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

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| **Case reference** | **:** | **CAM/38UB/HNA/2024/0614**<br>**CAM/38UB/HNA/2024/0615**<br>**CAM/38UB/HIR/2025/0001**<br>**CAM/38UB/HIN/2025/0002** |
| **Property** | **:** | **1-3 The Blarney Stone,**<br>**Lower Windsor Street,**<br>**Banbury, OX16 5AS** |
| **Applicant** | **:** | **OX1 Limited**<br>**Tariq Qume Khuja** |
| **Representative** | **:** | **Unrepresented** |
| **Respondents** | **:** | **Cherwell District Council** |
| **Representative** | **:** | **Peter Savill of counsel** |
| **Type of application** | **:** | **Appeal against decisions relating to variation and suspension of improvement notices, refusal to revoke an improvement note and against civil financial penalties** |
| **Tribunal** | **:** | **Judge A. Arul**<br>**Gerard F. Smith MRICS FAAV** |
| **Date of hearing** | **:** | **7-8 July 2025** |
| **Date of decision** | **:** | **28 October 2025** |

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**DECISION AND REASONS**

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## Decisions of the Tribunal

(1) The Respondent's decision to vary parts of and suspend parts of Improvement Notice 3227 (by way of notices 3378 and 3426) is upheld. The time for compliance has been further varied by the Tribunal.

(2) The Respondent's decision to refuse to revoke Improvement Notice 3242 is set aside and a direction is made revoking Improvement Notice 3242.

(3) The civil financial penalties are varied as set out in this decision so as to provide for a total sum payable by OX1 Limited of £11,000 and a total sum payable by Mr Khuja of £11,000.

## REASONS

## The Application

1. By two applications, each dated 2 August 2024, the Applicants appeal against decisions made by the Respondent on 11 July 2024 to impose civil financial penalties.

2. By a further application dated 19 August 2024, the Applicants appeal against a decision made by the Respondent on 1 August 2024 to vary parts of and suspend parts of an Improvement Notice numbered 3227; which was done by the issue of two new notices.

3. By a further application dated 11 November 2024, the Applicants appeal against a decision made by the Respondent on 4 and/or 11 November 2024 to refuse to revoke an Improvement Notice numbered 3242 (alternatively, a failure to make a decision following a request on 4 November 2024).

4. Improvement Notice 3227 was served upon the Applicants by the Respondent pursuant to sections 11 and 12 of the Housing Act 2004 ("the Act"). The decision to vary parts of and suspend parts of Improvement Notice 3227 and to refuse to revoke Improvement Notice 3242 was pursuant to section 16 of the Act.

5. The First Applicant is OX1 Limited, a limited company which owns the Property and is owned and operated by the Second Applicant who is Mr Khuja.

6. The appeals are made pursuant to paragraph 13 of Part 3, Schedule 1 to the Act against the variation, suspension and/or refusal to revoke Improvement Notices and pursuant to paragraph 10 of Schedule 13A to the Act against the civil financial penalties. There are two points of note. Firstly, this is not an appeal paragraph 10 of Part 3, Schedule 1 to the Act against either Improvement Notice 3227 or 3242; such appeals in any event being out of time. Secondly, we have taken the appeals against civil penalties as being against the decision to impose them and the amount, which are separate basis of appeal under paragraphs 10(1)(a) and 10(1)(b) respectively. This dual was basis of appeal was apparent from the application and Mr Khuja's submissions.

7. All applications relate to residential flats known as 1-3 The Blarney Stone, Lower Windsor Street, Banbury, OX16 5AS (the "Property").

8. On 10 March 2025, the Tribunal gave directions (the "Directions") for filing and serving evidence, which had been fully complied with by all parties.

9. On 13 March 2025, the Tribunal gave further directions as to preparation of the case, which had been fully complied with by all parties.

10. On 1 July 2025, the Respondent wrote to the Tribunal indicating that one of its witnesses, Mr Donald McAllister, was recovering in hospital following very recent surgery and was therefore unable to participate in the proceedings. The Respondent filed and served a witness statement from Mr Edward Antoniak, Assistant Building Control Surveyor, who adopted and exhibited Mr McAllister's evidence and whom it was proposed would attend the hearing in his absence. This was addressed at the start of the hearing and the Applicant did not object; had he done so we would have been minded permitting the late evidence, given the circumstances and that the evidence was merely adopting that which had been served in accordance with the Directions.

11. On 3 July 2025, the Applicant wrote to the Tribunal stating that an appeal to the Upper Tribunal was pending in another case (CAM/38UB/HIN/2024/0008 and 0009) and asking whether it was appropriate for the same Judge to hear this matter. In fact, both the Judge and Surveyor member are the same in both cases. A Procedural Judge considered this communication and determined that it was not unusual for applications to involve similar facts or people, the grounds of appeal in the previous case did not allege any misconduct or judicial bias and that it would take compelling reasons for a Judge to recuse themselves. The Procedural Judge directed that there was no reason to alter the panel and that it was impractical given the timing and the overriding objective under the Procedural Rules.

## The Inspection and the Hearing

12. On the morning of the first hearing day, the Tribunal inspected parts of the Property, comprising the flats and some common parts. We were also able to inspect the public road facing parts of the exterior of the building and to view limited parts of the ground floor commercial premises through a window. We could not inspect the ground floor as the commercial tenant had not given permission to the Applicants. We encouraged Mr Khuja to try and explain to the tenant that this was a Tribunal inspection and not directly connected with their relationship of landlord and tenant but, unfortunately, permission was not forthcoming by the time the inspection of other parts concluded. The view of the commercial premises from outside was very limited and provided minimal, if any, assistance to the Tribunal.

13. The hearing then took place at a nearby venue for the remainder of the first day and via CVP on the second day. We heard evidence, as described below, during the remainder of the first day, with the second day involving submissions from all parties.

14. The parties all attended both hearing days. The Applicants were not formally represented but Mr Khuja presented the case with assistance from a friend who accompanied him. The Respondent was represented by Mr Savill of counsel. There were multiple cases and issues to be discussed and we are grateful to both Mr Khuja and Mr Savill for presenting the evidence and their submissions in a thorough and cogent way.

15. The Respondent had submitted written statements for each of its witnesses, and it was confirmed that it adopted those statements as its evidence, which the Tribunal took as read. Live evidence was heard from Mr Antoniak, in the absence of Mr McAllister as noted above, as well as Mr David North (Housing Grants and Standards Team Leader) and Ms Carolyn Arnold (Environmental Health Officer). All three witnesses are employees of the Respondent.

16. Neither Applicant had submitted a written statement for themselves or any witness. They did not, therefore, give live evidence. Mr Khuja had the opportunity to ask questions of Mr Antoniak, Mr North and Ms Arnold and both parties were able to make submissions.

17. The Tribunal had the benefit of bundles of documents from the Applicants and the Respondent. The Applicants' bundle runs to 324 pages and contains copies of the applications, the Directions, relevant notices under challenge, emails and some legal authorities. The Applicants also produced a skeleton argument and an additional authority. The Respondent's bundle runs to 601 pages and contains a statement of reasons for opposing the appeals and witness statements from Mr McAllister, Mr North and Ms Arnold along with extensive

exhibits. The exhibits include, amongst other things, the Improvement Notices, Financial Penalty Notices, various correspondence including emails and other documents. As above, we had an additional statement from Mr Antoniak which exhibited the statements and exhibits of Mr McAllister. Finally, we had a bundle of authorities from the Respondent. References to page numbers in this decision are references to page numbers in the bundles.

**Key Facts**

18. The Property comprises a ground floor commercial premises with flats above and behind. We did not have direct evidence on its history but were told by the Respondent that the building itself was constructed around the mid-19th Century. It was originally a public house with a single flat across the first and floors and the flat was reconfigured into two self-contained flats following the grant of planning permission in 2012. It seems that the public house closed in 2015 and planning permission was granted in 2018 so that the ground floor could be used as a coffee shop, there would be two flats on the first-floor level and one flat on the second floor. There was some correspondence between Mr Khuja and the Respondent Building Control department in 2019 about the requirements, if any, for compliance with the Building Regulations but this did not reach a conclusion. The above-mentioned configuration is broadly what was in place at the time of our inspection, with the commercial premises having a separate entrance to the flats, both from the main road.

19. OX1 Limited is the sole registered proprietor of the freehold interest in the Property. We were shown official copies noting that it has been registered as proprietor since 1 March 2012 (following acquisition in late 2011). Mr Khuja is the sole director and shareholder of OX1 Limited.

20. Each of the flats within the Property are let on assured shorthold tenancies to residential tenants.

21. Flats 1 and 2 are on the first floor, accessed from an internal stairwell from the public road entrance. Flat 3 is on the second floor, accessed from a further internal stairwell. The flats were all occupied by tenants at the time of the hearing.

22. The commercial premises were vacant at the time of the hearing. It was plainly not in a condition where it could be used for any retail purpose as it appeared to be part way through some refurbishment works.

23. The timeline of events which we were able to establish from the documents or from the parties (and hence was not materially in dispute) is as follows:

(a) 8 August 2023 – the Respondent attended the Property following a complaint from a tenant of pest infestation.

(b) 10 August 2023 – the Respondent, along with the Oxfordshire Fire and Rescue Service and Mr Khuja, undertook an inspection of the Property. Mr Khuja arranged a sitting watch of the Property overnight whilst agreed emergency fire protection works were carried out. These principally related to the fire separation between the commercial and residential parts of the Property.

(c) 16 August 2023 – a further inspection of all parts of the Property was undertaken under section 239 of the Act, which Mr Khuja attended along with the tenant of the commercial premises. Officers from the Respondent's Housing team and Building Control team attended.

(d) 24 October 2023 – Improvement Notice number 3227 was served by the Respondent on OX1 Limited under Part 1 of the Act relating to miscellaneous hazards and required remedial works throughout the three flats. The notice identified category 1 and 2 hazards e.g., relating to excess cold, noise, and structural collapse/falling elements.

(e) 24 October 2023 – Improvement Notice number 3242 was served by the Respondent on OX1 Limited under Part 1 of the Act. The notice required OX1 Limited to commission a RICS Level 3 Building Survey to discern the extent of those hazards identified with intrusive investigation.

(f) 15/16 August 2023 – emails between the parties concerning pest control.

(g) 17 August 2023 – notice served by the Respondent on the Applicants under pest control legislation.

(h) 9 November 2023 – meeting about the pest control notice at council offices attended by Mr Khuja and the Respondent.

(i) 15 November 2023 – Improvement Notice 3227 and 3242 became operative in the absence of an appeal.

(j) 28 November 2023 – entry points covered/matters under pest control notice addressed.

(k) 7 February 2024 – a Notice of Intention to issue a Financial Penalty was served by the Respondent on OX1 Limited as owner of the Property under section 249A of the Act. This notice related to eight

alleged breaches of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 committed on or around the 8 and 10 August 2023.

(l) 7 February 2024 – a Notice of Intention to issue a Financial Penalty was served by the Respondent on Mr Khuja as director of the owning entity under section 249A of the Act. This notice related to eight alleged breaches of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 committed on or around the 8 and 10 August 2023.

(m) 16 February 2024 – the Respondent granted a 28 day extension of time for representations on both Notices of Intention until 25 March 2024. This was extended again following a meeting with Mr Khuja on 12 March 2024 although there is some difference of view as to whether it was extended until 21 or 26 April 2024.

(n) 26 April 2024 – the Respondent visited the Property and inspected all three flats.

(o) 11 July 2024 – the Respondent served a Notice of a Decision to issue a Financial Penalty on OX1 Limited as owner of the Property. The penalty was for £24,975.

(p) 11 July 2024 – the Respondent served a Notice of a Decision to issue a Financial Penalty on Mr Khuja as director of the owning entity of the Property. The penalty was for £24,975.

(q) July 2024 – the Respondent obtained a summons issued in Oxford Magistrates' Court against OX1 Limited, as owner of the Property. This related to alleged failure to comply with Improvement Notice 3242.

(r) July 2024 – the Respondent obtained a summons issued in Oxford Magistrates' Court against Mr Khuja, as director of the owning entity of the Property. This related to alleged failure to comply with Improvement Notice 3242.

(s) 1 August 2024 – the Respondent partially revoked Improvement Notice 3227 to reflect works which the Applicants had had carried out since the Improvement Notice had been issued and following the inspection on 26 April 2024. Improvement Notice 3227 was replaced with a varied Improvement Notice number 3378 and a suspended Improvement Notice number 3426. The suspension related to flat 3, as some works had been carried out but the sloping floor in the kitchen remained. The requirement to undertake this

work was suspended until 21 days after the flat next becomes vacant.

(t) 2 August 2024 – two applications were filed with the Tribunal, one for each Applicant, against the Financial Penalties issued on 11 July 2024.

(u) 7 August 2024 –the date that the Applicants say they received the revised Improvement Notices (3378 and 3426).

(v) 19 August 2024 – third application to the Tribunal challenging the decision to revoke, vary or suspend Improvement Notice 3227.

(w) 30 August 2024 – operative date of the revised Improvement Notices (3378 and 3426).

(x) 24 September 2024 – the Respondent gave notice of its intention to carry out works in default in relation to Improvement Notice 3242.

(y) 4 November 2024 – Mr Khuja emailed the Respondent requesting revocation of Improvement Notice 3242. The Respondent replied the same day indicating that it would not make a decision whilst the summonses were pending.

(z) 11 November 2024 – fourth application to the Tribunal challenging the refusal to revoke Improvement Notice 3242.

(aa) 11 November 2024 – Respondent confirms decision to refuse to revoke the Improvement Notice (timing wise, this was the same day, but some hours after the fourth application to the Tribunal noted above).

(bb) 30 November 2024 – date by which remedial works required under revised Improvement Notices (3378 and 3426).

## The Law

### Improvement Notices – Issue, Variation and Revocation

24. Part 1 of the Act provides for a system of assessing the condition of residential premises, and the way in which this is to be used in enforcing housing standards. It provides for the Housing Health and Safety Rating System ("the HHSRS"), which evaluates the potential risk to harm and safety from any deficiencies identified in dwellings using objective criteria.

25. Local Authorities apply the HHSRS to assess the condition of residential property in their areas. The HHSRS enables the identification of specified hazards by calculating their seriousness as a numerical score by prescribed method. Hazards that score 1000 or above are classed as Category 1 hazards, whilst hazards with a score below 1000 are classed as Category 2 hazards.

26. Section 2(1) of the Act defines a hazard as: '*… any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)*'.

27. Section 2(3) of the Act provides that: '*… regulations under this Section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur*'. Those regulations are the Housing Health and Safety Rating System (England) Regulations 2005 and implement the HHSRS.

28. Section 5 of the Act requires that, if a Local Authority considers that a Category 1 hazard exists in respect of any residential premises, it *must* take appropriate enforcement action. Section 5(2) sets out seven types of enforcement action which are appropriate for a Category 1 hazard. The types of enforcement action that a Local Authority may take following identification of a Category 1 hazard include service of an Improvement Notice. There are others, which are not material for the purposes of his decision.

29. Section 7 of the Act contains similar provisions in relation to Category 2 hazards. Power is conferred on a Local Authority to take enforcement action in cases where it considers that a Category 2 hazard exists on residential premises and those courses of action include service of an Improvement Notice. The power is discretion and not mandatory; unlike for Category 1 hazards.

30. Section 9 of the Act requires the Local Authority to have regard to the HHSRS operating guidance and the HHSRS enforcement guidance.

31. Sections 11 to 19 of the Act specify the requirements of an Improvement Notice for Category 1 and 2 hazards. Section 11(2) defines an Improvement Notice as a notice requiring the person upon whom it is served to take such remedial action in respect of the hazard as specified in the Improvement Notice.

32. Section 11(8) of the Act defines remedial action as action (whether in the form of carrying out works or otherwise) which in the opinion of the Local Authority will remove or reduce the hazard. Section 11(5) states

that the remedial action to be taken by the Improvement Notice must as a minimum be such as to ensure that the hazard ceases to be a Category 1 hazard; but may extend beyond such action. Section 12 of the Act deals with an Improvement Notice for a Category 2 hazard and contains similar provisions to that in section 11.

33. Sections 14 and 16 of the Act provide for variation, suspension and revocation of Improvement Notices.

34. Section 14 of the Act permits a Local Authority to suspend an Improvement Notice until a time, or the occurrence of an event, specified in the notice and that can include a time when a person of a particular description (such as a tenant) begins, or ceases, to occupy any premises.

35. Section 16 of the Act deals with variation and revocation of Improvement Notices. It allows a Local Authority to vary part or all of an Improvement Notice on request or on its own initiative. There is an express power to do so where the Local Authority is satisfied that the Improvement Notice, or relevant part of it, has been complied with, or there are other special circumstances making it appropriate to do so.

36. An appeal may be made to the Tribunal against an Improvement Notice under paragraph 10, Part 3, Schedule 1 to the Act or against a decision relating to variation or revocation under paragraph 13, Part 3, Schedule 1 to the Act. The time limit for appeals is set out in paragraph 13, Part 3 Schedule 1 to the Act and is within the period of 21 days beginning with the date on which the Improvement Notice was served or 28 days from the date the decision was made if it relates to variation or revocation.

37. An appeal is by way of a rehearing and may be determined by the Tribunal having regard to matters of which the Local Authority was unaware at the time of its original decision. The Tribunal may confirm, quash or vary an Improvement Notice or other decision relating to it. The function of the Tribunal on an appeal against an Improvement Notice is not restricted to a review of the Authority's decision. The Tribunal's jurisdiction involves a rehearing of the matter and making up its own mind about what it would do.

38. Paragraphs 1 to 5 of Part 1 of Schedule 1 to the Act deal with the requirements for the service of Improvement Notices, including identifying the person on whom a notice must be served. Four distinct situations are catered for, each of which identifies the recipient of the notice by reference to the nature of the specified premises in the improvement notice; the expression 'specified premises' is defined in section 13(5) of the Act as premises in relation to which remedial action is to be taken in respect of the hazard. The situations are:

39. Where the specified premises are licensed under Part 2 or Part 3 of the Act, the notice must be served on the licence holder.

40. Where the specified premises are not so licensed and are not a flat then notice must be served on 'the person having control of the dwelling' or in the case of an HMO on either the person having control of the HMO or the person managing it.

41. Where the specified premises are a flat which is either a dwelling not licensed under Part 3 of the Act, or an HMO which is not licensed under Parts 2 or 3 the notice must be served on 'the person managing' the flat, or on a person who is both an owner of the flat, and in the authority's opinion ought to take the action specified in the notice.

42. Where any specified premises are common parts of a building containing one or more flats, or any part of such a building which does not consist of residential premises, the notice must be served on a person who is an owner of the specified premises and who in the local authority's opinion ought to take the action specified in the notice.

43. Paragraph 5 of Part 1 of Schedule 1 to the Act further provides that a copy of the notice must be served on every other person who to the knowledge of the Local Authority has a relevant interest in the specified premises or who is an occupier of such premises.

44. The provisions in Schedule 1 to the Act for identifying the proper recipient of an improvement notice therefore make it important to be able to identify the 'owner', the 'person having control', and the 'person managing' the specified premises.

45. Section 262 of the Act defines amongst other expressions the meaning of 'owner' as a person who is for the time being entitled to dispose of the fee simple of the premises whether in possession or in reversion and also includes a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds 3 years.

46. Section 263 of the Act defines the meaning of the expressions 'person having control' and 'person managing'. 'Person having control' means the person who receives the rack rent of the premises (whether on his own account or as an agent or trustee of another person), or who would so receive if the premises will let at a rack rent (section 263(1)). In broad terms, section 263(1) defines the person managing as the person receiving the rents.

47. Section 239 of the Act deals with a Local Authority's powers of entry. There is some detail to these provisions which Mr Khuja helpfully set

out in his submissions (as covered below). Central to these is section 239(5) which states that:

*"Before entering any premises in exercise of the power conferred by subsection (3), the authorised person or proper officer must have given at least 24 hours' notice of his intention to do so— (a) to the owner of the premises (if known), and (b) to the occupier (if any)."*

**Civil Financial Penalties**

48. Section 249A of the Act states that:

"(*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*."

49. Section 249A(2) of the Act sets out what constitutes a "relevant housing offence". It includes those under section 30 of the 2004 Act.

50. Section 30 of the Act states that:

*"(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.*

*(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—*

*(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);*

*(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and*

*(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).*

*(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.*

*(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.*

*(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.*

*(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.*

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

*(8) 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."*

51. In the first instance, the Local Authority must ascertain beyond reasonable doubt that a relevant Improvement Notice has become operative and that the Applicant has failed to comply by beginning and completing any remedial action as specified in the notice in relation to each hazard identified.

52. If the Local Authority determines that a relevant housing offence has been committed, Schedule 13A to the Act sets out the procedural requirements which it must then follow, including the service of Notices of Intent and of Final Notices, before the Financial Penalty may be imposed under section 249A.

53. There are various procedural requirements in Schedule 13A to the Act, not all of which need to be set out in full, however the timing of the Notice of Intent is pertinent to this appeal and that is covered by paragraph 2. This states:

*"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."*

54. In addition, by paragraph 12 of Schedule 13A to the Act, the Local Authority must have regard to guidance which the government has issued to local housing authorities as to how their financial penalty powers are to be exercised. The guidance confirms that local housing authorities are expected to issue their own policies in relation to housing offences and the imposition of civil penalties, and must include the factors which they will consider when establishing the offender's level of culpability and the harm which has been caused by the offence, as well as a matrix for calculating the appropriate level of penalty after taking into account any additional mitigating or aggravating circumstances.

55. On an appeal against a financial penalty, the Tribunal is required to make its own finding as to the imposition and/or amount of a financial penalty. The appeal is a re-hearing, hence the Tribunal may take into account matters which were unknown to the Local Authority when the Final Notices were issued. The Tribunal may uphold, revoke or vary the penalties pursuant to paragraph 10(4) of Schedule 13A to the Act.

56. When considering how to exercise its powers under paragraph 10(4) of Schedule 13A to the Act, the Tribunal is to start from the Local Authority's policy which underlies the decision to issue the Financial Penalties and apply it as if we are standing in the shoes of the original decision-maker, giving proper consideration to arguments that we should depart from the policy. In doing so, we are required to pay proper attention to the decision under challenge and the reasoning behind it, although we can, and should, depart from the policy in certain circumstances, such as where it had been applied too rigidly. The burden lies with the Applicants to persuade the Tribunal to depart from the policy and, in considering that matter, the Tribunal must look at the objectives of the policy and ask itself whether those objectives would be met if the policy were not followed. Further, the Tribunal is carrying out a rehearing, not a review, and while the original decision of an elected authority carries a lot of weight, the Tribunal can vary the decision if, having given it that special weight, it agrees with the Local Authority's conclusion. These points were confirmed in the case of *Waltham Forest London Borough Council v Marshall* [2020] 1 WLR 3187.

## The Issues

57. The issues set out in the annex to the Directions made on 10 March 2025 broadly provide for the above questions. In broad terms, there are several challenges relating to the same Property to decisions to issue Financial Penalties to each Applicant, the refusal to revoke Improvement Notice 3242 and the decisions varying or suspending Improvement Notice 3227. There is also an overarching issue raised by the Applicants as to whether the combined enforcement steps in relation to the Improvement Notices, Financial Penalties, together with issue of summons in the Magistrates' Court and issue of a notice of intention to carry out works represents an abuse of process, double counting or is otherwise unlawful.

58. The Tribunal identified the following issues for determination, supplemental to those in the Directions.

(a) Is the variation, suspension or revocation of Improvement Notice 3227 lawful? The Tribunal was careful to note that this relates to the basis of those variations or revocation/partial revocation as the Applicant had not appealed the underlying Improvement Notice.

(b) Did the Respondent fail to make a decision to revoke Improvement Notice 3242 at the Applicants' request or decide not to revoke? In either event, should the notice be revoked?

(c) Is the Property an HMO under section 257 of the Act?

(d) Was section 239 of the Act applicable and, if so, was it complied with?

(e) Was the statutory procedure, including time limits, complied with for the service of Financial Penalties? Was there a continuing breach to which the notices related?

(f) What is the appropriate amount of any penalties?

(g) Was the Respondent obliged to follow the provisions of the Police and Criminal Evidence Act 1984 ("PACE")?

(h) Is the use of more than one form of enforcement step unlawful?

59. The detail behind these general questions was more fully explored in submissions from all parties and addressed in our findings below.

## Applicants' Evidence and Submissions

60. In his written submissions, Mr Khuja accepted the possibility that the Property is an HMO pursuant to section 257 of the Act but said there was no way of knowing this. He said that the builder who had undertaken some of the refurbishment works had not completed them and Mr Khuja had not been aware that any Building Regulations requirements were not met. He said that he would have cooperated had he been told, and referred us to the Respondent's own Enforcement Policy, which, for example, at paragraph 3.1, refers to prevention being better than cure and working with property owners to educate them.

61. Mr Khuja made a number of assertions of procedural irregularity.

62. In relation to PACE, he asserted that these provisions were applicable and not complied with, principally as there had been no interview under caution. He said the Code for Crown Prosecutors had not been followed.

63. In relation to section 239 of the Act, he was not told of the visit to the Property by Ms Arnold on 8 August 2023 hence it was unlawful. Mr Khuja seemed to focus on this meaning that the proceedings are a nullity, although, even if they were not a nullity, we took his submission to mean that evidence obtained during the visit would not be admissible. Mr Khuja asserted that the statutory powers of entry were potentially draconian and there were restrictions in the legislation. He pointed us to the requirements under 239(3) (that the officer carrying out an inspection must be 'authorised by the local housing authority', under section 239(5) (that at least 24 hours' notice must be given to the owner of the premises (if known) and to the occupier (if any). There are exceptions if the inspection is to ascertain if an offence is being committed; however, Mr Khuja pointed out that the Respondent would have known of any relevant offence or could have ascertained it without an inspection. He pointed us to the need under section 239(9) for any authorisation to be in writing and that it must state the "particular purpose or purposes for which the entry is authorised". He referred us to section 243 which sets out who in a local housing authority can authorise under these provisions. He said that this is the deputy chief officer. Mr Khuja said that, whilst Ms Arnold may have been invited into a flat by one tenant, she knocked on other doors and this was therefore an exercise of section 239 powers of entry.

64. On the issue of authority, Mr Khuja pointed to the fact that Ms Arnold had produced a general authorisation badge but it postdated the 8 August 2023 visit. She was asked about her previous badge in evidence but could not recall what it said. He maintained that, in any event, one could not have a general authorisation, it had to be bespoke (under section 239(9)). He said the correct procedure was that, for each

intended visit, Ms Arnold ought to go to Nicola Riley (Assistant Director, Wellbeing and Housing), and seek authority.

65. Mr Khuja relied on the case of *Metlane Ltd v Amber Valley District Coun*cil BIIIR/17UB/HIN/2012/0007, although accepted that it was a first instance decision so may be persuasive but is not binding on the Tribunal. In that case the Improvement Notice was not validly served as the evidence relied upon was not obtained in a manner compliant with section 239.

66. Mr Khuja said that whether Ms Arnold had sufficient authority to sign the Improvement Notices was also a concern. Under cross examination, Mr Arnold had given honest answers she that did not know who authorised visits and had never asked if she could. She gave evidence that she always signed statutory notices, had done so for 13 years, had never been told she cannot sign notices; but accepted she had never been told that she can. Mr Khuja says this is not sufficient.

67. In reinforcing this submission, Mr Khuja referred us to the Respondent's scheme of delegation. This refers to the Head of Regeneration and Housing, Ms Riley. Ms Arnold had signed the Improvement Notices in her own name, which he said she cannot do so according to the scheme of delegation. He relied on the case of *Fitzpatrick v Secretary of State for the Environment and another* [1990] 1 PLR 8 and section 234 of the Local Government Act 1972. The effect of these is that any document purporting to bear the signature of the proper officer of an authority is deemed duly given, made or issued until the contrary is proved. The essence of this submission is that the proper officer's signature must be being applied themselves or in the form of a rubber stamp. He said cannot be valid if proper officer has not sanctioned the use of their signature. Ms Arnold confirmed under cross examination that she has the ability to apply Ms Riley's signature but, Mr Khuja submitted, did not have the training or confidence to do so.

68. In relation to service of documents, Mr Khuja submitted that there was a failure to 'give' the Applicants the Notice of an Intention of a Financial Penalty in time i.e., 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates at any time when the conduct is continuing, or within the period of 6 months beginning with the last day on which the conduct occurs. Mr Khuja elaborated on this in his oral submissions. He submitted that the Respondent only looked at the possibility of penalties at the last minute and dealt with it on very last day. The wording of the statutory languages that, in practical terms, it is 6 months less 1 day. The Notices of Intent are dated 7 February 2024. Ms Arnold's evidence is that they were left in the Respondent's post room. Mr Khuja said there was no evidence of postage. In any event, applying rule 6.26 of the Civil Procedure Rules 1998 (the rules governing civil

claims in the courts) and taking the Respondent's case at its highest, deemed service was not until the second day until after posting – 9 February 2024. In fact, he contended it was later, on 13 February 2024. The Notices of Intent were emailed to him but he had not agreed to accept service by email. He referred to section 246(9) of the Act, which in turn refers to section 233 of the Local Government Act 1972. He asserted that the breach was 8 Augst 2023 so the Notices of Intent were deemed served out of time (they were posted on the day of the 6 month deadline). Even for a continuing breach, the additional work was completed on 11 August 2023 giving a deadline of 10 February 2024 – on his case, service was not until 13 February 2024.

69. In relation to the decision not to revoke Improvement Notice 3242, Mr Khuja relied on the case of *Curd v Liverpool City Council* [2024] UKUT 218 (LC). He argued that the Respondent was seeking to impose an unlawful obligation to provide a survey to identify hazards. The decision not to revoke the notice was irrational. He referred us to Ms Arnold's letter to him dated 9 November 2023 in which she stated: "*This notice largely requires further investigative work to be carried out so a full picture of building defects can be obtained.*" He said the notice does not specify the defects alleged, it is asking a third party to undertake an inspection so offends the *Curd* case.

70. Mr Khuja referred us to the email communications with Ms Riley on 4 November 2024. He requested that Ms Riley revoke the notice and she replied the same day and stated: "As the matter you refer to is currently subject to proceedings in the Magistrates Court, I am unable to consider such a request until the matter has been concluded by the Magistrates court." Mr Khuja pointed to the fact that it was not until a week later, after he filed his appeal, that Mr North sought to formalise the Respondent's response. Mr Khuja submitted that this should be inadmissible, in any event it was not possible to refuse a second time. He said that all we should rely upon is the email from Ms Riley of 4 November 2024 and that we should what happened afterwards. We took these submissions as fallback to his primary position that the refusal to revoke, or failure to make a decision, was in any event irrational and should not stand.

71. In addition to the challenge to the quantum of the Financial Penalties (addressed below), Mr Khuja argued that the Respondent could not institute criminal proceedings for the same matter once a civil penalty had been issued. He referred to it being issued and paid, however we assume that he meant issued because none of the parties asserted that a payment had already been made. This was both a double jeopardy argument (abuse of process) and a more general point that the Respondent had been heavy handed e.g., serving two Improvement Notices, two Financial Penalties as well as a summons and notice of intention to carry out works. This is despite the matters complained of relating to the same Property and the same events.

72. In addition to the above points about multiple enforcement steps, there was a discrete issue about action against both OX1 Limited and Mr Khuja personally. He accepted that in his written submissions that section 251 of the Act allows a company officer to be held liable for the offences of the company where it is with the consent, connivance or neglect of the officer. In his oral submissions he focused on connivance or neglect. He accepted that the legislation was designed to prevent avoidance "by hiding behind the corporate identity" but submitted that the liability of a director was designed to address a situation where the company failed to pay or was unable to. He said that it was never the purpose to enable two penalties; such is double counting. He said that any alleged consent/connivance/neglect must be proven by the Respondent beyond all reasonable doubt and that it had failed to produce such evidence.

73. Mr Khuja said that, to the contrary, there was no evidence that either Applicant had been notified of defects or that the Property was regarded as an HMO. He could not know what goes on in private dwellings and there was no evidence how long some of the alleged defects had been in place. With no such knowledge he cannot be responsible.

74. Mr Khuja also asked us to look at the lack of harm to the occupants of the Property. The main issue was fire separation. He referred us to the repair obligations in the lease between OX1 Limited and the commercial tenant. Paragraph 31.2 required the tenant to carry out any works required by law and paragraph 31.8 required the tenant keep the Property equipped with all fire prevention, detection and fighting machinery and equipment and fire alarms and imposed a maintenance obligation on the tenant. Mr Khuja said that there was no suggestion by the Respondent that fire detection was not in communal parts.

75. Mr Khuja also invited us to look at actions taken. For example, as soon as he was aware of concerns, he put in place a waking watch and then carried out the works required at that time to Mr North's satisfaction. He said it was likely that damage to stairs by a tenant but it was all addressed the very next day.

76. Mr Khuja submitted that the Respondent had disregard its own enforcement policy, there were no attempts at resolving matters informally. It would have been straightforward to just set out a schedule of works.

77. We were referred to a first instance decision of the Tribunal in the case of *Kazi v Bradford Metropolitan City Council* dated 20 November 2023 under case reference MAN/00CX/HNA/2022/0073. He accepted this was not binding on this Tribunal but pointed to similarities. In that case, the tenant had contacted the council and a section 239 notice of inspection was served. The tenant was then

invited to a PACE interview. Tribunal looked at what the risks to the occupiers were. Mr Khuja said that the email about an inspection on 16 August 2023 did not say who was attending. In terms of harm, there was a pull switch which had been pulled too hard and some loose plaster. There was no significant harm.

78. In relation to the Financial Penalties, Mr Khuja submitted that the level of penalties is too high. The penalties were £24,975 for OX1 Ltd and the same amount for him personally, therefore a substantial sum overall. The Respondent places the level of harm at 'high', but Mr Khuja said that this was inappropriate. The issue was primarily the fire separation between the ground floor commercial premises and the first floor residential flats. Mr Khuja said that the ground floor was unoccupied, leased out and subject to being stripped out, with refurbishment and fitting out works to be completed. For this to present a hazard would require an intruder to break into the ground floor and deliberately start a fire. Mr Khuja submitted that this is highly unlikely and entirely beyond the Applicants' control. Mr Khuja referred to the Respondent seeking to overcome this by asserting that the intention had been to open a cafe in the ground floor unit and, had this gone ahead, then a higher degree of harm would have existed. He said that there were two problems with this reasoning. Firstly, the Respondent cannot seek to establish a level of harm based on a state of affairs that did not exist, and, secondly, the Respondent is entirely ignoring the question of what works would have been carried out had the cafe been developed.

79. Mr Khuja contended that a more rational starting point would have been 'medium' harm. This would give a starting point of £12,500. In its calculations the Respondent took a starting point of £17,500 and then added further sums for aggravating factors. Only £1,000 was given for mitigation for "prompt action taken by the landlord to address the most serious fire safety deficiencies." Mr Khuja submitted that this is woefully inadequate. The fire safety problems were the major concern and the Applicant immediately instituted a waking watch to entirely overcome any risk, following which it arranged emergency works to the Respondent's specifications without delay or hesitation.

80. Mr Khuja also argued that further mitigation should have been given for the fact that it was not the Applicants who carried out the work on the conversion. They had entrusted the work to a building contractor, whom he said should, in addition to carrying out the work with reasonable skill, have also obtained Building Regulations consent. He said that OX1 Limited is taking proceedings against the builder in question and some deduction should have been made in respect of this as it was completely unaware of the failings of the builder. He also said that there was a concerted effort to comply with the Building Regulations during 2018 and 2019 by registering a Building Notice and there was no evidence it was rejected. There was also no account of the Applicants' personal circumstances, he said that it was clear that the

Respondents were aware that he was looking after his poorly wife and raising four children during the material times.

**Respondent's Evidence and Submissions**

81. Mr Savill helpfully structured his oral submissions around those made by Mr Khuja, so that we could understand the arguments in response. However, he referred us to the Respondent's statement of case which set out its position fully and which he also relied upon. We have considered the content of this, along with the Applicants' additional grounds (pages 317 to 319 of their bundle) and skeleton argument. The below therefore represents only a summary of the key points made in response.

82. The Respondent maintained that Mr Khuja was aware that a full plans application for Building Regulations approval was needed. We were referred to the letter dated 8 February 2019 from the Building Control Service to OX1 Limited which stated: *"Thank you for submitting a Building Notice for the above development. Unfortunately, we cannot accept your application as a Building Notice as the proposed development will require a Full Plans application. The reason is that there is a common space and the fire authority will need to be consulted. We look forward to receiving your Full Plans application."*

83. We had seen, during a short break on the second hearing day, the public entry on the Respondent's website which referred to 'building notice accepted'. Mr Savill acknowledged this and stated that it was for the Applicant to satisfy the requirements. He noted that the building notice had the applicant details as Mr Khuja, not an agent. On a conscientious reading, anyone would consider the above-mentioned letter to have been sent to the correct address.

84. Mr Savill submitted that the Property fell squarely within section 257 of the Act; namely a building or part of a building which had been converted into self-contained flats. There was no full plans application when one was needed as the Building Control department had advised. He said the Property either was, or was not, a HMO, this was a question of fact and independent of anyone's opinion. There is no obligation to notify the owner, but in any event doing so or not does not change the status. He referred us to the case of *Hastings Borough Council v Turner* [2020] UKUT 184 (LC). In paragraph 33 of that case it was emphasised that the evidential burden of proving that a property is not an HMO falls with the owner. The Applicant has not produced any evidence of this; it is not for the Respondent to prove that the Property is an HMO. Mr Savill submitted that, in any event, on the basis of the evidence of Mr Antoniak that a full Building Regulations application was required and had not been received, we may be satisfied beyond doubt that it was.

85. In relation to the refusal to revoke Improvement Notice 3242, Mr Savill accepted that the notice of refusal on 11 November 2024 was after the event; being a few hours after the proceedings had been commenced. Mr Savill submitted that, if the Tribunal confines itself to the email from Ms Riley to Mr Khuja dated 4 November 2024, this is not a decision, deferral or postponement, so an appeal as framed is misguided and arguably premature. In the alternative, if the Tribunal proceeded on basis that the notice served on 11 November 2024 can be taken account, it does amount to a decision to refuse to revoke. Mr Savill made the point that the two documents are consistent and there is no mischief or injustice in proceeding on the basis of the 11 November 2024 notice. It does not give substantially different reasons.

86. In relation to the Financial Penalties, Mr Savill submitted that the question is whether the Respondent can be criticised for taking the route which it did. The Tribunal stands in the Respondent's shoes but cannot say that the policy itself is wrong. It is discretion type appeal, meaning the Tribunal should only interfere if the exercise of discretion is *Wednesbury* unreasonable or irrational (a reference to the public law principles derived from the case of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223). Mr Savill submitted that nothing renders the decision to take formal action rather than informal action unreasonable. He also said that the context is important, Mr Khuja is not a naïve newcomer landlord or developer. There are serious breaches which expose tenants to real risk and are likely to have been longstanding.

87. As to the service of the Notices of Intent, Mr Savill referred us to the points made at paragraph 24 of the Respondent's statement of case. The essence of this is that it is possible to cut through the argument that there was late service, because this was a continuing breach. The statement of case refers to the alleged breaches still being extant on 16 August 2023 when the Respondent reinspected the Property with the Applicant.

88. Mr Savill also submitted that the work was incomplete and referred us to Mr North's witness evidence concerning his inspection on 11 August 2023. There was no requirement for the Applicants to know the work was incomplete, the fact is that it was, so the breach was continuing. The Applicants were aware through follow up visits even if no list was provided. Either way service was not defective as the breach was continuing even if the Applicant did not know.

89. Mr Savill points out that the Applicants had not made written representations against the penalties. There was a meeting and an extension was given. It could not be open ended, the Respondent has to balance the interests and he described this as an unapologetic jurisdiction. The representations could have been delegated if Mr Khuja could not deal with them. As for the numbers, we had the

working out and nothing was wrong. We infer that Mr Savill was referring to Ms Arnold's witness statement which provides her methodology and how she applied the criteria in the Respondent's policy. On the issue of penalties to both OX1 Limited and Mr Khuja, he submitted that the critical point was consent. Mr Khuja had focused on connivance or neglect however the statutory offence was committed if there was consent of an officer; as the sole director, this was made out.

90. In relation to the Improvement Notices, the works required were not unreasonable or manifestly excessive. In relation to Improvement Notice 3242, the Respondent can require a report. The *Curd* case would not prevent a variation. The Applicants made no request to vary.

91. Mr Savill submitted that the Tribunal is confined to the basis that it was advanced. It would be unduly onerous on local authorities to look wider. No overarching supervisory jurisdiction to look. We were referred to the case of 'Hope & Glory', which we take to be a reference to *Hope & Glory Public House Limited v City of Westminster Magistrates' Court* [2011] EWCA Civ 3. This is a licencing case however the point made by Mr Savill is that on a re-hearing, whilst the Tribunal considers matters afresh, we should not depart lightly from the original decision. We should attach weight to the fact that the original decision was made by an appointed decision maker and interfere only if satisfied that the decision was wrong. Mr Savill submitted that these decisions could not be wrong in law. The variation was to remove a requirement (rather than revoke).

92. As to the *Curd* case, Mr Savill said this was very specific on its fact and he referred us to paragraph 37 which, he said, identifies the key distinction. The critical distinction is testing to determine whether a hazard exists and testing to determine the extent of an already identified hazard. Improvement Notice 3242 identified category 1 and/or 2 hazards for all flats. The remedial action required as a building survey and to undertake the work which it identified. It was not to identify hazards, only to identify the works needed to address the hazards already identified and listed. This, Mr Savill contended, was not contrary to the *Curd* case; in other words, it was not testing to determine whether a hazard exists at all.

93. In relation to the use of section 239 powers of entry, Mr Savill submitted that there is no power of entry exercised if an officer is admitted voluntarily. It did not reach the stage where a power of entry needed to be exercised; there was agreement between the respective tenant and Ms Arnold. The Respondent therefore denies that the visits were in breach of section 239(5) of the Act. The visit on 8 August 2023 was principally for the purposes of establishing whether the Respondent needed to exercise its powers under the Prevention of Damage by Pests Act 1949. Section 22 of the 1949 Act only requires notice of entry be given to the occupier. Visits on 20 August 2023 and

11 August 2023 were undertaken pursuant to s239(7) because the observations made on 8 August 2023 gave the officers reasonable cause to believe that Property was a section 257 HMO and hence entry was needed to ascertain whether any offence had been committed under section 234(3) of the Act. This was somewhat of a secondary argument because, notwithstanding the above, entry was not demanded as a power, rather officers were invited to enter by the tenants. We were referred to the first instance case of *Cheltenham Construction Ltd v Gloucester CC*, CHI/23UE/HER/2007/001 in which the local authority officer was invited into the property by the tenant, and the Tribunal found this was sufficient. This position was upheld in *Kaniu v West Northamptonshire Council* CAM/34UF/HEP/2021/0003 and permission to appeal this and other grounds was refused.

94. As to the effect of any breach of section 239, Mr Savill submitted that the Tribunal has no inherent power to exclude evidence improperly obtained. There was no question of foul play. The case of *Metlane* was determined on its own facts and this Tribunal is not bound by it.

95. On the more general point about Ms Arnold's authority to sign the Improvement Notices, Mr Savill submitted that there was nothing in this. He said that there was a presumption of regularity so it was not enough for Mr Khuja to assert lack of authority, he had to positively prove it. Section 239(9) would ne unworkable if everything has to go to senior person every day. He gave an example of the Localism Act 2011.

## Decisions

96. The Tribunal has considered carefully the various evidence and submissions presented.

97. There were a number of procedural points taken which we address first of all.

98. In relation to section 239 of the Act, we accepted Ms Arnold's evidence that she was invited by the tenant of flat 2, so was not exercising a statutory power of entry. We had limited evidence of what precisely was said to the other tenants to determine whether there was an exercise of powers or entry to the respective flats was with their consent. The only evidence we had was from Ms Arnold saying she was not exercising her powers. There is no evidence from any party of an inspection prior to 8 August 2023. Ms Arnold denied this and we accept her evidence absent anything to the contrary. It follows that there was no requirement to give the Applicants 24 hours' notice prior to the visit on 8 August 2023 since section 239 was not engaged. In any event, any procedural defect was rectified when notice of later visits was given. The *Metlane* case is distinguished because we have found that the statutory power of entry was not being exercised on 8 August 2023.

99. We reject Mr Savill's submission that there is no general power to exclude evidence improperly obtained. The Tribunal has wide powers to regulate the evidence before it, derived from, amongst others, Rule 3, 6(1) and 18(1)(d) of the Procedural Rules. In an appropriate case it can determine it inappropriate to consider evidence of a particular kind, including having regard to how it was obtained and whether that undermines its ability to hear the case fairly and justly. In view of our findings, it is not necessary to exclude the evidence presented by Ms Arnold; it was not obtained improperly, and no injustice is caused given that it is the same evidence which arises from subsequent visits to the Property where section 239 of the Act was engaged and complied with.

100. In relation to the question of whether the Improvement Notices and/or Notices of Intent to issue Financial Penalties were defective for want of authority, we accept that Ms Arnold was properly exercising authority delegated to her by Ms Riley. Neither 234 of the Local Government Act 1972 or the case of *Fitzpatrick* assist the Applicant. We accept that section 234 allows for a notice to be signed by a proper officer and that a notice may be invalid if not properly signed. In *Fitzpatrick* the appeal was dismissed on the basis that there is a presumption that a document purporting to be signed by the proper officer is valid until proven otherwise and delegation is possible. We accept these propositions of law. On the given facts, we have found that Ms Riley did, and does, have the relevant authority to delegate to Ms Arnold. That permits Ms Arnold to sign, in her own name, exercising a delegated power; it does not require her to sign in Ms Riley's name, whether using a rubber stamp or otherwise.

101. In relation to PACE, we do not consider that this was engaged or that there was a requirement to interview under caution. The statutory scheme for Financial Penalties is separate and distinct, and an alternative to prosecution. Inherent in that is that the scheme for prosecution, including interview, is not engaged. As the name suggests, it is a 'civil' penalty scheme.

102. In relation to the service of documents, we accept Mr Khuja's submission that email submission is not expressly provided for in the Local Government Act 1972. We consider that there was a continuing breach existing at least until 16 August 2023 during the follow up visit when Mr Khuja was present. Therefore, service by first class post on 7 February 2024 with deemed service on 9 February 2024 (if one draws by analogy the Civil Procedure Rules 1998) or actual receipt on 13 February 2024 all fall within the 6 month less 1 day statutory time period for serving a Notice of Intent to Issue a Financial Penalty under Paragraph 2(2) of Schedule 13A of the 2004 Act.

103. None of the procedural/jurisdictional challenges succeed and Tribunal therefore considers that it has jurisdiction to consider the substantive challenges to the decisions to vary, suspend or revoke Improvement

Notice 3227, to refuse or fail to revoke Improvement Notice 3242 and to issue Financial Penalties to each Applicant.

104. In relation to Improvement Notice 3327, this was replaced with variation Improvement Notice 3378 and suspended Improvement Notice number 3426. The variation arose from the fact that some remedial works had been carried out. The suspension related to flat 3, as some works had been carried out but the sloping floor in the kitchen remained. It was inherently reasonable to vary an improvement notice to reflect that some required works had been carried out; as was evident during our site inspection. It was also inherently reasonable to suspend the part of the improvement notice where the remaining works (i.e., the sloping kitchen floor in flat 3) would be disruptive to occupants and were not an immediate threat to safety. We inspected the floor in flat 3 during our site inspection and take the view that there was no threat to safety, in fact the slope in the kitchen floor was modest. We therefore uphold the variations and suspensions.

105. We indicated to Mr Khuja at the start of the hearing that the effect of finding in his favour on the appeals relating to Improvement Notice 3227 would potentially be that we quash the variation or suspension. This would then revert to the original notice deadlines, placing him immediately in breach. As we have not quashed the variation or suspension, one positive is that the time for compliance has been frozen pending these proceedings, so this consequence does not arise. Notwithstanding this, we consider it appropriate to vary the time for compliance to 4 months to allow for seasonal difficulties with obtaining relevant tradespersons to carry out the works.

106. It is important to emphasise again that we cannot go behind the original Improvement Notices. The Applicants did not appeal those, within the statutory timescales, or at all. We have therefore confined ourselves to the variation and suspension.

107. We do, however, make the observation that in our view there needed to be better communication leading to the Improvement Notice issued on 23 October 2023 as Mr Khuja did not know clearly what he needed to do. Mr North's witness statement is not consistent with his notes at page 301 of the Respondent's bundle. The Respondent's enforcement policy includes an informal stage (as shown at page 173 of its bundle) but we were not presented with evidence that Mr Khuja was given information or assistance. Both Mr North and Ms Arnold accepted during their evidence that more could have been done. We noted in paragraphs 3.1 and 3.2 of the policy (Respondent's bundle, page 175), there is a discretion to enforce if there is risk, but the major issues relating to fire were dealt with hence a re-evaluation of risk was appropriate when exercising the discretion. Whilst we do not consider that the decision to take enforcement steps was irrational (and we accept Mr Savill's submission that these were steps available to the

officers), the Respondent ought to have considered whether in light of the fire prevention measures taken, and the cooperation of Mr Khuja at that time, further discussions and assistance were appropriate. This was not a landlord who had been subject to any prior prosecution.

108. We make the observation that section 257 of the Act would appear to apply, with the consequence that the Property is a HMO, because these are converted flats and no Building Regulations approval was obtained. In relation to the latter point, this is a fact regardless of fault or not in not pursuing such application. On 24 January 2019, the Applicants submitted to the Respondents Building Control department a Building Notice for the conversion. Building Control notified the Applicants on 8 February 2019 that a full plans application was required for this type of conversion, as consultation under the Regulatory Reform (Fire Safety) Order 2005 applied. No full plans application was made. There is accordingly no Building Regulations completion certificate for the conversion and the Applicants did not provide any evidence to the contrary. We noted some ambiguity on the public record as to whether the Building Notice concerning a material charge of use was sufficient, (the public record referring to the notice being completed) or whether a full plans application was still required. The emails from 2019 referred to a material change of use. We accept Mr Antoniak's evidence that the inspection on 16 August 2023 found ongoing non-compliances with the relevant Building Regulations. We accept his position that a full plans application is required. We accept Mr Savill's submissions, relying on the *Hastings* case, that the burden lies with the Applicants to prove that the Property does not fall within section 257 of the Act. It does appear perverse that the legislation potentially requires a building owner to prove a negative, however we must assume that there were policy or other reasons behind parliament framing it in this way. In this case, that could have been achieved by showing that the Building Regulations were not applicable or have been complied with. The Applicants have not discharged that burden.

109. In relation to the refusal to revoke Improvement Notice 3242, we find that the email sent by Ms Riley on 4 November 2024 was not a refusal. It was merely a deferral of her decision until the criminal proceedings had concluded. We find that the decision taken on 11 November 2024 in the notice sent by Mr Noth was lawful. We note that Mr Khuja had filed an appeal to the Tribunal just before that decision. It was only on 11 November 2024 that paragraphs 8 and 9 of Schedule 1 to the Act was engaged. The appeal was therefore filed at a time when there was no decision to appeal. However, we see nothing in the legislation that precludes the appeal continuing notwithstanding that it relates to a decision made after it was filed; but extant at the date of the hearing and our decision.

110. Turning then to the question of whether the refusal to revoke notified on 11 November 2024 should be set aside, we have in mind the requirements under schedule 2 of Improvement Notice 3242. We

consider it inconsistent to require a Level 3 Building Survey but to also require it to be an intrusive survey. In the expert opinion of the Tribunal, a Level 3 Building Survey is by its nature and specification non-intrusive. We also consider that the timescales were unrealistic for this level of survey, given the need for testing. We further consider that the scope was too wide, going beyond identified hazards of fire safety and the sloping floor. What was required was in effect a wholesale survey of the entire building. Examples include item 5b, which was too wide as we don't know there is any problem with insulation, and 5c, which is too wide, as the Applicants are being asked to carry out all work related to structural integrity. We consider that the requirements were a fishing expedition, contrary to the *Curd* case.

111. We therefore set aside/quash the decision to refuse to revoke, and substitute a decision to revoke Improvement Notice 3242. We decided not to vary it instead because too much of an amendment would be needed. We would need to vary the scope of the work, nature of the surveyor's enquiry and instructions and the time scales – in other words, all of the core features. It would be wrong to effectively re-write the whole notice.

112. In relation to the Financial Penalties, we were satisfied that an offence had been committed because we find that the Property is a HMO and the various breaches of the regulations had taken place.

113. We find ourselves in a difficult position because, in all probability, section 251 of the Act was designed, at least in part, to avoid the mischief of limited companies being dissolved to avoid payment of penalties. There is therefore the potential for double counting which might potentially be perverse. However, there is a clear statutory basis for an officer of a company to also be issued with a financial penalty where there has been consent, connivance or neglect. As Mr Khuja is the sole director and shareholder of OX1 Limited and the directing mind of the company's operations, we find that its breaches of the relevant regulations were with his consent.

114. On the basis that a financial penalty was an appropriate recourse and permissible against both OX1 Limited and Mr Khuja, there is the question of whether they were properly served within the timescales set out in Schedule 13A of the Act. As we have concluded above, we consider that, whilst email was not good service (as it is not permitted under section 233 of the Local Government Act 1972) and simply handing a document to a local authority post room is insufficient evidence of service, there was a continuing breach and the relevant notices were received by Mr Khuja and OX1 Limited within 6 months of the 16 August 2023 when such continuation was identified. We acknowledge that Mr Khuja did not have clear information on what works were required at that stage (he was not told until 23 October 2023), however, nonetheless there was still a breach existing for the

purposes of the time limits. We do not consider that there was any obligation on the Respondent to tell the Applicants prior to the issue of the Notices of Intent, albeit good practice and the Respondent's enforcement policy might have suggested more of a dialogue with him. They had the chance to make representations and the time for doing so was extended, yet they still did not do so.

115. As to the amount of the Financial Penalties, we find as follows:

116. We consider that medium culpability is more appropriate because Mr Khuja had made efforts to deal with the fire issue quickly and then had meetings with Respondent. He had personal issues but knew there was more needed from the 23 October 2023 notice and had not complied.

117. We consider that medium harm is more appropriate because Mr Khuja dealt with the fire quickly, and the remaining remedial works were not sufficient high risk to tenant safety. There was not clear communication, both Mr North and Ms Arnold accepted that this could have been better. Mr North's statement says he was not satisfied with the works but his notes from the inspection on 11 August 2023 do not support that. He does not say in his notes that he gave a list of further requirements. By his own admission, Mr North said that the priority concerns were dealt with.

118. On this basis, applying the criteria from the Respondent's policy (shown at page 195 of its bundle, and the table at page 197), the culpability and harm are both medium, giving a starting point of £12,500.

119. In relation to aggravating factors, we consider that the +£2,000 should be removed as there is no evidence of other breaches or convictions and the Cotefield inspection (another property owned or controlled by Mr Khuja) was at the same time in August 2023 - so not 'former' but in fact simultaneously. There was no evidence of other properties or actions, informal or not. If informal, this would have been in evidence as a reason for not dealing with this case informally.

120. In relation to mitigation, we consider that all of the factors in the policy (page 197 of the Respondent's bundle) are satisfied. This should be increased to £2,500. We note Ms Arnold's evidence that Mr Khuja was "very willing to assist".

121. On the basis of the aforementioned adjustments, we calculate as follows:

(a) £12,500 starting point;

(b) Less £2,500 for mitigation;

(c) Plus £1,000 (10% for rental) in respect of OX1 Limited only – there is no evidence that Mr Khuja was deriving any rent or net profit;

(d) Plus £1,000 (10% for large portfolio) in respect of Mr Khuja only – there is no evidence that OX1 Limited has a large portfolio;

122. This gives a final figure for Mr Khuja of £11,000 and a final figure for OX1 Limited of £11,000.

123. We have not made an adjustment for the debt point for the reasons mentioned below.

124. We have not made an adjustment for the mortgage point because it seems that OX1 Limited has long term debt even if this is not protected by a formal charge against the title (per the information shown at page 231 of the bundle).

125. We make the observation that it was clear to us that the Respondent has not given proper consideration to the fact these are separate people/entities. We were not convinced that a correct interpretation of the financial position had been made. There may be assets but there is also significant liability recorded as greater than the assets in the OX1 Limited accounts. The alternative would be to adjust up 10% for substantial assets but adjust down for substantial debt; which would cancel out anyway.

126. We also make the observation that Ms Arnold has not applied the guidance correctly as, on her reckoning, she came to £18,500 x 2 which is less than two times the subtotal. In fact, she should have applied a reduction as per page 227 of the Respondent's bundle. Further, the policy at page 227 is missing a 'not exceed' in the second row, right hand column of the table.

**Summary of Decision**

127. The Tribunal concludes that the inspection on 8 August 2023 which led to the issue of Improvement Notice 3227 and 3242 was not conducted in exercise of the statutory powers under section 239 of the Act. The issue of those Notices, and subsequent variations was lawful. The Tribunal further concludes that Ms Arnold had the required authority to sign those Notices.

128. The Tribunal concludes that it was appropriate to vary parts of and suspend parts of Improvement Notice 3227.

129. The Tribunal therefore confirms the decisions to vary/suspend.

130. The Tribunal sets aside the decision to refuse to revoke Improvement Notice 3242 made on 11 November 2024 and directs that the Notice be revoked because it goes further than is permissible.

131. The Tribunal varies Improvement Notice 3227 to allow 4 months for the remaining required remedial works.

132. The Tribunal varies the Financial Penalty in respect of OX1 Limited to the total sum of £11,000.

133. The Tribunal varies the Financial Penalty in respect of Mr Khuja to the total sum of £11,000.

134. No application for a refund of fees was made, nor would an order be appropriate in circumstances where the appeal has not succeeded. The Tribunal makes no order in respect of the same.

**Name: Judge A. Arul Date: 28 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).