FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KB/HNA/2025/0617**
Property	**:**	**106 Bedford Road, Barton-le-Clay, Bedfordshire MK45 4LR**
Applicants	**:**	**Jerathinam Jeshree**
Representative	**:**	**Nicholas O'Brien of counsel**
Respondent	**:**	**Central Bedfordshire Council**
Representative	**:**	**Nick Mason-Williams of counsel**
Type of application	**:**	**Appeal against financial penalties under section 249A and schedule 13A of the Housing Act 2004**
Tribunal members	**:**	**Judge A. Arul** **Judge A. Holtom** **Gerard F. Smith MRICS FAAV**
Hearing date	**:**	**25 February 2026**
Date of decision	**:**	**23 March 2026**

DECISION

Decisions of the Tribunal

(1) The civil financial penalty of £20,803 issued on 8 May 2025 is confirmed.

(2) The Tribunal makes the determinations as set out in the decision below.

Reasons

The Application and Hearing

1. By an application dated 5 June 2025 the Applicant appealed against a civil financial penalty of £20,803 imposed upon him by the Respondent by a Final Notice of Financial Penalty dated 8 May 2025 in respect of the Property.

2. The application is opposed by the Respondent.

3. Directions were issued by the Tribunal on 15 September 2025 ("the Directions"). The Respondent was to file and serve a bundle of relevant documents including those items set out in paragraph 9 of the Directions by 22 October 2025. The Applicant was to file and serve a bundle of relevant documents including those items set out in paragraph 12 of the Directions by 19 November 2025. This included any expanded statement of reasons or grounds for appeal. Any reply from the Respondent was to be filed and served by 3 December 2025.

4. Both parties presented their own bundle of documents, comprising 197 pages (Applicant) and 682 pages (Respondent). There were some issues with legibility of certain pages of the bundles, but these were resolved by the time of the hearing with the Tribunal having received some documents separately including spreadsheets. We were satisfied that each party had received copies of documents relied upon the other party and sufficient time to prepare for the hearing.

5. The application was heard by CVP on 25 February 2026. The Applicant, Mr Jeshree, attended and was represented Mr O'Brien of counsel. The Respondent was represented by Mr Mason-Williams of counsel. We had the benefit of helpful skeleton arguments from both counsel, along with a bundle of authorities. There were several other persons present at the hearing, principally solicitors and various officers from the Respondent.

6. The witness evidence for the Applicant comprised a statement from Mr Jeshree dated 19 November 2025 together with eight exhibits. The witness evidence for the Respondent comprised two statements, dated 29 October 2025 and 3 December 2025, from Ms Kirsty Crowther, (Environmental Health Practitioner) together with several exhibits. We

heard live evidence from each witness, in the case of Mr Jeshree this being with the assistance of an interpreter in the Tamil language.

The Facts

7. The primary factual events were largely agreed between the parties, as summarised below.

8. The Property comprises a detached building within which there are seven bedrooms, two kitchens and several bathrooms. The Applicant resided in the Property until December 2022. The rooms are let for residential purposes.

9. The Applicant is a freehold proprietor of the Property, having acquired it on 3 November 2016. We were shown official copies of the register held by the Land Registry showing that the freeholder proprietor is the Applicant and his wife, Mrs Suthagini Jeshree.

10. The chronology of key events is as follows:

(a) 3 November 2016 – Applicant and his wife purchase the Property.
(b) December 2022 – Applicant moves out of the Property.
(c) 20 January 2023 – Ecolet Development Projects Limited ("Ecolet") enters into an Assured Shorthold Tenancy with five tenants.
(d) 30 January 2023 – Applicant enters into a five-year agreement with a two-year break clause with Ecolet Development Projects Limited ("Ecolet"). There was said to be two versions of this agreement with the rent amount differing (£1,800 per month and £2,400 per month) but only one was provided in the bundles.
(e) August 2023 – Applicant occupies a room on the ground floor of the Property.
(f) 29 May 2024 – Inspection under a Magistrates' Court warrant pursuant to section 240 of the Housing Act 2004.
(g) June 2024 – Applicant occupies the whole of the ground floor of the Property.
(h) 6 June 2024 – Respondent issues a notice to produce documents under section 235 of the Housing Act 2004.
(i) 21 November 2024 – Respondent issues Notices of Intent to issue financial penalties totalling £22,589.88.
(j) 31 December 2024 – Agreement dated 30 January 2023 is surrendered.
(k) 16 January 2025 – Respondent refuses Applicant's application for a HMO licence.
(l) 10 February 2025 – Applicant makes representations against the Notices of Intent via his solicitors.
(m) 24 March 2025 – Respondent replies to the representations.
(n) 8 May 2025 – Respondent issues Final Notice of Financial Penalty.
(o) 5 June 2025 – Appeal to the Tribunal.

11. The offences alleged by the Respondent and which give rise to the Final Notice of Financial Penalty are:

(a) Having control of or managing an unlicenced House in Multiple Occupation ("HMO") from 20 January 2023, for which a penalty of £7,856 was imposed;
(b) Failing to take various safety and safety related measures as at 29 May 2024, for which a penalty of £9,284 was imposed;
(c) Failing to maintain the kitchen, first floor bathroom, garden and rear outbuilding as at 29 May 2024, for which a penalty of £3,662.88 was imposed.

12. The Applicant appeals against these penalties, which total £20,802.88; rounded to £20,803.

The Law and Issues

13. Section 249A of the Housing Act 2004 ("the 2004 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."

14. Section 249A(2) of the 2004 Act sets out what constitutes a "relevant housing offence". It includes those under section 72 and 234 of the 2004 Act.

15. Section 72 of the 2004 Act states that:

"(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.
...
(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."

16. Section 234 of the 2004 Act states that:

"(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."

17. Section 254(2) of the 2004 Act states that:

"(2) A building or a part of a building meets the standard test [for a HMO] if—
(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
(b) the living accommodation is occupied by persons who do not form a single household (see section 258);
(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

18. Section 263 of the 2004 Act sets out definitions of "person having control" and "person managing", as:

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

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

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

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

19. The Management of Houses in Multiple Occupation (England) Regulation 2006 ("the Regulations") are those applicable under section 234 of the 2004 Act.

20. Regulation 2 states: *"(c) "the manager", in relation to an HMO, means the person managing the HMO."* The footnote to this regulation states "*For the meaning of "person managing" see section 263(3) of the [2004] Act."*

21. Regulation 4 states:

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

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

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

(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—
(a) the design of the HMO;
(b) the structural conditions in the HMO; and
(c) the number of occupiers in the HMO.

(5) In performing the duty imposed by paragraph (4) the manager must in particular—
(a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and
(b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.

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

22. Regulation 7 states:

"(1) The manager must ensure that all common parts of the HMO are—
(a) maintained in good and clean decorative repair;
(b) maintained in a safe and working condition; and
(c) kept reasonably clear from obstruction.

(2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—
(a) all handrails and banisters are at all times kept in good repair;
(b) such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided;
(c) any stair coverings are safely fixed and kept in good repair;
(d) all windows and other means of ventilation within the common parts are kept in good repair;
(e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and
(f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.

(3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove

from the HMO or which are otherwise outside the control of the manager.

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

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

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

23. In the first instance, the local housing authority must ascertain beyond reasonable doubt that a licencing or management offence has been committed.

24. If the local housing authority determines that a relevant housing offence has been committed, Schedule 13A to the 2004 Act sets out the procedural requirements which the local housing authority must then follow, including the service of Notices of Intent and of Final Notices, before the financial penalty may be imposed under section 249A.

25. In addition, by paragraph 12 of Schedule 13A to the 2004 Act, the local housing 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.

26. In this case, the Respondent's policy is a document entitled 'Housing Enforcement Policy' which was last approved in June 2022. The Tribunal has had regard to this document.

27. 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 principal grounds of appeal are that the Applicant was not a manager (or person having control) of a HMO at the material times, had no knowledge of the matters complained of, and in any event the penalties are excessive in all the circumstances. The six components of the appeal are set out in the application and Mr O'Brien's skeleton argument. The appeal is a re-hearing, hence the Tribunal may take into account matters which were unknown to the local housing 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 2004 Act.

28. When considering how to exercise its powers under paragraph 10(4) of Schedule 13A to the 2004 Act, the Tribunal is to start from the local housing authority's policy which underlies the decision to issue the civil 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 Applicant to persuade the Tribunal to depart from the policy and, in considering that matter, the Tribunal has to look at the objectives of the policy and ask itself whether those objectives would be met if the policy were not followed. 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 is agreed with the local housing authority's conclusion. These points were confirmed in the case of *Waltham Forest London Borough Council v Marshall* [2020] 1 WLR 3187.

29. The issues set out in the annex to the Directions made on 15 September 2025 broadly provide for the above questions.

(a) Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of premises in England (see sections 249A(1) and (2) of the Housing Act 2004);

(b) Whether the Respondent has complied with all of the necessary requirements and procedures relating to the imposition of the

financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act); and/or

(c) Whether the financial penalty is set at an appropriate level, having regard to any relevant factors, which may include, for example: the offender's means;

a. the severity of the offence;
b. the culpability and track record of the offender;
c. the harm (if any) caused to a tenant of the premises;
d. the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
e. the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

(d) The Tribunal may have regard to any official guidance relating to financial penalties (also known as "civil penalties") that may be published from time to time by the Secretary of State for Communities and Local Government, but the Tribunal will not be bound by such guidance when making its decision.

30. There were two central issues in the present case. Firstly, whether the relevant Notice of Intent and Final Notice had been properly served having regard to the Applicant's status (i.e., was he a person having control or a manager of a HMO) and, secondly, whether the penalties imposed were excessive. The Tribunal must then decide whether to confirm, vary or cancel the Final Notice imposing the financial penalties. The Tribunal, must of course, be satisfied that the relevant offences have been committed, not only as to whether the Applicant was a manager or person having control but also as a matter of fact. However, it is of note that there was no material dispute as to the requirement for a HMO having regard to the number and type of occupants, or non-compliance with the Regulations. The Applicant's position was that, whilst these were matters which the Respondent must prove, the responsibility for any breaches lay with Ecolet.

The Applicants' position

31. The Applicant argues in his statement of case that he was not a person having control of or managing the Property for the purposes of the licensing scheme (thus did not require a licence himself) and was not a manager for the purposes of the Regulations. In any event, he argues that he had no personal knowledge of the matters relied upon as constituting breaches of the Regulations. Finally, he argues that the penalties imposed were too high. In submissions Mr O'Brien confirmed that the Respondent was put to proof that an offence had been committed at all (to the higher criminal standard of proof).

32. In essence, the Applicant's position is that a five-year 'lease' was entered into with Ecolets, they would pay him £2,400 per month and would manage the Property. He says he had no knowledge or expectation of a let as a HMO. He cannot have been a manager because there was a lease.

33. The Applicant's evidence was that, having vacated the Property in December 2022 and handed over to Ecolets, he did return and used part of the property in August 2023, but was still working and living in Wales. This partial occupation does not negate his lack of control of or management of the Property.

34. In his oral testimony, the Applicant explained that he is a businessman, he is not legally trained and English is not his first language. He operates 18 shops with his brothers. He lets five houses, he says these are to people he knows, often on long lets, so he has not used agents often. It became apparent that some let properties may be above or otherwise attached to the shops which he operates.

35. In 2022, the Applicant bought another house and moved. He was trying to let the Property, and obtained market appraisals at the time as per the letters from Inspired and Connells. Ecolets approached him, they initially offered a monthly rent of £1,500, then £1,800, but he asked for £2,500 and they agreed on £2,400. His understanding of the arrangement was that Ecolets would take responsibility for five years, including all maintenance. He asked for a break clause at two years. It was Ecolets form of agreement, he checked the rent amount and the five-year term with two-year break. He did not check other terms thoroughly. He understood that the Property was to be given to one family living together.

36. He told us that he did not know the Property had been subdivided. He said that it was a large house so, some months after handing over to Ecolets when he needed occasional accommodation in the locality, he believed a family could give him a room. He was aware there were two separate entrances so thought this was possible. He said he did not go upstairs so did not see the locked doors. He would often come in at midnight.

37. After the inspection he verbally exercised the break clause with Ecolets. He denied being involved in managing the Property and that his continued payment of the utility bills (subject to reimbursement) was any indication of that. He was asked why he would pay for the new electrical consumer unit if the agreement with Ecolets was that they would pay for all maintenance. He said he did not know.

38. He accepted that none of transactions/payments to him were for the £2,400 agreed with Ecolets. He said some tenants were not paying at the same time. In July 2023 there was more than £2,400. He said that sometimes Ecolets came to his shop and paid cash or via the card

machine. He referred us to a spreadsheet showing that Ecolets owed him £9,068.14 as at 1 December 2024. He was taken to entries on 26 July 2023 and asked about two different payments on the same day. It was suggested to him that £600 and £700 are actually payments from tenants. He said he did not know and the payments came from Ecolets. When asked about it being unusual to have different amounts if the agreement was £2,400 he said Ecolets pay different amounts due to bills. On his tally of payments from Ecolets for utility bills there was £5,000 relating to 'Mr Singh' but treated as a rent payment. He said Ecolets did some maintenance and boiler work and Mr Singh owed this money to Ecolets, and in turn Mr Singh paid him. He said he kept utility bills in his name as he needed evidence of an address.

39. He was asked about the request by the Respondent for financial information. He said that he could not remember, he emailed the agreement with Ecolets, but did not read through the letter completely, choosing instead to telephone Ms Crowther. It was put to him that he was incorrect to say he was never asked to provide bank statements but said he was only going by his knowledge (which we took to mean understanding). He accepted that there was no evidence provided of his income. In relation to financial hardship, he said he has had to pay £40,000 including a lot of money to builders. His witness statement stated that his businesses are loss making and the penalties would cause financial hardship.

40. In paragraph 21 of his grounds of appeal, the Applicant argues the following as to why the penalties are flawed: (i) any culpability on his part was low; (ii) he had caused no harm to any tenant; (iii) he was not party to or aware of the creation of an HMO; (iv) there was no need to significant punish or deter him from offending in the future; (v) others in his position would not be deterred by any penalty; (vi) he had derived no personal benefit from any unlawful conduct – any gain was Ecolets.

The Respondent's position

41. The Respondent confirmed in its statements in response that it believed the Applicant to be the manager and/or person in control of the Property at the material times. In Mr Mason-Williams' skeleton argument, he argues that the statutory definitions for all offences are similar when it comes to the person in control being the same as one managing.

42. Mrs Crowther's evidence confirmed the steps she had taken to establish occupancy and the concerns over compliance with the Regulations.

43. Ms Crowther also explained in her oral testimony the process of her having written a questionnaire when she found the Applicant asleep in a ground floor room during the inspection which took place upon execution of the warrant.

44. In relation to the fire separation between self-contained units and the HMO, she maintained that this was inadequate to curtail fire spreading. It was partitioned downstairs with normal plasterboard (having grey rather than pink paper consistent with fire rated products) which was not compliant with the Building Regulations. She accepted this was consistent with the Applicant's evidence that Ecolets had separated the Property. She said there was also a problem with the chimney breast knocked through, so any fire would have gone up. There was a lack of fire doors to bedrooms, kitchens and all risk rooms along the means of escape. She knew these were not 'FD30' (providing 30-minute protection) fire doors because they were made from normal timber and not marked up (for example, on top) and there were no strips and seals on the door frames. There was no fire blanket in the kitchen.

45. In relation to the doors, the front door had no locking mechanism at all and she referred to photographs of this. There was a missing barrel on the side door. There was no thumb turn on the rear exit door or bedroom doors.

46. In relation to the obstructed means of escape, she clarified that this related to items along a corridor. She conceded this was not entirely obstructed but maintained it would impede escape if one was in a hurry. She said HMOs were higher risk than normal family homes, with people working different schedules and risk of fire generally being higher, and the items were of combustible material. Hence she maintained a HMO manager should police this with their tenants.

47. In relation to overcrowding, her view was that the kitchen and bathroom facilities were only suitable for five occupants, taking account of things such as cupboard space and there being only one fridge and one cooker. She accepted this was not a safety issue.

48. In relation to condition, she maintained that the communal kitchen was unhygienic and not clean. The disrepair in the shared bathroom was more than from ordinary use, for example the shower was set up as a corner bath and there was inadequate tiling, so damage was being caused. The garden had rubbish, lots of black sacks and pizza boxes. The Property had come to the Respondent's attention due to neighbour complaints about overflowing bins and rats. She said this would have been obvious to the Applicant living there.

49. In relation to the rents, her calculation was that the Applicant collected £26,750 from Ecolets going by the 'PayProp' statement they had been provided. She suspected the rent might be more.

50. In relation to her calculations, she said even if the Applicant did not know what was going on, he is still the owner and living on site so she would not have given much credit. If he had not been living at the Property she conceded she might have gone for a 10-15% realistic further reduction; different percentages were broached and her evidence was that she may not have credited much and certainly not high percentages such as 33%, 50% or 75%.

Conclusions and Reasons

Relevant Offence

51. The Tribunal must be satisfied beyond a reasonable doubt that the Applicant committed a "relevant housing offence" in respect of the Property for the period to which the Final Notice relates.

52. The Tribunal was satisfied that the Property was a HMO at the material times. The criteria in section 254(2) of the 2004 Act are satisfied in that the Property was occupied in return for rent by at least five persons as their only or main residence and who did not form a single household and who shared basic amenities including kitchen and bathroom facilities. This was evident from the Assured Shorthold Tenancy agreement entered into with five tenants, the bank statements showing multiple payments from Ecolets to the Applicant, the photographs of the individual rooms with lockable handles and the evidence of Mrs Crowther about the circumstances of each tenant whom she interviewed on site.

53. Section 61 of the 2004 Act requires a licence for a HMO and section 72 makes it an offence to not have one in place. It was common ground that there was no licence, the issue was more who was responsible for obtaining it. In any event, we had no evidence before us of a licence and the Applicant's evidence was that he had applied unsuccessfully for a licence since these matters came about and Ecolets surrendered their lease.

54. The next issue is whether the Applicant was a manager or person having control over the Property. This was firmly in dispute between the parties.

55. The starting point here is the arrangement between the Applicant and Ecolets. The agreement which we were shown, described to us by the Applicant as a 'lease' but in fact headed 'company let agreement' was not formulated in the way which the Applicant described. He described that he had handed over the Property to Ecolets for a fixed term of five years and at a fixed rent of £2,400 per month. Ecolets would then effectively sublet the Property, as the Applicant understood it to a single-family

unit. Ecolets would manage the Property and collect rents and the Applicant would simply receive his fixed rent. The version of the agreement which we were provided with referred to £1,800 per month. This agreement appeared to be one for letting to a corporate tenant. In other words, it was not an Assured Shorthold Tenancy to an individual regulated by the Housing Act 1988. It assumed that the corporate tenant would let to its employees and, in fact, included express provisions prohibiting occupation by others or subletting. It therefore was not what the Applicant contended it was. Nonetheless, we were persuaded by Mr O'Brien's submissions that, even if the agreement was not as its parties intended, or otherwise did not comply with the requirements for a disposition of land to be in writing, signed and contain all the terms agreed (e.g., as required under section 2 of the Law Reform (Miscellaneous Provisions) Act 1989), a simple tenancy could be created by a common understanding to exchange use of the Property for rent. It was common ground that there was some arrangement with Ecolets (indeed, the Respondent had also issued financial penalties to it which were not the subject of this appeal) and we had evidence in the form of the payment summary that Ecolets were paying rents to the Applicant. The evidence of what those payments should be and why they were not a single lump sum of £2,400 each month was less than satisfactory. However, we were satisfied on the balance of probabilities that the Applicant had an agreement with Ecolets which provided for them to make payments each month. This does not fully answer the question of management, control or knowledge, which we address below.

56. We did not find the Applicant's evidence credible in relation to the arrangements with Ecolets. In the summary he had produced, which was apparently extracts from his bank statement, there were multiple payments for £600-700, which would correspond with rent per room. The suggestion that Ecolets, an independent letting agent, were attending his shop to pay over rents due to him on a card machine lacked credibility. We also found the suggestion of swapping debt by setting off payments due to builders unusual.

57. We find that the Applicant is an experienced businessman. His evidence was that he operated multiple shops, some with flats above. We accept that he previously occupied the Property as his family home, and the family at some point vacated. However, he is by no means inexperienced in dealing with property or what one could regard as an accidental landlord. We were not persuaded that he had no knowledge that the Property was being used as a HMO.

58. When the Applicant was occupying part of the Property, a significant asset said to now be worth over £1m, and his former family home, it is likely on the balance of probabilities that he would have had a look around on occasions when he was there. He suggested that during his

whole time there he never went upstairs (so as to see the apparently new lockable bedroom door handles and items in the hallways), and came and went late at night so did not see other tenants regularly. We find that this lacks credibility given his obvious interest in the Property. We were shown photographs of the accumulation of rubbish consistent with multiple persons occupying the Property and beyond what might be considered usual for a family. It is unlikely that the Applicant did not notice this.

59. We were not persuaded with the Applicant's explanation of utility bills remaining in his own name. These were variable so could potentially have been very high and represents a personal financial risk. The Applicant told us that he kept them in his name so he could have proof of living at this address (or at least a connection with this). If, on his evidence, the Property had been handed over to Ecolets for five years, we see no credible reason to do so this and, even if that were wrong, doing so for all utilities makes no practical or commercial sense. It also begs the question how the tenants would prove their own addresses. If the Applicant was in fact living somewhere else, one wonders why he would not have his address elsewhere. We were shown a council tax bill for a property in Wales, which showed the Applicant registered there. We did not accept his explanation therefore that he needed to have evidence of his address, specifically the Property. To the contrary, in our view, it would be more consistent with a HMO to have the council tax in the landlord's name. Having other utility bills in his name is consistent with managing the Property.

60. We also did not find it credible that a single-family unit would have given the Applicant a part of the Property part way through their tenancy. Once the Applicant realised he could move in separately he must have known that the Property had been separated. He may not have known on 31 January 2023 (the day after the handover to Ecolets), but by the time he was offered a room he ought to have known. We have disregarded the evidence of Ms Crowther recorded in the questionnaire which she completed whenasking questions of the Applicant on site during the inspection under the warrant. The answers he gave about his occupation and what he knew of others were given at a time when he was suddenly woken up and he was not told that the matters to be discussed may relate to a criminal offence. In any event, very little turns on what he said at that time.

61. We therefore find that the Applicant had knowledge that the Property was being used as a HMO. We had insufficient information by which to conclude that he was directly managing it. We are also unclear on the timeline as it appears that Ecolets had entered into an agreement with tenants some eleven days prior to their agreement with the Applicant. There was also some suggestion from the Respondent that he had been

involved in engaging contractors. However, the only tangible evidence of this was his commissioning of the electrical certificate. This was after the Respondent's involvement and once he became aware of the need for HMO compliance. We find that it is not beyond possibility that, when faced with non-compliance, he took a view to simply get that work completed, irrespective of who might ultimately be responsible. The Respondent did not produce evidence of his engagement of contractors prior to this, although we did note that the Applicant was named on the fire risk assessment. We are also mindful that Ecolets had entered into an Assured Shorthold Tenancy with some tenants and the communications between them and the Respondent admitted that they had been involved in acting as a letting agent for those tenants.

62. Notwithstanding the lack of clarity over the precise extent of the Applicant's involvement with the letting of the Property as a HMO, including the financial arrangements, the statutory definition of the person having control of or managing the Property includes the person who receives, directly or indirectly, the rack rent. This in turns means not less than two-thirds of the full net annual value of the premises. We were shown evidence from two independent letting agents of rents achievable in 2022. Inspired by their letter dated 17 February 2022, considered £2,700 to £3,000 per calendar month achievable. Connells, by their letter dated 18 February 2022, considered £2,000 per calendar month achievable. In his evidence, the Applicant referred to £3,500 after agents fees achievable, but we were not shown any independent evidence of this. Equally, we were not shown any more recent evidence of rental values.

63. On the basis of lawful marketing, having regard to the absence of a HMO licence at the relevant time, we consider that the rack rent in 2022 was around £2,500 per calendar month. Allowing for a 10-15% inflationary increase into 2023 and 2024 would give a net annual rent value of under £3,000. The critical point in time is the grant of rights to Ecolet, which was 30 January 2023. In our view the rack rent was no greater than £3,000 at that point. On the basis of the Applicant's own evidence that he was receiving, or entitled to receive, £2,400 from Ecolets, this would be over two-thirds of the net annual rent value (being 80%). Even taking the Applicant's figure of £3,500, he was receiving approximately 68% of the net annual rent value. Therefore, we conclude that the Applicant was receiving the rack rents for the purposes of section 263 of the 2004 Act. It follows that he was a person having control of and managing the Property for the purposes of section 72 of the 2004 Act and a person managing the Property for the purposes of the Regulations pursuant to the imported definition from the 2004 Act under Regulation 2(c). We were also referred to the authority of *R (Clearsprings Ready Homes Ltd) v Swindon Magistrates' Court* [2024] EWHC 2023 (Admin), [2025] 1 WLR 2118, [67] in which it was determined that Regulation 2(c) should

be read as if it stated "the manager" means the person managing or the person in control.

64. We have found beyond reasonable doubt that the Property required a HMO licence and did not have one. As a person in control of or managing the Property, the Applicant was guilty of an offence under section 72 of the 2004 Act. It is for the Respondent to satisfy us of this and we consider that it has done so.

65. We were also satisfied beyond reasonable doubt that all but one of the allegations relating to breach of the Regulations were proven. We summarise the position as follows:

Regulation 4:

(a) Inadequate fire separation between self-contained units and the HMO – the photographs demonstrated open areas in the brickwork where fire could pass from room to room and lack of intumescent strips in the doors;
(b) Lack of fire doors to bedrooms, kitchens and all risk rooms along the means of escape – the photographs demonstrated that the doors in these areas were not compliant fire doors;
(c) No thumb turn on the rear exit door or bedroom doors - the photographs demonstrated that these doors did not have thumb turns, thus creating a risk for occupants escaping;
(d) Obstructed means of escape in the form of items along a corrido – the photographs demonstrated that several occupants were using the areas on the first floor outside of their bedrooms as storage, for example with shoe racks and washing. Whilst not an absolute obstruction, our view is that these are sufficient obstructions for escape routes, being a good proportion of the landing area outside each room and items present in the only escape route from each room;
(e) Over-occupation of the HMO, with there being at least seven occupants in a property suitable for five – we were not satisfied that there was over occupation. The Property comprised individual rooms and we considered that two en-suite bathrooms and one family bathroom, a large kitchen and large lounge area were sufficient for 7 sharing;
(f) The side door was missing a locking mechanism – the photographs showed that this was the case;
(g) There was no fire blanket in the kitchen – the photographs showed that this was the case;

Regulation 7:

(h) The communal kitchen was poorly maintained and unhygienic – the photographs showed that this was the case;
(i) Discarded items had accumulated in the rear garden and outbuilding – the photographs showed that this was the case;

(j) The rear garden was overgrown and poorly maintained – the photographs showed that this was the case;
(k) The first floor shared bathroom was in a state of disrepair and poorly maintained – the photographs showed that this was the case.

66. On this basis we considered that there were breaches of section 72 of the 2004 Act and of Regulation 4 and 7 of the Regulations. We find that all those breaches have been made out, save for over occupation.

67. The Tribunal was satisfied beyond a reasonable doubt that the Applicant committed a "relevant housing offence" in respect of the Property for the period in question in that he failed to comply with the requirement to licence the Property and to the specified parts of the Regulations.

68. In proceedings against a person for an offence under subsection 72 of the 2004 Act it is a defence under subsection 72(4) that a notice for temporary exemption has been given or under subsection 72(5) that he had a reasonable excuse for failing to comply with the notice. Neither defence has been made out, for the avoidance of doubt it was not contended that a temporary exemption had been applied for nor that there was a reasonable excuse. The Applicant's case focused on him not being a manager or person in control and reasonable excuse was not argued in the six main grounds of appeal or in his witness statement or skeleton argument. For completeness, had he argued that there was a reasonable excuse by delegation to Ecolets, we would not have found that sufficient. We have rejected the argument that the Applicant had no knowledge that the Property was being used as a HMO, hence lack of knowledge would not amount to a reasonable excuse defence for the absence of a licence.

69. In proceedings against a person for an offence under subsection 234 of the 2004 Act it is a defence under subsection 234(4) that he had a reasonable excuse for failing to comply with the Regulations. For the same reasons, the Applicant has not argued a reasonable excuse defence and had he argued that there was a reasonable excuse by delegation to Ecolets, we would not have found that sufficient. We have rejected the argument that the Applicant had no knowledge that the Property was being used as a HMO, hence lack of knowledge would not amount to a reasonable excuse defence for not complying with the Regulations.

70. We were therefore not satisfied that there was an absolute defence to the offences.

<u>Amount of the Penalties</u>

71. The government encourages each local housing authority to issue its own policy for determining the appropriate level of penalty, with the

maximum amount being reserved for the worst offenders. Relevant factors include:

a. the severity of the offence;

b. the culpability and track record of the offender;

c. the harm caused to the tenant;

d. punishment of the offender;

e. deterring the offender from repeating the offence;

f. deterring others from committing similar offences;

g. removing any financial benefit the offender may have obtained as a result of committing the offence; and

h. the offender's means.

72. We have considered the Respondent's published policy and it adopts these factors. The Respondent's process was to identify a starting figure for each penalty. First, by determining three factors: the severity of the offence, culpability and offender track record, and a punishment factor. These are then assessed on a scale based on the degree of harm (or risk of harm) caused by the offence or culpability. These are then converted to a numerical score which is in turn used against a scale to identify a penalty banding. There is a table which then converts the overall numerical score to a financial amount between £0 and £30,000 being the maximum penalty permissible under the policy (and by law).

73. We considered Mrs Crowther's assessment to be generous, for example giving the benefit of doubt to the Applicant. Lower scores were given for his financial circumstances merely due to lack of information. In relation to the breach of Regulation 4, a score of 31 was arrived at, whereas we have found no overcrowding breach. The score is based on the fire protection risks, therefore we feel it remains appropriate notwithstanding our findings. We do not propose to set out each and every finding however we have considered each of the assessments made on the severity of the offence, culpability and offender track record, and a punishment factor and, giving the Applicant the same benefit of the doubt, adopt the same judgements.

74. Ms Crowther conceded that if the Applicant had no knowledge that the Property was being used as a HMO (but was still technically a manager or person having control) a 10-15% reduction *might* be in order. We find that the Applicant did have knowledge therefore so no such reduction is warranted. As to the Applicant's financial circumstances, this remains unsatisfactory, especially having heard that he has considerable other business interests including an involvement in running 18 shops and five residential lettings. We do not have the material from the Applicant by which to adjust the scoring.

75. We therefore find that a total penalty of £20,803 is appropriate. We confirm the penalty issued on 8 May 2025 without adjustment.

76. We cannot make orders regarding the payment terms of the penalty. We encourage transparency from the Applicant as to his personal circumstances so as to allow the parties to discuss affordability and payment terms.

Name: Judge A. Arul **Date:** 23 March 2026

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).