FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/33UG/HNA/2024/0004** **CAM/33UG/HNA/2024/0005** **CAM/33UG/HNA/2024/0008** **CAM/33UG/HNA/2024/0009**
HMCTS Code	:	**CVP REMOTE**
Property	:	**St Peter's House, 23 Cattle Market Street, Norwich NR1 3DG**
Applicants	:	**1.Ori Calif** **2.Spicerhaart Residential Lettings Ltd T/A Haart** **3.Cattle Market Street Ltd** **4.Osnat Golan**
Representatives	:	**1,3 and 4.Gateley Legal LLP** **2.Matthew Bowden of Haart**
Respondent	:	**Norwich City Council**
Representative	:	**NPLaw (David Lowden)**
Type of application	:	**Appeal against financial penalties: section 249A Housing Act 2004**
Tribunal member(s)	:	**Regional Judge Ruth Wayte** **Roland Thomas FRICS**
Date of hearing	:	**11-12 February 2025**
Date of decision	:	**24 February 2025**

DECISION

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(1) The tribunal cancels the Financial Penalty Notices issued to Ori Calif and Haart in respect of their alleged breaches of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 ("the 2007 Regulations").

(2) The tribunal cancels the Financial Penalty Notices issued to Cattle Market Street Limited ("CMS") and Osnat Golan in respect of the 2007 Regulations 5(1)(b) and 5(2).

(3) The tribunal varies the Final Penalty Notices for CMS and Osnat Golan in respect of regulation 5(4) to £16,000 each;

(4) The tribunal varies the Final Penalty Notices for CMS in respect of regulation 7(4) to £30,000 and confirms the Final Penalty for Osnat Golan for this breach at £16,000;

(5) The tribunal varies the Financial Penalty Notices issued to CMS and Osnat Golan in respect of regulations 6(1)(a) and 8(1)(b) to £2,000 per breach each.

The application

1. This application is an appeal by four applicants in respect of a total of 23 financial penalties imposed under section 249A of the Housing Act 2004 ("the 2004 Act"). They related to a property known as St Peter's House, Norwich ("the Property") and followed service of an Emergency Prohibition Order ("EPO") dated 11 April 2022. Those penalties amounted to £441,000, as set out below and were issued in respect of alleged breaches of the 2007 Regulations said to have occurred on the 7 and/or 11 April 2022:

HMO Regs 2007	5(1)(b): fire escapes	5(2): fire equipment and alarms	5(4): protection of occupiers	6(1)(a): water	7(4): interruption of electricity	8: safety of common parts
Ori Calif	27,500	27,500	27,500	27,500	27,500	27,500
CMS	25,000	25,000	25,000	25,000	25,000	25,000
Osnat Golan	16,000	16,000	16,000	16,000	16,000	16,000
Haart	6,000	6,000	6,000		6,000	6,000

2. Although the Property had been converted into self-contained flats, the Property was said to fall within the definition of an HMO under section 257 of the 2004 Act as the conversion did not comply with the appropriate building standards at the time and less than 2/3rds of the flats were owner occupied. A Final Certificate was issued by Norwich City Council ("Norwich CC") on 3 August 2022, meaning that the Property ceased to be an HMO, and the EPO was revoked the following day.

3. Directions were originally ordered on 12 September 2024 in respect of Mr Calif, CMS and Mrs Golan. Haart made a successful application to extend the time for making their appeal and directions were then ordered in respect of their participation in the consolidated hearing.

4. The appeal was heard on 11 and 12 February 2025. Mr Calif, CMS and Mrs Golan were represented by counsel Duncan Craig, Haart by counsel Jotesh Jotangia and Norwich CC by counsel Rupert Myers. In addition to the hearing bundles prepared by all parties, Mr Myers produced a skeleton argument, further submissions and a table summarising the penalties imposed by his clients, together with a bundle of authorities. Mr Craig also produced a skeleton argument. The tribunal heard from four witnesses for Norwich (Arlo Reddick, Otis Hernandez, Adriana Nape and Paul Aldous), Ori Calif and Ryan Reardon on behalf of Mr Calif, CMS and Mrs Golan and Matthew Bowden for Haart. The documents drawn to our attention, the oral argument and evidence have all been taken into account by the tribunal in reaching its decision.

Background

5. CMS is a development company which was set up to acquire and develop the Property, a former office block. The original plan had been to convert the building into residential flats for sale on long leases. Osnat Golan, who is resident in the USA, was the sole director of CMS at the relevant time for this appeal. Ori Calif is her nephew and acted as an advisor to CMS in respect of property developments under an agreement dated 25 November 2016. Haart is a residential lettings company that was engaged by CMS in December 2021 to let some of the vacant flats on short term lettings.

6. CMS bought the Property on 21 June 2017. BHD, architects employed by CMS, applied for planning permission in September 2017 to convert the building into flats under permitted development rights. CMS entered into a building contract with Mant Construction Limited for the conversion works and B2 Chartered Building Surveyors were subsequently employed to supervise them. Mr Calif was introduced to Mant by Pieter Brons-Harper, a developer that he had met in London. Mant recommended B2. Planning permission for conversion of the office block into 53 residential units was granted on 13 June 2018.

7. The works progressed and on 26 July 2019 Capital and Counties Building Control Services Limited ("CCL") sent a letter to Mant stating that "*…I currently see no reason why we would be unable to issue the relevant completion certificate upon the satisfactory completion of the building works and assuming our satisfactory receipt of the relevant test certification.*" Electrical test certificates were issued on 14 March 2020 and on 26 June 2020. B2 were instructed to ensure that the Property was delivered in accordance with all relevant standards, with a view to selling the flats from the autumn of 2020.

8. In September 2020 CMS commissioned a Fire Risk Assessment and obtained a Certificate of Commissioning in respect of the fire alarm. Mant wrote to B2 to confirm that the sprinkler system had been checked and was operational. Certificates of Partial Practical Completion and a Partial Final Certificate were subsequently issued by CCL in September 2020. The Partial Final Certificate stated that CCL was an approved inspector. It related to 51 of the flats and purported to be evidence that the requirements specified in the initial notice (presumably from Norwich CC) had been complied with. In fact, unknown to CMS at the time, CCL had ceased to be an approved inspector in December 2019 and was struck off the register at Companies House on 14 September 2021.

9. Mr Calif moved away from the UK in 2020. After that, he visited the country and the property sporadically, with the frequency of those visits reduced by the Covid pandemic throughout 2020-2021. He, together with Mrs Golan and CMS therefore put their trust in B2 to ensure the works met all applicable standards. Unfortunately, it became clear by early 2021 that Mant had not completed the works in accordance with their contract, which was terminated by CMS on 3 September 2021. Mr Calif informed the tribunal that proceedings have now been issued by CMS against Mant and B2 to try and recover some of their losses.

10. CMS made new arrangements with Mr Brons Cooper to complete the works and by the end of 2021, several flats had been sold on long leases as originally planned. However, as the majority of the flats were vacant, CMS decided to let them out. An agreement was entered into with Bamptons on 14 November 2021 in respect of management of the leasehold properties and with Haart on 2nd December 2021 to let 29 of the empty flats on assured shorthold tenancies. That agreement included the provision of a management service by Haart in respect of any flats let by them.

11. As the levels of occupation at the Property increased, serious problems developed with the electricity supply, which was disconnected by UK Power Networks ("UKPN") on 7 February 2022. That prompted the first complaint to Norwich CC. Mr Calif had arranged for generators to be provided to the Property while the issues with the electricity supply

were resolved, with cables run from the generators to the Property through open windows and the common parts.

12. Norwich CC first visited the Property on 15 February 2022. Arlo Reddick, a Private Sector Housing and HMO Enforcement Officer, recorded fire doors and cupboards being propped open, defective fire doors and fire-stopping throughout and evidence of multiple leaks in the building, amongst other issues.

13. Further visits took place on 8 March, 10 March, 15 March, 16 March, 7 April and finally on 11 April 2022. Mr Calif was present at the visit on 16 March and in contact with Norwich CC from February 2022. The power was restored and the generators removed at the end of March 2022 but the connection was terminated by UKPN on 11 April 2022 on the basis that the previous connection had been unlawful. That led to the service of the EPO by Norwich CC and the Property was cleared of residents on that date.

14. On 12 April 2022 Norwich CC confirmed to Mr Calif that Building Control requirements were not in place. An inspection report was served by them on 14 April 2022 and a schedule of works sent to CMS on 18 May 2022.

15. By this time, CMS had appointed Ryan Reardon – a surveyor - to assist them with obtaining sign off from Norwich CC and he oversaw the complete replacement of the fire alarm, fire doors and fire stopping throughout the Property. A Fire Strategy Report was obtained on 31 May 2022 and on 3 August 2022 Norwich issued Completion Certificates. The Prohibition Order was revoked the following day.

16. Norwich CC sought information about the Property from Mr Calif and Ms Golan and also contacted Haart. Following consideration of that information and the official sign off process, Notices of Intent were issued in respect of the financial penalties on 5 October 2022. Representations were received on behalf of Mr Calif, Mrs Golan and CMS on 2 November 2022 and from Haart on 7 November 2022. Final Notices were not issued by Norwich CC until December 2023, with further (replacement) Final Notices issued to Mrs Golan due to errors.

17. Mr Calif, Mrs Osnan and CMS appealed the Notices on 9 January 2024 and Haart on 5 March 2004. As stated above, although the Haart appeal was sent to the tribunal later than the date permitted under the Tribunal Procedure Rules 2013, that appeal was allowed to proceed under those rules as Judge Wayte decided that good reason had been provided for that delay.

The Law

18. Financial penalties as an alternative to prosecution were introduced by the Housing and Planning Act 2016 which amended the Housing Act 2004 by inserting a new section 249A and schedule 13A. It is for the local authority to decide whether to prosecute or impose a fine and guidance has been given by the Ministry of Housing, Communities and Local Government. In order to impose a financial penalty the local authority must be satisfied beyond reasonable doubt that the conduct amounts to a relevant housing offence.

19. Section 249A lists the relevant housing offences which include offences under section 234 (management regulations in respect of HMOs) of the 2004 Act. Only one financial penalty under that section may be imposed on a person in respect of the same conduct (section 249(A)(3)).

20. Schedule 13A sets out the requirement for a notice of intent to be given before the end of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates. It also contains provisions in respect of the right to make representations within 28 days after that initial notice and the requirements for the final notice.

21. Appeals are dealt with in paragraph 10 of Schedule 13A. The appeal is a re-hearing and may be determined having regards to matters of which the authority was unaware. On an appeal the First-tier Tribunal may confirm, vary or cancel the final notice.

22. The maximum civil penalty for each offence is £30,000. The relevant factors as set out in the MHCLG guidance are:

(a) Severity of the offence;
(b) Culpability and track record of the offender;
(c) The harm caused to the tenant
(d) Punishment of the offence
(e) Deter the offender from repeating the offence
(f) Deter others from committing similar offences.
(g) Remove any financial benefit the offender may have obtained as a result of committing the offence.

23. It is now usual for each local authority to have developed their own enforcement policy. The Upper Tribunal has confirmed that while the tribunal should consider for itself what penalty is merited by the offence under the terms of any such policy, weight should be given to the assessment made by the authority of the seriousness of the offence and the culpability of the appellant.

24. Norwich City Council's Financial Penalty Policy is dated June 2017. A penalty band ranging from £100 to £30,000 is indicated based on a judgement of culpability and harm as shown in the following matrix:

Harm		Culpability		
	Very High	High	Medium	Low
High	Band 6	Band 5	Band 4	Band 3
Medium	Band 5	Band 4	Band 3	Band 2
Low	Band 2	Band 1c	Band 1b	Band 1a

25. With the exception of band 1, each band has an assumed starting point. The penalty may be adjusted by an incremental value "*to reflect the level of co-operation experienced following identification of the offence*".

26. The basis for the determination of culpability and harm is set out in an appendix, with descriptions and examples of each level.

27. Finally, the policy states that the council will apply the "Totality Principle" in cases where more than one penalty has been imposed, "*with a view to ensuring that the total penalty or penalties properly reflect all of the offending behaviour and are just and proportionate in all the circumstances*".

The issues

28. The following issues were in dispute:

- Whether the Property was an HMO (Haart only);
- Whether Mr Calif was a manager as defined in section 263 of the Housing Act 2004;
- Whether Haart had a defence of "reasonable excuse" in respect of all of the penalties levied against them;
- The amount of any penalties properly imposed, in particular the correct assessment of culpability and harm under the policy and consideration of the "Totality Principle", including duplication.

Was the Property an HMO?

29. Haart put Norwich to proof that the Property was an HMO, while admitting that it was a converted block of flats. In order for section 257 of the 2004 Act to apply, Norwich had to prove beyond reasonable doubt that the building work did not comply with the appropriate building standards (at the relevant time) and that less than two-thirds of the self-contained flats were owner-occupied.

30. Paul Aldous, a Building Control Surveyor employed by Norwich CC, had produced a witness statement dated 16 October 2024 and gave evidence at the hearing. He had carried out an inspection to the common parts on 13 April 2022 and confirmed that they failed to meet fire safety requirements in respect of the means of warning and escape, internal fire spread (structure), access and facilities for the fire service and the sprinkler installation. He was also able to confirm that CCL had been removed from the register of approved inspectors in December 2019 and Norwich had never received their sign off in respect of the Property in any event. His evidence was not challenged by Mr Jotangia.

31. In respect of the occupation of the building, Arlo Reddick had prepared a schedule of occupants which listed some 30 short term lettings (out of 51 flats), 17 of which were arranged by Haart itself. Again, that evidence was not challenged by Mr Jotangia.

Tribunal's decision

32. Norwich CC have proved beyond reasonable doubt that the Property was an HMO at the relevant time due to the lack of compliance with the relevant building standards and occupation by owner-occupiers in less than 2/3rds of the 51 flats. As an HMO to which section 257 applies, the relevant regulations are the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 ("the 2007 Regulations").

Was Mr Calif a manager as defined in section 263 of the 2004 Act?

33. The 2007 Regulations refer to the duty of the manager and therefore in order to prove a breach of those regulations, Norwich CC first need to prove – beyond reasonable doubt – that the relevant person is a manager as defined in the 2004 Act. That definition is in section 263(3) the relevant part of which states:

"*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 part of the premises; or

(b) *would so receive those rents or other payments but for having entered into an arrangement …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.*"

34. It was common ground that Mr Calif was neither an owner or leaseholder of the property and therefore Norwich CC's case depended upon them showing that he received rents or other payments as agent of CMS. The best Mr Myers could do was invite the tribunal to infer that payment had been made to Mr Calif from an invoice sent in the name of CMS to Rose Smith dated 20 April 2022 requesting payment by bank transfer to GWO & Co Limited, a company which is owned by Mr Calif. He also referred to numerous examples of Mr Calif assuming responsibility as a manager of the property, including him signing the letting agreement with Haart on 2 December 2021 as "landlord 1".

35. Mr Calif had consistently denied he was a manager as defined in the 2004 Act. His position, as stated in his representations to the Notice of Intent, was that he was an advisor to CMS and he acted as their principal contact as Mrs Golan was resident overseas. He also denied receiving any rents or other payments from the leaseholders or those in occupation. He maintained that position in his lengthy cross examination by Mr Myers, stating that he had never received any payment for the cost of the generators, even from CMS.

<u>The tribunal's decision</u>

36. Norwich CC have failed to prove beyond reasonable doubt that Mr Calif was a manager as defined in the 2004 Act. They appear to have overlooked the requirement for a proprietary interest in the property or the receipt of rents/other payments. The tribunal is clear that Mr Calif was the representative of CMS throughout and effectively took on the role as project manager of the site from March 2022, following the departure of the previous site manager Riz Ahmed. He was clearly involved in the decision to let out the empty flats in December 2021, as evidenced by his signature on the agreement with Haart. However, no evidence has been provided of him receiving rent or other payments from the occupiers at the time of the alleged breaches on 7 and 11 April 2022. The invoice relied on by Mr Myers is not evidence of payment and was dated 20 April 2022, after the crucial dates. The tribunal do not consider it is appropriate to draw any inference of payment as the evidence is against that, both from Mr Calif personally and the fact that the covering email from Ms Smith refers to invoices as opposed to payment. In any event, given the date, it would not help Norwich CC's case.

37. In the circumstances, at the time of the alleged offences, Mr Calif did not owe any duty under the 2007 Regulations and the penalties imposed on him personally must all be cancelled.

<u>Have Haart established the defence of "reasonable excuse"?</u>

38. Haart’s Grounds of Appeal submitted with their application admitted that “the Manager Condition” was fulfilled on 7 and 11 April 2022 but claimed the agency had a reasonable excuse for any failure to comply with the HMO Regulations. This was expressed in the Grounds of Appeal in terms that the agency was not aware and could not reasonably have firmly concluded that the building work did not comply with the relevant standards and therefore they could not reasonably have determined that the Property was an HMO under the 2004 Act.

39. The only witness evidence was by Matthew Bowden, the in-house solicitor for Haart. He had no direct knowledge of the relevant events but exhibited emails from Haart’s records, which showed contact between the agents, the landlord and various tenants in relation to issues with various flats in the Property. He also relied on the agreement between Haart and CMS to provide a letting and management service. He explained that as part of that service, Haart would act as the first point of contact and pass issues on to the landlord and/or their contractors. In practice, most of those communications were with Mr Calif who acted as Haart’s point of contact for CMS.

40. Mr Jotangia, who was instructed by Haart to represent them at the hearing, reminded the tribunal that the starting point for the imposition of a financial penalty was section 249A of the 2004 Act, which states that the local authority may impose a penalty if satisfied that a person’s conduct amounts to a relevant housing offence. He argued that given the limited nature of the management agreement between Haart and CMS, they should not be treated as a manager under the 2004 Act or be held liable for any breaches of the 2007 Regulations. In particular, he relied on the terms of the agreement dated 2 December 2021 between CMS and Haart which were to let specific flats and made no mention of the Property being an HMO. Haart had not been given any prior notice of the alleged breaches by Norwich CC – their first contact with the agency was after the dates of the alleged breaches when they asked for copies of any tenancy agreements.

41. Given the admission in their grounds of appeal that they were a manager as defined in the 20024 Act, Mr Myers argued that the position taken by Mr Jotangia in the hearing was not relevant to the scope of the appeal. In his further submissions, Mr Myers pointed out that Haart had not appealed on the basis that they were excused by section 3 of the 2007 Regulations and that their full management role would reasonably require them to be aware of ongoing safety risks and maintenance failures.

The tribunal’s decision

42. Mr Myers included in his original skeleton argument reference to regulation 3 of the 2007 Regulations. The relevant part of that provision states that:

"Regulations 4 to 10 shall apply subject to the following limitations – (a) the manager's duty shall only apply in relation to such parts of the HMO over which it would be reasonable to expect the licence holder, in all the circumstances, to exercise control…".

43. This provision appears to have been overlooked by Norwich CC, at least in relation to the 5 penalties imposed against Haart as manager. As detailed in the table on the first page of this decision, no penalty was imposed in respect of the alleged breach in respect of the water supply but no explanation has been given by Norwich CC as to why they considered it was not reasonable to levy a penalty for that breach against Haart but the others were reasonable, including the duty of the manager to supply and maintain electricity. The culpability assessment was reduced to medium following representations, which reduced the penalties from £16,000 to £6,000 x 5.

44. As the parties are aware, under Schedule 13A to the 2004 Act this appeal is a rehearing of the decision to impose the financial penalties and may be determined having regard to matters of which the authority was unaware. It seems to the tribunal that bearing in mind the nature of the agreement with Haart and the fact that it is accepted that CMS (represented by Mr Calif) were the primary manager of the Property at the time, Norwich CC have failed to prove that it would be reasonable to expect Haart to exercise control over the common parts of the property, including the electricity supply and other alleged breaches. The conditions attached to the letting agreement are clear that it is the landlord who bears responsibility for ensuring the Property complies with any local authority or other requirements. Norwich made no attempt to contact Haart at the time of their visits to the Property, which indicates that they did not consider them to be exercising control of the common parts at that time.

45. In the circumstances, while this may not amount to a reasonable defence as set out in the initial representations against the penalties, the tribunal determines that it was not reasonable of Norwich CC to treat Haart as exercising control over the common parts and supply of electricity to the Property and therefore regulations 5, 7 and 8 do not apply to them. This means that all the notices issued against Haart must be cancelled.

<u>Penalties levied against CMS and Mrs Golan as director</u>

46. This leaves the 6 penalties levied against CMS and Mrs Golan, amounting to a total of £150,000 and £96,000 respectively. Those applicants admitted the breaches and did not seek to raise a defence of reasonable excuse, although made arguments as to Norwich CC's

assessments of culpability and harm, totality and duplication. For ease of reference the tribunal will consider each regulation separately before considering the arguments in respect of duplication and finally, totality, once any penalties have been determined by the tribunal.

Regulation 5: duty to take safety measures

47. Norwich CC levied three penalties in respect of regulation 5 on each applicant: one under regulation 5(1)(b) (means of escape), one under regulation 5(2) (fire alarm) and one under regulation 5 (4) (design and structural condition of the HMO). A penalty of £25,000 was set for CMS for each breach based on high harm and very high culpability (Band 6) and £16,000 for Mrs Golan based on high harm and high culpability (Band 5), reduced after her representations to the Notice of Intent. All of the penalties were at the assumed starting point for that Band.

48. The Final Notices are very similar, with minimal details of the offence, mirroring the language of the regulation, for example "*the means of escape was not kept in good order and repair*". The dates of the breaches were 7 and 11 April 2022 for the Final Notices for regulation 5(1)(b) and 5(4) and 11 April 2022 for 5(2).

49. During the hearing, Mr Myers prepared a table in respect of the penalties, which sought to draw together the respondent's evidence in support of the amounts sought. That table really looked at culpability and harm, as opposed to the particulars of the offence. For regulation 5(1)(b), a reference was made to "*multiple deficiencies to the fire precautions throughout the building*" and that "*the protected route in this property was not protected to a level that it could be relied upon*". Regulation 5(4) referred to inadequate fire separation, defective compartmentation and excessively long escape routes.

50. So what was the conduct that was said to give rise to those offences? By 7 April 2022 the generators had been removed and electricity supply restored, albeit briefly. That day the Property was visited by Ms Napa, Mr Reddick and James Peterson, all Private Sector Housing and HMO Enforcement Officers. Ms Napa and Mr Reddick both made statements in these proceedings and attended the hearing.

51. Ms Napa's statement notes several defects on that visit which are said to apply to both regulation 5(1)(b) and 5(4). In particular: insufficient compartmentation in respect of the means of escape; faulty fire doors, the fire alarm not covering the staircase and some areas of the building still being under construction. Two more specific examples were given of items being "stored" on the means of escape: the photographs showing a door mat placed outside the front door of two of the flats, presumably by the occupants.

52. Mr Reddick's statement separates out the defects said to refer to each breach. For regulation 5(1)(b) he refers to: multiple damaged stair nosings on the only escape stairwell; fire separation breached at basement level and a hole above the fire door; a hole in the side of the electrical riser cupboard on floor 2 and inadequate fire separation between levels; and the faulty fitting of intumescent strips and smoke seals to the top floor lobby fire door.

53. He then lists the following issues said to be relevant to regulation 5(4) and his assertion that the design and structural condition of the property was not adequate to protect the occupiers: no clear separation or signage between the basement and ground floor; no fire detection in the stairwell; no Automatic Opening Vent (AOV); the excessive length of escape routes; sprinkler heads too close to emergency lighting and escape signs (also cited as evidence of breach of regulation 5(1)(b)) and defects to fire compartmentation and fire doors.

54. By 11 April 2022 the power had been disconnected by UKPN. Mr Reddick's statement identified further breaches on that day. For regulation 5(1)(b) he listed: a hole in the plaster above the basement fire door; a hole in the plaster above the door to the only escape stairwell on the second floor; the defective nosing (as before); a hole and open door to the electrical meter cupboard; a gap under the electrical riser cupboard; and an open top floor water cupboard.

55. In respect of regulation 5(4) he listed: separation between levels of the water cupboards; the length of the escape route (as before); no clear delineation between the basement and ground floor level (as before).

56. Finally, in relation to regulation 5(2), he noted that the fire alarm panel was showing multiple fault lights: in particular, an indication of a fire in zone two, a power fault, a general fault and a warning light indicating "more events". He accepted in cross examination that this was most likely to be due to the loss of power to the building on that day.

57. Mr Craig on behalf of CMS and Mrs Golan submitted that some or all of the matters that gave rise to the Notices arose out of the same conduct, in particular the same building contract which had been performed negligently by Mant and B2. In his closing submissions, he argued that no separate penalty should be levied for regulation 5(4) given the overlap between that regulation and 5(1)(b).

57. Harm was assessed as high, which was accepted by Mr Craig on behalf of CMS and Mrs Golan due to the obvious risk to occupants from fire. Culpability was assessed as "very high" for CMS and "high" for Mrs Golan, both of which were resisted. As stated above, the assessment of culpability in Norwich CC's policy is set out in an appendix, with the headlines as follows:

Band	Description
Very high	The offender has intentionally breached or flagrantly disregarded the law
High	Actual foresight of or wilful blindness to risk of offending but risk nevertheless taken
Medium	Offence committed through act or omission which a person exercising reasonable care would not commit
Low	Offence committed through little fault

Each "Band" also provided examples to assist in the determination, for example for "very high", "the offender has a track record of failure to comply"; for "high", "the offender had knowledge of the breach, for example through a complaint but has not responded" and for "medium", "a failure to carry out regular inspections, for example, of the common parts of a house in multiple occupation". "Low" includes circumstances where "there was no warning/circumstance indicating a breach".

59. Culpability of "very high" was determined by Norwich CC in respect of each alleged breach by CMS. The argument was that by instructing works that were carried out unlawfully, residents were put at risk. Despite being aware of the continuing complaints and problems CMS continued to place tenants at the property. This was said to show a flagrant disregard for the law and safety of occupants.

60. Mr Craig submitted that "medium" was more appropriate. He accepted that CMS had failed to have adequate systems in place to avoid the offence but pointed out that the company had relied on Mant, supervised by surveyors and authorised building control to carry out the works in accordance with the contract and the law. CMS could not be blamed for the incompetence of the original contractors. Furthermore, after service of the EPO, the company had fully rectified the property and achieved building control sign off from Norwich CC in a matter of weeks. This further mitigation should also have been taken into account by Norwich CC in its assessment of culpability, particularly given that the assessment took place after the defects had been rectified. Despite this, no change was made following the representations by CMS.

61. Norwich CC had reassessed Mrs Golan's culpability as "high" following her representations. From the document in Norwich's bundle said to represent their decision-making process, they decided that "wilful

bindness" may fit for Mrs Golan, who appeared to be a silent director of CMS.

62. Mr Craig submitted that "low" was more appropriate, given that her liability was under section 251 of the 2004 Act, which provides that a director of a company also commits the offence if it can be proved to have been committed with the consent, connivance or be attributable to any neglect on the part of a director. Here, the only evidence could be neglect, which Mr Craig submitted should merit a lower assessment of culpability than consent or connivance.

63. For completeness and as stated above, Norwich CC's policy also contains the ability to adjust the penalty within the Band by increments. For example, it may be reduced by one increment for "full co-operation following identification of the offence" or increased by one increment to reflect "significant involvement by the council required to achieve compliance". No adjustments were made to the penalties levied against CMS or Mrs Golan.

The tribunal's decision

64. CMS made the decision to develop the property for residential use in 2017. As the landlord at the time of the alleged offences, the company was responsible for the safety of the occupants. By mid-2019 it was aware that its chosen contractor had failed to complete the building works. The Fire Risk Assessment dated September 2020 also listed several of the same defects found by Norwich in respect of damage to the staircase and excessive gaps under the fire doors. Given the total failure to properly supervise the works as the client, the decision to let the vacant flats in December 2021 was reckless. Mr Calif as the company's representative took insufficient care to ensure that the works had been properly carried out or that the residents' safety was protected. As the tribunal observed during the hearing, the photographs of the Property show a shockingly bad conversion. It was only after service of the EPO that the company took appropriate steps to appoint a competent surveyor (Mr Reardon) and ensure the building was safe. The fact that they had to replace the alarm, all the fire doors and attend to fire stopping/compartmentation throughout speaks volumes.

65. As stated above, neither CMS or Mrs Golan denied the offences or raised a reasonable excuse defence on the basis of the defective works by Mant. They were right to do so. The tribunal is clear that any reasonably competent developer would have taken much better care in selecting their contractor and those supervising the works. Mr Calif's account of taking the recommendation of someone he had only met recently and agreeing to use the contractor's chosen surveyor/building control company is casual beyond belief. Clearly, the pandemic would have had an impact on the development project but even when the

problems with Mant became clear, the company simply appointed another apparently incompetent contractor and left them to it. Mr Calif's sporadic visits when he was in the UK were totally insufficient.

66. That said, the tribunal considers that Mr Craig has a point about duplication, in particular that some of the matters that gave rise to the notices arose out of the same conduct. The tribunal does not agree that the conduct refers back to the original building contract, "conduct" in these circumstances really refers to evidence of the breaches observed at the Property by Norwich CC's officers on 7 and/or 11 April 2022.

67. As stated above, Norwich chose to issue two separate Final Notices for similar issues, one based on a failure to maintain the means of escape in good order or repair and another on the failure to ensure that the design and structural condition of the property was sufficient to protect the occupiers from injury. Ms Napa uses the majority of the defects spotted by her on 7 April 2022 as evidence of both breaches, Mr Reddick makes more effort to separate the defects but also uses the same examples for both breaches (for example defective fire doors). Given the cross-over in respect of the defects, the tribunal considers that one Final Notice only should have been issued in respect of regulation 5(1)(b) and 5(4). Given the tribunal's conclusions about the negligent development and the fact that it is more over-arching in nature, regulation 5(4) appears the most appropriate. The Final Notice in respect of regulation 5(1)(b) is therefore cancelled.

68. The assessment of the risk of harm as high has been agreed by the parties and is supported by the tribunal: it is obvious that a failure to protect the occupants from injury due to grossly inadequate fire stopping carries a high risk of harm.

69. As to culpability, the tribunal does not consider that Norwich CC has established "a flagrant disregard of the law" by CMS to the required standard. The evidence shows gross incompetence on the part of the company and its representative, as Mr Hernandez (Norwich's Team Leader) conceded in cross-examination, as opposed to deliberate avoidance. There is also no suggestion that CMS or Mrs Golan knew the certification by CCL was worthless, until advised by Norwich CC. Given that there was some knowledge of the failure of the project prior to the decision to let the empty flats, the tribunal considers that the appropriate Band is "high", due to "wilful blindness to the risk" both on the part of CMS and its sole director. The tribunal rejects the suggestion that Mrs Golan should benefit from her inaction. Her neglect of the company's duty to ensure the safety of the Property's occupants is every bit as serious as consent or connivance, particularly in the context of fire safety measures.

70. In terms of any adjustment, while it is true that action was finally taken by CMS to attend to the Property's defects, significant involvement was

necessary by the council to ensure that those defects were remedied. Those adjustments therefore cancel each other out.

71. In the circumstances, the tribunal varies the penalty for the breach of regulation 5(4) to £16,000, being the assumed starting point of Band 5 reflected by an assessment of "high" for both harm and culpability. This applies to both CMS and Mrs Golan.

72. Given the acknowledgment by Mr Reddick that the defective control panel on the fire alarm found on 11 April 2022 was most likely to be due to the lack of power, the tribunal will consider duplication when considering the Final Notice for the breach of regulation 7(4), interruption of electricity.

Regulation 6 (1)(a): duty to maintain water supply and drainage

73. The Final Notice for this breach referred to the inspection on 7 April 2022, stating that on that day the water supply was not kept in good, clean and working condition. Again, Norwich CC determined that the risk was high, due to the serious risk of harm. Culpability was again assessed at "very high" for CMS and "high" for Mrs Golan, leading to a penalty of £25,000 (Band 6) and £16,000 (Band 5) respectively.

74. The evidence of the breach was set out in Ms Napa's witness statement. On 7 April 2022 she spotted several water leaks in the building and measured the hot water coming out of a tap in a flat on the fourth floor at 45°C, against a standard of 50°C to prevent Legionella growth. The Final Notice also referred to the incorrect set up of the sprinkler system with the mains supply, as identified by a report from Anglian Water following their inspection on 25 February 2022.

75. Mr Reddick's statement exhibited several emails from Mr Calif to Pure Water Storage and others requesting that a plumber be booked to deal with the report as soon as possible. The email trail ends with an indication that a plumber would attend on site on 2 March 2022 to have a look and give a price. Mr Calif stated in his oral evidence that the report had been attended to.

76. Mr Craig submitted that the risk of harm had been overstated by Norwich and should be reduced to "medium", based on a low risk of a serious adverse effect. Ms Nape had admitted in cross-examination that a risk of Legionella poisoning was reduced when properties were fully occupied and had only taken a single measurement in any event. Culpability should also be reduced to medium for CMS and low for Mrs Golan, as before.

The tribunal's decision

77. There was no dispute in relation to the evidence of leaks and inadequate temperature in one of the hot water taps on 7 April 2022. There is a conflict of evidence as to whether the defects identified by Anglian Water remained on 7 April 2022. Given the emails from Mr Calif requesting that works be carried out in early March 2022, which are supported to an extent by an email from one of the occupants (Jan Patrick) complaining about interruption of the water supply due to works being carried out in the middle of March 2022, the tribunal are not satisfied that Norwich have proven beyond reasonable doubt that those defects were still present on 7 April 2022. In the circumstances the determination in relation to this breach proceeds on the basis of Ms Napa's evidence alone.

78. With this in mind, the tribunal agrees with Mr Craig that the risk of harm was overstated in the Final Notice and that "medium" is the correct level. We also agree that culpability in respect of this issue is "medium", on the basis that the offence was "committed through an act or omission which a person exercising reasonable care would not commit". Again, we see no reason to reduce the culpability in respect of Mrs Golan. This places the penalty in Band 3 with an assumed starting point of £2,000. Again, no adjustment is due under the policy given the balance of action taken by the applicants against the involvement of Norwich CC.

79. In the circumstances the tribunal varies the Final Penalty for the breach of regulation 6(1)(a) to £2,000 for both CMS and Mrs Golan.

<u>Regulation 7 – duty to maintain electricity</u>

80. The Final Notice refers to the interruption of the electricity supply on 11 April 2022. Culpability was assessed as very high for CMS on the basis that there had been a flagrant disregard of the law. Culpability for Mrs Golan was reassessed at high following her representations. Harm was also assessed as high due to the fact that the lack of power left the property without a fully functioning alarm system, no access to hot water and no lighting, following the failure of the emergency lighting back up. The penalty for CMS was therefore £25,000 (Band 6) and £16,000 (Band 5) for Mrs Golan. As before, both penalties were at the assumed starting point for the respective Band, with no adjustment.

81. Following his visit on 7 April 2022 and the discovery that power had been restored to the Property, Mr Reddick contacted UKPN and was informed that there was nothing on their system to suggest that the reconnection was approved or carried out by them. UKPN visited the Property on 11 April 2022, where they met Mr Reddick. He was informed that UKPN had disconnected the power as onsite contractors had illegally connected to the UKPN substation, in the basement of the Property. Access appeared to have been gained by removing paving and making a small hole at the bottom of the wall surrounding the

substation, as illustrated in photographs exhibited to Mr Reddick's statement. As the generators had by then been removed from site, the disconnection left the Property without any power at all, which led to the EPO being served that day.

82. Simon Stevens, the Lead Field Engineer for UKPN in the Norwich area, emailed Mr Reddick on 13 April 2022 setting out the background to their visits. That email explained that on 7 February 2022, a visit had taken place following a customer inquiry. UKPN found the network to be in an unsafe condition and evidence that the substation had been accessed without permission. Groundworks had also taken place in the vicinity of the high voltage cables supplying the substation. Supplies were isolated for safety and an observation form handed to the customer. When they visited on 11 April 2022 they discovered that the substation had been accessed again and works carried out to make the site live, without UKPN's permission, including the replacement of main fuses. Supplies were therefore isolated and the fuses were removed from site.

83. Mr Reddick's evidence on this issue was not challenged by Mr Craig. In his representations against the Final Notice issued to him personally in respect of this breach, Mr Calif claimed he was unaware that the generators had been disconnected on 11 April 2022. He maintained that argument in his witness statement, which stated that CMS "had previously identified issues with the electricity supply" and sourced generators to provide power to the Property at a cost of over £40,000. In cross-examination, he denied being involved with the illegal reconnection of the power. He stated that the work was carried out by Mr Brons-Harper and as soon as he was told an official request needed to be made to UKPN to restore the power, he completed that on behalf of CMS.

84. Mr Craig accepted that high was the correct assessment in terms of the risk of harm to the occupants. Again, he argued for medium culpability for CMS and low for Mrs Golan.

The tribunal's decision

85. As stated above and in the Final Notice itself, the evidence indicated that it was the removal of power which prevented the fire alarm from functioning on 11 April 2022. In those circumstances, the tribunal considers that the Final Notice in respect of the breach of regulation 5(2) must be cancelled, as it is in reality based on the same conduct as the Final Notice in respect of this regulation.

86. By this time Mr Calif had taken charge of the project on behalf of CMS and, on his evidence, was paying out of his own pocket for the generators. He had every incentive to get power restored as soon as possible and the tribunal do not accept his evidence that he knew

nothing about the illegal connection made by the contractors at the beginning of April. He would obviously have been aware that the generators had been removed from site, as he was no longer paying for them and therefore this also casts doubt on his previous written representations and statement. CMS had already been notified about the previous unlawful connection in February 2022.

87. In all the circumstances, the tribunal is clear that this breach has been proven beyond reasonable doubt and that Norwich CC was correct to assess the culpability of CMS as very high: a flagrant disregard of the law. The illegal connection to the substation was potentially extremely dangerous and therefore the tribunal also agrees that high is the appropriate assessment of harm. This puts the breach in Band 6, with an assumed starting point of £25,000. The tribunal considers that it would be appropriate to add two increments to this amount, to reflect the fact that there had been two unlawful connections and the significant further enforcement activity taken by Norwich CC to ensure the works were completed lawfully. The tribunal therefore varies the Final Penalty for CMS for this breach to £30,000.

88. Although the tribunal has previously applied the same culpability assessment to Mrs Golan, it seems likely to us that for this breach the works were driven by Mr Calif on behalf of CMS. However, as its sole director her neglect allowed such dangerous works to be carried out on the company's behalf and therefore the tribunal confirms the assessment by Norwich CC of high (wilful blindness), meaning Band 5 and a penalty of £16,000.

<u>Regulation 8: maintenance of common parts</u>

89. The Final Notice referred to the inspections carried out on 7 and 11 April 2022. Specific breaches were identified as the top floor "common area" and outside paving not being maintained in a safe and working condition in breach of regulation 8(1)(b) and the basement area railing not being kept in good order and safe repair, presenting a danger to occupiers in breach of regulation 8(4)(c). The offence was described as serious and the defects presenting a serious risk of imminent harm. The Final Penalty for CMS was £25,000 (Band 6) and £16,000 for Mrs Golan (Band 5).

90. Mr Reddick's statement contained further detail of the alleged breaches. On 7 April 2022 he describes an accessible room on the top floor that was derelict. There was a hole in the floor and the roof was open and accessible via a ladder. There was rubble and used building materials across the floor. Photographs of the room were exhibited to his statement. Outside, he referred to damaged and loose paving bricks to the walkway accessing the rear of the grounds. That walkway was adjacent to railings protecting the basement area. The gaps were large enough to fall through and would be particularly dangerous for

children. Again, photographs of his findings were exhibited to his statement. When he returned to the Property on 11 April 2022 he again found the door to the derelict room on the top floor open and the room itself in the same condition as before.

91. Again, this breach was assessed by Norwich CC as very serious due to the number of occupants in the building at the time. Harm was assessed as high and culpability as with the other alleged breaches: very high for CMS and reassessed to high for Mrs Golan based on her "wilful blindness" to the risks. The Final Penalties were therefore £25,000 and £16,000 as before.

92. Again, there was no challenge to Norwich CC's evidence by Mr Craig. Mr Calif maintained that the door to the undeveloped part of the building would normally have been kept locked but made no comment in respect of the outside walkway or railings, other than to blame the contractors. Mr Craig submitted that the correct assessment in relation to any proven breach would be Band 3 for CMS (medium harm, medium culpability) and Band 2 for Mrs Golan (medium harm, low culpability).

The tribunal's decision

93. Regulation 8 of the 2007 Regulations describes the common parts as including entrance doors, staircases, passageways, lobbies and steps used by the occupiers to gain access to the entrance doors of their respective units. In these circumstances, although the tribunal accepts that the door to the "derelict" room on the top floor was open and would be a danger to unauthorised entrants, it cannot be described as a common part. This conclusion is supported by the fact that the first photograph of the door to that room has a notice which reads "authorised personnel only". There is also a problem with the railings, as although they are clearly unsuitable for a residential setting, they do not appear to be in disrepair as required by the regulation. That leaves the sole breach being the condition of the external walkway and stairs, which the tribunal accepts are properly common parts and were in a poor state of repair, with the loose brick to the steps particularly hazardous.

94. The condition of the external walkway and steps would have been obvious to Mr Calif as the representative for CMS, who as landlord are liable for the safety of the residents of their Property. In those circumstances, the tribunal accepts that the breach is proven but given the limited nature of the conduct, a more appropriate assessment under Norwich CC's Policy would be a medium risk of harm and medium culpability. This produces a penalty in Band 3, with an assumed starting point of £2,000. As before, the same penalty is appropriate for both CMS and its sole director.

Conclusion

95. The tribunal agrees with Norwich CC that the development by CMS was handled extremely poorly, the company and its representative were out of their depth with a complex project of this scale. Although they were clearly let down by their original choice of contractor and at least one of the replacements, their continued incompetence meant that the Property was unsafe to occupy. This made the decision by CMS to let the unsold flats particularly egregious. It was only the enforcement action of Norwich City Council that appears to have resulted in a competent surveyor achieving Building Control sign off. It is hoped that the other issues have also been attended to so that the current residents are not suffering from any further issues with the conversion.

96. That said, Norwich CC were rather ambitious in terms of the penalties they tried to impose, in terms of the number, amount and their choice of "offender". That choice appeared to overlook the statutory definition of "manager". Norwich CC also appear to have failed to appreciate the difference between an HMO of converted flats and the 2007 Regulations as opposed to a standard HMO with shared facilities and the 2006 Regulations. Insufficient care was taken to draft the Notices of Intent in terms of the particulars of the offence which led to other cancellations for duplication. The blanket assessment of culpability as "very high" and harm as "high" took insufficient notice of the actual evidence and likely effect of each breach. For ease of reference, the tribunal's decision in respect of the penalties is summarised in the table below:

HMO Regs	5(1)(b): fire escapes	5(2): fire equipment and alarms	5(4): protection of occupiers	6(1)(a): water	7(4): interruption of electricity	8: safety of common parts
Ori Calif	Cancelled	Cancelled	Cancelled	Cancelled	Cancelled	Cancelled
CMS	Cancelled	Cancelled	16,000	2,000	30,000	2,000
Osnat Golan	Cancelled	Cancelled	16,000	2,000	16,000	2,000
Haart	Cancelled	Cancelled	Cancelled		Cancelled	Cancelled

97. This means that a total of £50,000 has now been levied against CMS and £36,000 against its sole director at the time, Mrs Golan. The tribunal is satisfied that these substantial penalties properly reflect the offending behaviour of each person and are just and proportionate in all the circumstances. There are concerns that CMS is now without assets, having sold the Property. In those circumstances, it is

appropriate for Mrs Golan to bear some personal responsibility for the offences. If recovered, the £86,000 should also meet the costs and expenses incurred in carrying out Norwich CC's enforcement actions.

Name: Judge Ruth Wayte 24 February 2025

Rights of appeal

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

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

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

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

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

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