FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	HAV/43UF/HNA/2025/0622 and HAV/43UF/HNA/2026/0026
Property	:	Flat 23B High Street, Horley, Surrey, RH6 7BH
Applicants	:	Esparon's Property Development Limited (First Applicant) Jonathan Esparon (Second Applicant)
Representative	:	Jonathan Esparon
Respondent	:	Reigate and Banstead Borough Council
Representative	:	Laura Hawkins (counsel)
Type of Application	:	Appeal against a financial penalty under s.249A of the Housing Act 2004
Tribunal Members	:	Judge H Lumby Mr A Hetherton MRICS IRRV (Hons)
Venue	:	Havant Justice Centre, Elmleigh Road, Havant, Hampshire PO9 2AL
Date of Hearing	:	24 March 2026
Date of Decision	:	7 April 2026

DECISION

Decision of the Tribunal

1. The decision by the Respondent to impose a financial penalty on the First Applicant is upheld. The total of the penalty originally amounted to a sum of £14,500. For the reasons set out below the Tribunal has determined that the financial penalty should be £9,000.

2. In the light of the above, the appeal made by the First Applicant against the imposition of a financial penalty imposed by the Respondent against it, under section 249A and schedule 13A of the Housing Act 2004, is therefore allowed to the extent of the amount of the financial penalty being reduced to £9,000 but is otherwise dismissed.

3. The decision by the Respondent to impose a financial penalty on the Second Applicant is not upheld and the financial penalty imposed is quashed.

4. In the light of the above, the appeal made by the Second Applicant against the imposition of a financial penalty imposed by the Respondent against him, under section 249A and schedule 13A of the Housing Act 2004, is therefore allowed and the financial penalty imposed on the Second Applicant is quashed.

Introduction

5. The Applicants appeal against the imposition of a financial penalty imposed by the Respondent pursuant to s. 249A of the Housing and Planning Act 2016. The Notice of Financial Penalty on the First Applicant was dated 11 September 2025 and the appeal was lodged by the First Applicant on 2 October 2025. The Notice of Financial Penalty on the Second Applicant was also dated 11 September 2024 and the appeal was lodged by the Second Applicant on 3 February 2026.

6. It was ordered on 6 March 2026 that both applications would be heard together, pursuant to an application from the Respondent.

7. The Respondent has not raised any issue in relation to the fact that the Second Applicant's application was received outside the 28 days' period allowed to bring an appeal. The Tribunal has in any event a discretion to allow late applications. It considers that the Second Applicant's actions in first filing papers with the Tribunal and secondly lodging the first application were sufficient demonstration of intent and it would be in the interests of justice to accept the second application out of time.

8. A civil penalty of £14,500 was imposed on each of the Applicants by reason of committing an offence pursuant to section 234(3) of the Housing Act 2004 (the "2004 Act") by failing to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 (the "Management Regulations"). The offence was said to have occurred on 6th February 2025, when the Respondent inspected the Property.

9. The Property comprises a three storey residential premises with ground floor access and living accommodation on the first and second floors. At the time of the inspection, it contained three bedrooms, each let to different occupiers by separate agreements, together with communal kitchen and WC/shower facilities. As such, it comprised a House in Multiple Occupation ("HMO") to which the Management Regulations applied. There was, however, no requirement for the Property to be licensed as an HMO.

10. The freehold of the building including the Property is owned by the First Applicant; there is no evidence of any inferior interest in relation to the Property, including any lease to the Second Applicant. The First Applicant is owned and run by the Second Applicant, although he says his wife and two of his children are nominally directors. The company has no employees and there are no separate managing agents.

11. The Respondent carried out an inspection of the Property on 6 February 2025, having served a notice of intention to inspect on the First Applicant on 27 January 2025. The Fire and Rescue Service had previously carried out an inspection in late 2024 where they had installed two battery operated smoke alarms. They had referred the Property to the Respondent on grounds of landlord/tenant relationship issues rather than safety concerns.

12. The Respondent wrote to the First Applicant on 19 February 2025 with an improvement notice requiring various works to be done to rectify breaches of the Management Regulations relating to fire identified during the inspection. This notice was later revoked on the basis that it had been complied with. The Respondent also required production of the tenancy agreements, which were provided. These showed that the Second Applicant had granted these, with rent being paid to his personal bank account.

13. A further improvement notice relating to excess cold was sent to the First Applicant on 28 March 2025.

14. The Second Applicant had required one of the tenants to leave by notice in January 2025 and subsequently required the other two tenants to leave, then reletting the Property to two occupiers. Mr Esparon had only given the first occupier required to leave four weeks' notice, arguing that the occupier only had a licence to use the Property; this was incorrect, as the occupational agreement entered into amounted in law to a tenancy, granting as it did exclusive possession of a bedroom.

15. The Respondent then considered issuing a financial penalty in relation to the Management Regulations breaches identified on 6 February 2025. Rather than referring to a council enforcement policy and issuing a notice of intent, the Respondent used software provided by an organisation called Justice for Tenants, which produced suggested penalties which the Respondent adopted. It also received advice and amendments to the draft notice of intent from Justice for Tenants by email dated 30 June 2025. This revealed uncertainty as to whether to proceed against the First Applicant as owner of the Property or the Second Applicant as recipient of the rent. As a result, the First Applicant

was required by notice served on 8 July 2025 to provide bank statements showing what happened to the rent received from the tenants. The Second Applicant refused to provide this information.

16. Notices of Intent to issue a Financial Penalty were served on each Applicants on 1 August 2025, referring to an intent to issue each with a penalty of £14,500, comprising two elements, £12,000 for breaches of the Management Regulations and an additional £2,500 for aggravating factors – this related to the age of two of the tenants, one being 83 and the other 61. Representations were received on behalf of both Applicants but dismissed by the Respondents, with the financial penalties being issued unamended on 11 September 2025.

17. The breaches relied on by the Respondent were as follows (with the relevant regulation shown in brackets):

(a) Breach 1 - failure to undertake a proper fire risk assessment (regulation 4(4))
(b) Breach 2 - failure to have self-closing fire doors (regulation 4(4)(a))
(c) Breach 3 - siting ignition sources (the fridge freezer and gas boiler) in the means of escape (regulation 4(1)(a) and 4(4)(a))
(d) Breach 4 - other obstructions to the means of escape (a vacuum cleaner, letter shelves and washing airer) (regulation 4(1)(a))
(e) Breach 5 - insufficient compartmentalisation between the ground floor understairs cupboard and the stairs above (regulation 4(4)(a))
(f) Breach 6 - operation of bedrooms doors and final exit doors only with the use of a key (regulation 4(4)(a))
(g) Breach 7 - lack of a mains-wired smoke detection system (regulation 4(4)(a))

18. The Tribunal did not inspect the Property as it considered the documentation and information before it in the set of documents prepared by the parties, which enabled the Tribunal to proceed with this determination.

19. This has been a determination following a hearing on 24 March 2026. The documents that the Tribunal were referred to are in two bundles of 345 and 666 pages, the contents of which included statements of case on behalf of the Applicants, two witness statements from Nicole Longley of the Respondent (Ms Longley was the officer responsible for the case) and copies of the relevant notices and other relevant documents. Mr Esparon also provided a skeleton argument. The contents of all these have been noted by the Tribunal. No financial information had been provided by the Applicants.

20. Mr Esparon attended the hearing in person and acted in a personal capacity and on behalf of the First Applicant. Ms Hawkins and Ms Longley both attended the hearing remotely by CVP. The Tribunal heard evidence from Ms Longley and Mr Esparon and submissions from Ms Hawkins and Mr Esparon.

21. Prior to the hearing, the Second Applicant applied for a copy of the referral email from the Fire and Rescue Service to the Respondent to be provided. The Tribunal ordered that the Respondent either provide it to the Applicants or bring a copy to the hearing. This was considered at the beginning of the hearing and a redacted copy was provided during the course of the hearing.

22. Having considered all of the documents provided and heard the submissions of the parties, the Tribunal has made determinations on the issue as follows.

The Law

23. In order to impose a financial penalty, there must be a "relevant housing offence" committed by the person served with the notice.

24. Section 249A of the 2004 Act provides:

"249A Financial penalties for certain housing offences in England

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.

In this section "relevant housing offence" means an offence under—
...
(e) section 234 (management regulations in respect of HMOs),
...
(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.
...
(6) Schedule 13A deals with—
the procedure for imposing financial penalties, appeals against financial penalties, enforcement of financial penalties, and guidance in respect of financial penalties..."

25. The "relevant offence" relied upon in this case is section 234 of the Housing Act 2004. Section 234 (3) provides that:

"A person commits an offence if he fails to comply with a regulation under this Section"

26. An HMO is a house in multiple occupation, as defined in section 254 of the Housing Act 2004. For these purposes, an HMO is a property comprising living accommodation occupied by persons who do not form a single household as their main or only residence, rent is paid by at least one such occupier and that two or more of the households in occupation share a kitchen and/or a bathroom and/or toilet.

27. The relevant regulations for these purposes are the Management Regulations.

28. The relevant Management Regulations referred to provide as follows:

2. In these Regulations-
...
(c) "the manager", in relation to an HMO, means the person managing the HMO

4 Duty of manager to take safety measures

(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 firefighting 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.

29. The person managing a property is defined in section 263(3) of the Housing Act 2004 as follows:

(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.

Sub-section (5) also provides:

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

30. This means that the Management Regulations applied to the Property on the date of the inspection. If the manager of the Property failed to comply with those regulations, they would have committed an offence pursuant to section 234(3) of the Housing Act 2004 and so would be liable for a financial penalty pursuant to section 249A of that Act.

31. The questions the Tribunal must consider are:

a) Whether the Tribunal is satisfied beyond reasonable doubt that the offence has been committed.

b) If the offence has been committed, who was the manager of the Property (i.e. was the manager the First Applicant or the Second Applicant or both or neither).

c) If an offence is found to have been committed by either or both of the Applicants, the question then arises as to whether, on the balance of probabilities, the relevant Applicant has a defence.

d) There then must be consideration of whether the financial penalty has been properly imposed by reason of the requirements in section 249A of and paragraphs 1 to 8 of Schedule 13A of the 2004 Act.

e) The final consideration is whether the penalty imposed is for an appropriate sum.

The Parties' cases

32. The Respondent argued that the breaches alleged had been shown to have occurred, it was appropriate to set a penalty and the appropriate level had been set. The appropriate procedure was followed. It was left to the Tribunal to determine who managed the Property but contended that Mr Esparon had responsibility as director of the First Applicant.

33. Mr Esparon argued that no offence was committed and postulated this was engineered by one of the occupiers in retaliation for their eviction. His contention was that the Tribunal could not be satisfied beyond reasonable doubt as the Respondent relied on guidance and recommendations rather than the law. He pointed out prompt actions to address the issues and cease use as an HMO. He said he was a responsible landlord acting properly and was being treated like the owner of a large HMO. He postulated that no harm was caused, any breaches were minor and the penalty was excessive; furthermore, the manager had not been identified.

Consideration

34. As there is a criminal offence at the heart of the jurisdiction to impose a financial penalty, the Tribunal must be satisfied beyond reasonable doubt of the commission of the offence.

35. In this case, the offence in question is the failure to comply with the Management Regulations on the date of the inspection (6 February 2025), pursuant to section 72(1) of the Housing Act 2004.

Offence

36. The Tribunal began by assessing whether the Property was an HMO on 6 February 2025. It comprised bedrooms together with shared WCs/shower room and a shared kitchen. It was then occupied by three separate people under separate agreements, none of whom formed a household with any other occupier. No party had argued it was not an HMO. The Tribunal were satisfied that the Property was an HMO on the relevant date.

37. The Tribunal next considered whether the offence had been committed. In doing so, it looked at each alleged failure set out in the financial penalty notices in turn.

38. *Breach 1 - failure to undertake a proper fire risk assessment (regulation 4(4))* The breach in question here relates to the fire audit that the Second Applicant provided to the Respondent when the inspection was carried out. This was dated 26 October 2024 and comprised a table with a list of items and a cross beside them if in existence. The Second Applicant explained that he did not do a more formal assessment as the First Applicant had no employees. The Respondent argued that a formal risk assessment should have been carried out, as recommended in the LACORS guide. The Second Applicant disagreed with this, arguing that these were mere recommendations. In cross examination, Mr Esparon acknowledged that he had not reviewed the LACORS guidance in detail but argued he was regularly sent safety advice by providers; he could not name any of them.

39. The Tribunal considered these arguments. Regulation 4(4) of the Management Regulations requires that the manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to the design of and structural conditions in the HMO and the number

of occupiers. There is therefore no express requirement to carry out a risk assessment. However, it is not possible to take all reasonable measures without a proper risk assessment. The Tribunal was satisfied beyond all reasonable doubt that a proper risk assessment had not been carried out and Mr Esparon was not qualified to do so himself. The audit produced fell far short of the required standard and demonstrated an amateur and cavalier approach to safety. As a result, the failure to carry out a proper fire risk assessment amounted to a breach of the Management Regulations.

40. *Breach 2 - failure to have self-closing fire doors (regulation 4(4)(a))*. The breach here revolved around the fittings of the doors. The Second Applicant argued that these were 30 minute fire doors and labelled as such. The Respondent argued that they were not fitted properly, lacking the required ironmongery. Mr Esparon also acknowledged in cross-examination that the door seals were cracked and in need of replacement.

41. The Tribunal considered these arguments. There is no express requirement to fit fire doors in a particular way. However, it is essential that fire doors work effectively and so are fitted properly and are not worn out. The Tribunal finds that this was not the case here and so the doors as fitted and in their condition did not properly protect the occupiers from injury in the event of fire. The Tribunal was therefore satisfied beyond all reasonable doubt that the doors amounted to a breach of the Management Regulations.

42. *Breach 3 - siting ignition sources (the fridge freezer and gas boiler) in the means of escape (regulation 4(1)(a) and 4(4)(a))*. This related to the location of the fridge freezer and gas boiler in a dead end off a dog leg on the ground to first floor stairs. The Respondent argued that the stairs formed a single compartment for fire escape purposes and the fridge freezer and the gas boiler represented potential ignition sources which could cause risk to the stairs if caught fire and prevent escape; it argued that these should have been compartmentalised to reduce risk. The Second Applicant argued that they were in a dead end so did not obstruct the escape route and there was in any event a secondary escape from the second floor.

43. The Tribunal considered these arguments. There is no express requirement to compartmentalise ignition sources and these did not obstruct the fire escape route. However, it is essential that effective compartmentalisation be carried out to ensure fire escape routes are reasonably safe. The presence of the fridge freezer and the gas boiler without any protection to limit risk in the event one of them caught fire clearly show that proper steps had not been taken to protect occupiers from risk in the event of fire. The Tribunal finds that the secondary escape on the second floor was insufficient for these purposes. The Tribunal was therefore satisfied beyond all reasonable doubt that the siting of the fridge freezer and the gas boiler amounted to a breach of the Management Regulations.

44. *Breach 4 - other obstructions to the means of escape (a vacuum cleaner, letter shelves and washing airer) (regulation 4(1)(a))*. This related to items in the main corridor which could obstruct safe passage to the front door in the event

of fire. The Second Applicant argued that these were placed there by the occupiers and so were not the Applicants' responsibility. In addition, they were promptly removed when required. Mr Esparon suggested that they have could have placed there by an occupier as a deliberate ploy to cause trouble because of their eviction. The Respondent argued that the Management Regulations do not exclude obstructions placed there by occupiers and it is for the manager to ensure unobstructed passage.

45. The Tribunal considered these arguments. It is essential that there is unobstructed passage in the event of fire. The Tribunal is satisfied that these items could amount to an obstruction. It is irrelevant that they were subsequently removed, it is sufficient for assessing the breach that they were there when the inspection occurred. However, the Tribunal is not satisfied based on the evidence provided that either of the Applicants were aware of these obstructions. It therefore cannot conclude beyond all reasonable doubt that these amounted to a breach of the Management Regulations. As a result, it cannot determine that these obstructions amounted to a breach of the Management Regulations.

46. *Breach 5 - insufficient compartmentalisation between the ground floor understairs cupboard and the stairs above (regulation 4(4)(a))*. This related to the understairs area on the ground floor. The Respondent argued that it was being used as a cupboard and should have been compartmentalised as a result. The Second Applicant said it was not a cupboard but was being used by one of the occupiers for storage. The same arguments for Breach 4 were advanced by Mr Esparon.

47. The Tribunal considered these arguments. It is essential that there is effective compartmentalisation in the event of fire, as explained in relation to Breach 2. However, the Tribunal is not satisfied based on the evidence provided that this area needed to be compartmentalised or that either of the Applicants were aware of these obstructions. It therefore cannot conclude beyond all reasonable doubt that this amounted to a breach of the Management Regulations. As a result, it cannot determine that this area amounted to a breach of the Management Regulations.

48. *Breach 6 - operation of bedrooms doors and final exit doors only with the use of a key (regulation 4(4)(a))*. This related to the fact that relevant doors as provided had to be key operated, raising concerns about obstructions to the means of escape in the event of fire. The Applicants did not deny the doors were key operated but said this was required by the occupiers.

49. The Tribunal considered these arguments. There is no express requirement in the Management Regulations about the alternatives to keys for escape doors. However, it is essential that occupiers are not trapped inside in the event of fire, which could occur if keys were required to open doors. The excuse that the occupiers required this is not sufficient and clearly show that proper steps had not been taken to protect occupiers from risk in the event of fire. The Tribunal was therefore satisfied beyond all reasonable doubt that the fact that these doors could only be operated with keys amounted to a breach of the

Management Regulations.

50. *Breach 7 - lack of a mains-wired smoke detection system (regulation 4(4)(a)).* The Respondent argues that the smoke detection systems should be connected to the mains, so all alarms sounded if one was triggered. The alarms in the Property were battery operated, including those installed by the Fire and Rescue Service. The Second Applicant argued that these were sufficient and any one of the smoke alarms could be heard throughout the Property.

51. The Tribunal considered these arguments. There is no express requirement in the Management Regulations to have mains wired alarms. There was no argument advanced that the smoke alarms did not work. The Tribunal notes the Fire and Rescue Service installed battery alarms and that there is no evidence the alarms could not be heard throughout the Property. It therefore cannot conclude beyond all reasonable doubt that the lack of mains wired smoke alarm amounted to a breach of the Management Regulations. As a result, it cannot determine that this amounted to a breach of the Management Regulations.

52. The Tribunal is therefore satisfied beyond all reasonable doubt that Breaches 1, 2, 3 and 6 amounted to breaches of the Management Regulations, but not Breaches 4, 5 and 7.

53. The Tribunal is therefore satisfied beyond reasonable doubt, based on the evidence provided by the Respondent, that there were breaches of the Management Regulations on 6 February 2025 and so potentially an offence had been committed pursuant to section 234(3) of the Housing Act 2004. It notes that that it had found less breaches of the Management Regulations than alleged by the Respondent.

Manager

54. The Tribunal next considered who the breaches of the Management Regulations had been committed by. It therefore needed to decide who the manager was for the purposes of those Regulations.

55. The Respondent had argued that both the Applicants were the manager. It contended that the First Applicant was as owner of the Property. It further argued that the Second Applicant could be the manager given Mr Esparon's role and because he had entered into the arrangements with the occupiers and received the rent into his personal bank account. Ms Longley in evidence made it clear that the Second Applicant was served a penalty notice in his personal capacity rather than as a director of the First Applicant. She was clear that she could not be certain that the Second Applicant was the manager as Mr Esparon had refused to provide details of where the rent went once received in his personal account. No explanation had similarly been provided when the notice of intent was served on him.

56. Mr Esparon was asked to explain why he entered into the agreements with the occupiers, rather than the First Applicant as owner doing so. He explained that it related to the VAT status of the building and was pursuant to advice from his

accountants. No explanation or evidence of that advice was provided. He said he had no legal interest in the building and there were no arrangements between him and the First Applicant that allowed him to grant leases in a personal capacity or have the rent be paid into his personal account. He did not explain why the rent was paid into his personal account or what happened to it after that.

57. The Tribunal considers that the Respondent was unable to decide who the manager was and so proceeded against both Applicants to be sure of getting the correct manager. Whilst the Tribunal does not condone this somewhat speculative approach, it understands the decision, given Mr Esparon's evasion and lack of explanation. The Tribunal found his approach and answers unsatisfactory. That said, the issue of who is the manager needs to be determined.

58. It is clear that Mr Esparon was the only person involved in the management of the Property. That could have been done in one of two capacities, as director of the First Applicant or in his own name. He had no interest in the Property in his own name; it was owned by the First Applicant. It had delegated no right to him to grant leases in his own name or to retain rent. That approach was apparently related to VAT. Accordingly, absent any evidence to the contrary, the Tribunal concludes on the balance of probabilities that his actions were taken on behalf of the First Applicant and so in his capacity as director of the First Applicant. By extension, rents received must be held on trust for the First Applicant. As a result, it concludes that the First Applicant appears to be the manager of the Property.

59. The definition of manager contained in the Housing Act 2004 is set out above. That definition has a number of components. The Tribunal considered each of the relevant parts.

(a) The definition provides that the manager is required to be *"an owner or lessee of the premises"*. The Property is owned by the First Applicant so it could be the manager. The Second Applicant has no interest in the Property so cannot be the manager. He could have liability as agent or trustee but the penalty was awarded in his personal capacity so this does not apply.

(b) The manager must receive "*(whether directly or through an agent or trustee) rents or other payments from…persons who are in occupation as tenants or licensees of parts of the premises"*. The Second Applicant received the rents but we have found that he received the rent as trustee of the First Applicant. However, it is unclear whether he accounted to the First Applicant for these rents, so if they actually received them. It remains the case, nonetheless, that the Property is their asset and so they are entitled to receive the rents.

(c) There is an exception to the requirement to receive the rents which is when the person entitled to them has "*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". This would appear to be the case here. Mr Esparon is not an owner or lessee of the Property. However, he stated that he was advised to grant the leases with occupiers direct for VAT reasons. This is therefore an arrangement with such other person whereby that other person receive the rents.

(d) Accordingly, if the First Applicant receives the rents from Mr Esparon, it fulfils the requirements to be the manager. If not, and based on Mr Esparon's explanation, the First Applicant still fulfils the requirements of the definition, by having entered into a relevant arrangement.

60. Accordingly, the Tribunal determines that the First Applicant is the manager of the Property. The Second Applicant cannot be the manager as he had no interest in the Property and was acting in his capacity as director and trustee of the First Applicant.

61. As the Second Applicant was not the manager of the Property, he cannot have committed the breaches of the Management Regulations. Accordingly, and with some reluctance given his approach, the Tribunal quashes the financial penalty against the Second Applicant.

Reasonable excuse

62. The question then arises as to whether the First Applicant has a defence to the commission of the offence, which it needs to establish only on the basis of a balance of probability. The First Applicant argued that the breaches were caused by the occupiers and remedied promptly, both through works and by ensuring the Property was no longer an HMO.

63. The Tribunal considered the First Applicant's arguments with care. It does not consider that the actions of the occupiers impacted on the breaches found to have been committed and so cannot amount to a reasonable excuse. Likewise, the fact that the breaches may have subsequently been remedied does not provide a reasonable excuse to whether the breaches were committed on the date of the inspection. It therefore concludes that the First Applicant does not have a defence or reasonable excuse for the breaches found to have been committed.

64. It also considered whether the Respondent's behaviour was such that a financial penalty was not appropriate. It finds that the Respondent's behaviour was at all times appropriate and proportionate. It took reasonable steps to investigate the potential breach and its correspondence was in no way excessive or aggressive. It was right to be concerned at the potential breach, as a result of the potential danger to the safety of the occupants of the Property. The Respondent faced obstruction and obfuscation from the Applicants, for example by claiming the inspection was unlawful and refusing to explain what happened to the rents once paid into the Second Applicant's bank account. The Respondent's actions

were legal and proportionate and this provides no defence or excuse for the offence.

65. The Tribunal therefore concludes that the First Applicant has no defence or reasonable excuse for the offence and that the imposition of a financial penalty on it was a legitimate and proportionate response by the Respondent to the offence.

Procedure

66. There then must be consideration of whether the financial penalty has been properly imposed by reason of the requirements in section 249A of and paragraphs 1 to 8 of Schedule 13A of the 2004 Act. Dealing with those requirements in Schedule 13A:

a) Paragraph 1 – this requires a local housing authority to give notice of its intention to impose a financial penalty upon a person under s.249A, and in this case, this was done as noted above, on 1 August 2025;

b) Paragraph 2 – the notice of intention must be given before the end of six months beginning with the day on which the authority has sufficient evidence of conduct to which the penalty relates and, given that the notice of intention was issued on 1 August 2025 and the inspection at which the evidence was gathered took place on 6 February 2025, this is within the required period;

c) Paragraph 3 – the notice must set out the amount of the penalty, the reasons for imposing it and the right to make representations – all of this detail was included within the notice as produced before the Tribunal;

d) Paragraph 4 – there is a right to make representations regarding the intended imposition of the penalty within 28 days after the notice of intention is served and in this case, such right was given and duly exercised by the First Applicant;

e) Paragraph 5 – the Respondent is required to decide, having considered the representations, whether to proceed to impose the penalty and, if so, in what amount – again, in this case, this was done;

f) Paragraph 6 - if imposing a penalty, the authority must issue a final notice, which was done in this case on 11 September 2024;

g) Paragraph 7 - the final notice must require payment within 28 days after the day on which it was given – in this case, that requirement was

imposed and set out in the notice;

h) Paragraph 8 - the final notice must set out (a) the amount of the penalty (b) the reasons for imposing the penalty (c) information about how to pay the penalty (d) the period for payment of the penalty (e) information about rights of appeal (which it did) (f) the consequences of a failure to comply with the notice. All these requirements were complied with.

67. Accordingly, the Tribunal is satisfied beyond reasonable doubt that the offence under section 234(3) of the Housing Act 2004 has been committed by the First Applicant and that the procedural requirements of s.249A and Schedule 13A of that Act have been complied with. Further, it is satisfied that no defence or reasonable excuse is made out, whether on the balance of probability or otherwise. Accordingly, it is satisfied that the Respondent was entitled to impose a financial penalty. It is also satisfied, given that an offence has been committed for which there is no reasonable excuse, that the Tribunal should support that decision, which it does.

Amount of penalty

68. The Respondent argued that the penalty of £14,500 imposed on the First Applicant was appropriate. It justified this by relying not on its own policy but by inputting data into software provided by Justice for Tenants. Ms Longley accepted that the decision on the amount was entirely taken by the output of the software.

69. The Tribunal accepts that comparative data applied properly can be helpful for local authorities in deciding on the appropriate level of penalties. Taking judicial notice of the Tribunal's own experiences with Justice for Tenants, it is concerned that they do not come from a neutral standpoint; indeed the documents disclosed by the Respondent from Justice for Tenants positively encourage the giving of penalties to enhance local authorities' revenues.

70. The Housing Act 2004 requires that the "*amount of a financial penalty imposed under this section is to be determined by the local housing authority*". The Tribunal considers on this occasion the amount of the penalty has not been determined by the Respondent but instead by Justice for Tenants. It therefore considers that the quantum reached should be set aside. In any event, as the hearing took the form of a re-hearing of the decision, it is for the Tribunal to consider the relevant level of any penalty it considers should be awarded.

71. In considering the appropriate level of the penalty, the Tribunal considered the following factors:

(a) the severity of the offence
(b) culpability and track record of the offender

(c) the harm caused to the occupiers
(d) punishment of the offender
(e) deterrence of repeat offences
(f) deterrence of others from committing similar offences
(g) removing any financial benefit from committing the offence

72. The Tribunal began by considering the seriousness of the offence. It accepted that offences involving the health and safety of occupiers were not minor but noted it had found three out of seven of the contended breaches not proven. None of the offences committed caused imminent risk of fire but did potentially present issues if a fire occurred. No actual harm was caused to any occupiers but the risk of harm in the event of fire was increased due to the breaches. The Tribunal had regard to the age of two of the occupiers, one in his 60s and one in his 80s; this increased the impact of the breaches.

73. It then considered the First Applicant's experience and approach to renting properties. This was the first offence by the First Applicant or indeed for Mr Esparon acting as manager on its behalf or in a personal capacity. However, he should have been aware of a landlord's legal obligations but appeared to take an amateur cavalier approach to informing himself of the relevant obligations, leading to the breaches found. The Tribunal did note that the First Applicant took prompt steps to address the breaches; however, this was achieved principally rendering the occupiers homeless; in the case of the first occupier required to leave, insufficient notice was given as Mr Esparon wrongly categorised a tenancy as a licence. Although this occupier was given notice to leave prior to the 6th February 2025, the Tribunal has taken account of his approach to his occupiers; this limits any mitigation from prompt action.

74. Overall, it concluded that the offence, taking into account the Respondent's own Enforcement Policy, was above Moderate but below Serious. The penalty for Moderate offences was set at £7,500 and for Serious at £12,500.

75. Taking all this into account, the Tribunal considered that a penalty of £9,000 was appropriate. The Tribunal considered this level of penalty reflected the severity of the offence but was still proportionate. It would deter repeat offending by the First Applicant and others and remove any financial gain from the breaches.

76. The Tribunal considered whether any aggravating factors should increase the penalty, such as occupiers' ages. However, it decided these had already been taken into account and so no increase was appropriate.

77. The Tribunal then considered whether there were any mitigating factors that should result in the financial penalty being reduced further. In doing so, it considered the various defences put forward by the First Applicant, including the fact that this was a first offence, his prompt action to address the breaches and Mr Esparon's theory that an occupier had deliberately acted to cause difficulties. The Tribunal has already taken these first two into account and the breaches found to have been committed are not affected by any actions occupiers may have taken. As a result, it considered no further reduction was

appropriate.

78. It finally considered whether the First Applicant's financial circumstances should be taken into account as an additional mitigation. However, no details of its financial position had been provided. Without proper details, it was not able to consider any discount on this ground. The Tribunal in addition takes judicial notice of the First's Applicant's published accounts online that show substantial assets held by it. These show nothing to amend that decision.

79. Overall, the Tribunal considers a financial penalty of £9,000 a fair and appropriate level under the circumstances, including when taking into account the aggravating factors.

80. Accordingly, the Tribunal determines that the financial penalty imposed on the First Applicant by the Respondent should be £9,000.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.