, fittings and appliances are maintained in good repair and in clean working order and that every window and other means of ventilation is in good repair.

32. Mr Khan gave evidence of slipped roof tiles and poorly maintained guttering. Mr Mir accepted that the maintenance of the guttering needed to be addressed. Externally the wastewater pipe from the kitchen sink was too short and cracked and the soil pipe rusted and poorly maintained. Windows in both the common parts and the living accommodation were blown. The kitchen ceiling showed signs of there having been a leak .The kitchen lacked essential fire safety equipment, including a fire extinguisher, a fire blanket and a carbon monoxide detector. The kitchen floor tiling was not flush with the hallway floor. Mr Khan gave evidence of cracks on the stair wall and mould in the bathroom. In response to Mr Mir, Mr Khan stated that the stain on the ceiling showed that there had been a leak. Mr Khan also referred to trip hazards at bedroom doors, the absence of fire doors and thumb turn locks to the bedrooms. There was damp/mould in the smallest bedroom.

33. On the evidence before it the Tribunal finds that the Appellant was in breach of Regulations 3, 4, 7 and 8 of the Regulations on 25 July 2024, the day it is alleged that the offence was committed.

The amount of the financial penalty

34. The appeal is by way of a re-hearing of the Respondent's decision to impose the penalties and/or the amount of the penalties. The Tribunal may therefore have regard to facts that were not known to Merton when it made its decision.

35. The Tribunal had a copy of Merton's Civil Penalties and Rent Repayment Orders policy of June 2019 before it. This sets out that Merton may impose a Civil Penalty, as an alternative to prosecution where a person commits the offence of failing to license Houses in Multiple Occupation. It states that only one civil penalty can be issued for an offence under s72 of the 2004 Act but that a civil penalty can be issued for each separate breach of the Regulations.

36. The Policy provides, at paragraph 11, the factors to be taken into account when setting the level of the penalty, being those set out in the statutory guidance under Schedule 9 of the 2016 Act. These are
    (a) Severity of the offence
    (b) Culpability and track record of offender
    (c) The harm caused to the tenant
    (d) Punishment of the offender
    (e) Deter the offender from repeating the offence
    (f) Detering others from committing similar offences

(g) Remove any financial benefit the offender may have obtained as a result of committing the offence.

37. The process for determining the level of penalty issued is set out in paragraph 12 of the policy. The starting point for a financial penalty for failing to obtain a property licence under s72 of the 2004 Act is £10,000, where it is a first time offence, to which relevant premiums are added. Where the offender has a large property portfolio (10+ properties) a premium of £2,500 is added. Note 3 to Merton's policy regarding this premium states that it is considered appropriate to set a higher penalty for landlords who operate a large number of properties as they are effectively operating a business and in failing to comply with statutory provisions are gaining a competitive advantage over law-abiding landlords. The penalty for non-compliance with the management regulations in respect of HMOs is £1,000 per regulation where it is a first time offence. Accordingly the Notice of Intent referred to a penalty of £16,500.

38. Ms Patel gave evidence that the Appellant was invited to make representations to Merton following service on it of the Notice of Intent. Merton did not receive formal representations from the Appellant but did receive an e mail from Mr Mir, on 15 January 2025 confirming that work had been done to the Property. On 1 November 2024 Mr Mir had applied for a mandatory HMO licence. Accordingly the £10,000 starting penalty was reduced to £8,000 and the penalty in respect of each breach of regulation to £500 per breach, making the total penalty £12,500. The policy does not set out any basis upon which the penalties it sets out may be reduced but Ms Patel gave evidence that where an offender applies for a licence the reduction Merton historically has made to the starting penalty is 20%, and that where an offender carries out work to remedy identified breaches of the regulations Merton reduces the premium from £1000 per regulation to £500 per regulation.

39. Ms Patel gave evidence that Merton considered the potential harm to the tenants to be 'medium', given that the property was not high-rise, having only two storeys. The Tribunal notes that Merton did not apply the premium of £2,500 to be added where significant harm occurred as a result of housing conditions.

40. The Tribunal heard evidence from Ms Patel that it was considered that the Appellant had a large portfolio because the council knew of 6 properties which it owned in Merton and of one in Richmond, and it assumed that as a property manager it must be involved with more than ten properties.

41. Mr Mir gave evidence that he and the Appellant deal with properties in Southwark, Merton, Richmond and Wandsworth. Of the six properties Merton referred to in

Merton there he submitted that he had no knowledge of 22 Marlborough Road, that 8 Orion House and 3 Cranbrook are the same property, 98a High Street is a single flat and 67 Southampton Close is his private residence. Neither he nor the Appellant are the landlord of the property in Richmond to which Merton referred, nor the properties in Southwark and Wandsworth which they manage.

42. Mr Mir submitted that Merton had acted illogically in initially stating that it intended to grant a licence, then refusing a licence on 'fit and proper' grounds and then offering a one year licence.

43. The Tribunal heard evidence from Ms Patel that the application for a licence had occurred before the Notice of Intent was issued so that at that time it was correct that Merton intended to grant the licence. The issue of the Notice of Intent was what made the Appellant not a 'fit and proper' person, but in exercise of its discretion Merton could grant a licence for one year. As to the delay between 25 July and the issue of the Notice of Intent Ms Patel stated that it was necessary to collect the evidence to substantiate that an offence occurred on 25 July

44. Mr Fitzsimons submitted that it is not appropriate to consider that the seriousness of an offence be reduced by subsequent conduct, it is the position that existed at the date of the offence that is relevant.

45. Mr Mir submitted that the penalty charged is disproportionate. He stated that *Williams v Birmingham C C* [2019] UKUT 63 (LC) is authority for the proposition that a civil penalty must be proportionate to the offence and take the landlord's good conduct into account. He submitted that Merton had ignored his cooperation, financial circumstances and lack of tenant harm, contrary to its own policy. Mr Mir also submitted that the Respondent had not given him a fair opportunity to regularize the position.

46. The Tribunal has taken into account that that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of licensing system and to deter evasion.

47. The Tribunal accepts Mr Fitzsimons' submission that the starting point is the date of the offence. The timings in this matter are unfortunate. Mr Mir had applied for a mandatory licence before the Notice of Intent was issued. This has given rise to a situation that appears perverse to the Appellant.

48. The Tribunal does not agree with Mr Fitzsimons that subsequent conduct is irrelevant, and this is not borne out by Merton's response to the Appellant's conduct after 25 July.

Ms Patel gave evidence that Merton reduced both the starting penalty and the penalties for non compliance with regulations by reason of the Appellant's conduct after the date of the offence.

49. In ascertaining the level of penalty to be charged the Tribunal should have regard to the Merton's policy and whether it was followed by it. While not referred to in the hearing this approach is consistent with the Upper Tribunal decision in *Waltham Forest LBC v Marshall* [2020] 1 WLR 3187).

50. On the evidence before it the Tribunal finds that Merton followed its policy in adopting a starting premium of £10,000 reduced to £8,000 because an application for a licence had been made. The Tribunal also finds that Merton followed its policy in fixing a charge of £1,000 per breach of regulation, reduced by 50% in respect of each breach of regulation.

51. With regard to the premium added for a 'large housing portfolio (10+ properties)' the Tribunal has had regard to Note 3 of Merton's policy with regard to offenders who have large property portfolios. Note 3 to Merton's policy states, '*It is considered appropriate to set a higher penalty for landlords who operate a large number of properties as they are effectively operating a business and in failing to comply with statutory provisions are gaining a competitive advantage over law-abiding landlords.'* The underlining is that of the Tribunal.

52. The note to Merton's policy clearly distinguishes between persons who are landlords and persons who manage on behalf of landlords.

53. The evidence that the Tribunal heard at the Hearing did not support Merton's submission that the Appellant was a portfolio landlord of more than ten properties. The evidence before the Tribunal was that the Appellant owned two other properties in Merton other than the Property, and Mr Mir's private residence. It, and Mr Mir, only managed the properties in the other boroughs. This evidence was not challenged by Merton.

54. Accordingly the Tribunal have not applied Merton's premium for a large housing portfolio.

Name: Judge Pittaway **Date:** 29 October 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

Housing Act 2004

72 Offences in relation to licensing of HMOs

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

(2)A person commits an offence if—

(a)he is a person having control of or managing an HMO which is licensed under this Part,

(b)he knowingly permits another person to occupy the house, and

(c)the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—

(a)he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b)he fails to comply with any condition of the licence.

(4)In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a)a notification had been duly given in respect of the house under section 62(1), or

(b)an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

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

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

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

(c)for failing to comply with the condition,

as the case may be.

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

(7)A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

(7B)If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct

234 Management regulations in respect of HMOs

(1)The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—

(a)there are in place satisfactory management arrangements; and

(b)satisfactory standards of management are observed.

(2)The regulations may, in particular—

(a)impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;

(b)impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

(3)A person commits an offence if he fails to comply with a regulation under this section.

(4)In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

(5)A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

(7)If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

Section 249A

(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)