



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

Case Reference : HAV/00MR/HNA/2025/0625

Property : 29 Clive Road, Fratton, Portsmouth, PO1 5JB

Applicant : Open Mind Property Limited

Representative : Mateusz Kornas

Respondent : Portsmouth City Council

Representative : Mr W Potterton (counsel)

Type of Application : Appeal against a financial penalty under s.249A of the Housing Act 2004

Tribunal Members : Judge H Lumby
Mr C Davies FRICS

Venue : Havant Justice Centre, Elmleigh Road,
Havant, Hampshire PO9 2AL

Date of Hearing : 7 April 2026

Date of Decision : 14 April 2026

DECISION

Decision of the Tribunal

1. The decision by the Respondent to impose a financial penalty of £10,000 on the Applicant is upheld.
2. In the light of the above, the appeal made by the Applicant against the imposition of a financial penalty imposed by the Respondent against it is dismissed.

Introduction

3. The Applicant appeals 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 Applicant was dated 23 September 2025 and the appeal was lodged by the Applicant on 17 October 2025.
4. The Tribunal has also received an appeal against a financial penalty from Mrs Ayesha Noor relating to the same address with the reference HAV/00MR/HNA/2025/062. We refer in this decision to Mrs Noor as the “Owner”.
5. It was ordered on 28 January 2026 that both applications would be heard together. A separate decision has been issued in relation to the Owner’s appeal.
6. A civil penalty of £10,000 was imposed on the Applicant by reason of committing an offence pursuant to section 72(1) of the Housing Act 2004 (the “2004 Act”) in relation to the licensing of a House in Multiple Occupation (the “HMO”). The offence was said to have occurred between 8th May 2025, when the Respondent inspected the Property, and 5th August 2025, when the Owner’s fee in relation to her application for an HMO licence was received. The penalty was initially set by the Respondent at £12,500 but reduced when issued to £10,000; this was on the basis that the Respondent had assumed the Applicant managed a portfolio of ten or more properties but could not evidence this.
7. The Property comprises a mid-terrace residential premises. At the time of the inspection, it contained four bedrooms, let by the Applicant to four different occupiers (including one couple) by separate agreements, together with communal kitchen and bathroom. As such, it comprised an HMO for the purposes of section 254 of the 2004 Act.
8. The Respondent designated the whole of the area within its district for Additional Licensing of HMOs on 22 November 2022. The designation came into force on 1st September 2023, requiring all HMOs as defined by section 254 of the 2004 Act to be licensed.
9. The Applicant accepts that at the relevant time the Property comprised an HMO which was required to be licensed but was not so licensed.
10. The freehold of the Property was registered in the name of the Owner and her late husband; on his death, it passed into her sole ownership. It is one of 13

properties said to be owned by her and is said to be subject to a Buy to Let mortgage.

11. The Applicant had entered into a management agreement (the “Management Agreement”) with the Owner on 1 September 2021, pursuant to which the Applicant took full management control of the Property, in return for a monthly payment to the Owner of £950. The Applicant took responsibility for letting and maintaining the Property and paying its bills, retaining all income above the £950 monthly payment. It is understood that a typical excessive income would be around £1,500.
12. The Respondent carried out an inspection of the Property on 8 May 2025 and on 13 May 2025 required the production of additional information. Both the Applicant and the Owner co-operated with the Respondent to provide information.
13. The Owner was informed on 16 May 2025 that the Property required an HMO licence. Although she submitted an application promptly, she did not pay the required fee until 5 August 2025, upon which the application became valid. An HMO licence has now been issued to the Owner.
14. A Notice of Intent to issue a Financial Penalty was served on the Applicant on 7 August 2025, referring to an intent to issue her with a penalty of £12,500, calculated in line with the Respondent’s enforcement policy; it comprised the basic penalty of £10,000 and an additional £2,500 to reflect the Applicant managing a portfolio of at least ten properties. The financial penalty was issued at a reduced level of £10,000 on 23 September 2025 because the Respondent had not evidenced that the Applicant managed a portfolio of ten or more properties.
15. The penalty was said to be because “*the offender is a person having control of or managing an HMO which is required to be licensed under Part 2 of the Housing Act 2004 (see section 61(1)) but it is not so licensed*”.
16. 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.
17. This has been a determination following a hearing on 7 April 2026. The documents that the Tribunal were referred to are in two bundles of 409 and 187 pages, the contents of which included two witness statements from the Owner, a statement of case on behalf of the Applicant, two witness statements from Abigail Griffith of the Respondent (Mrs Griffith was the officer responsible for the case) and copies of the relevant notices and other relevant documents. Mr Potterton also provided a skeleton argument which the Tribunal considered after the hearing. The contents of all these have been noted by the Tribunal. No financial information had been provided by the Applicant.
18. Mr Artur Kupis and Mr Mateusz Kornas of the Applicant attended the hearing. The Owner also attended and was represented by Mr Nadeem Bedar. Mr

Patterson represented the Respondent and Mrs Griffith gave evidence on their behalf.. The Tribunal heard evidence from the Owner, Mrs Griffith and Mr Kornas and submissions from Mr Potterton, Mr Beder and Mr Kornas.

19. 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

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

21. 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—

...

(b) section 72 (licensing 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...”*

22. The “relevant offence” relied upon in this case is section 72(1) of the Housing Act 2004. Section 72(1) provides that:

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

23. 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.

24. The person having control of a property is defined in section 263(1) and (2) of the Housing Act 2004 as follows:

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

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

25. 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

26. This means that if the Property at any time from 1 September 2023 was an HMO and occupied by three or more households, then the person who had management or control of the Property would be required to have an HMO licence from Portsmouth City Council. A failure to do so would be an offence

pursuant to section 72(1) of the 2004 Act. More than one person can have management or control at one time.

27. 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, did the Applicant have control or manage the Property, as defined in section 263 of the 2004 Act.
- c) If an offence is found to have been committed by the Applicant, the question then arises as to whether, on the balance of probabilities, the 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

28. 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 in accordance with the Respondent's enforcement policy. The appropriate procedure was followed.

29. The Owner argued that she did not have control or management of the Property. She was unaware that the Property was being used as an HMO until told by Mrs Griffith. Her position was that she would have demanded a higher payment if it was intended to use the Property as an HMO.

30. The Applicant argued that it was the Owner's responsibility to apply for the licence, they contending that they believed they could not separately apply and reminded her of the need to apply. They maintained they had co-operated with the Respondent in good faith and considered the penalty imposed on them to be disproportionate.

Consideration

31. 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.

32. In this case, the offence in question is the management or control of an HMO without a licence, pursuant to section 72(1) of the 2004 Act.

33. It was agreed by all parties that at the relevant time the Property was an HMO, was required to be licensed but was not licensed. The Tribunal agrees with this

assessment.

34. As a result, the only relevant consideration was whether the Applicant was in control or managed the Property. It is not disputed that the Property is managed by the Applicant. Mrs Griffith said in evidence that the Respondent had considered that the Applicant managed the Property. However, as the hearing before the Tribunal took the form of a re-hearing, it was open to the Tribunal to reach its own conclusions on control and management.
35. The Tribunal began by considering whether the Property was controlled by the Applicant. Section 263 of the 2004 Act has a very specific definition of control, as set out above. This says the person in control is the person who receives the “rack-rent” of the premises, where rack-rent is in turn defined as being not less than two-thirds of the full net annual value of the premises. In this case, the Applicant received the full monthly rent of around £2,500. No representations were received as to what the rack rent is but the Tribunal considers £2,500 would at least meet this definition; in doing so, it notes Mr Kornas’ comments that the Applicant had improved the Property from its own resources and the Owner’s comments that an HMO attracts a higher rent than the same property let as a whole by way of a single tenancy. The facts that the Applicant paid a proportion to the Owner and met the utilities bills does not affect this. There is no requirement to own the Property or even have a legal interest in it. This means that the Applicant meets the threshold for control.
36. Accordingly, the Tribunal determines that the Applicant was in control of the Property for the purposes of section 263 of the 2004 Act.
37. The Tribunal next considered whether the Applicant was managing the Property, again as defined by section 263. This definition is also set out above and again is very specific and slightly eclectic. That definition has a number of components. The Tribunal considered each of the relevant parts.
38. The definition provides that the manager is required to be “*an owner or lessee of the premises*”. The Applicant has no interest in the Property so it would appear prima facie that it cannot be the manager.
39. 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 Applicant received the rents but did not pass these to the Owner, instead paying her a fixed monthly payment.
40. However, 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 is the case here. The Applicant entered into the Management Agreement with the Owner; they are not owners or lessees of the Property but receive and retain the rents. This is therefore an arrangement with such other person whereby that other person receive the rents. The relevant section also provides that the definition of manager “*includes, where*

those rents or other payments are received through another person as agent or trustee, that other person". This means that the Applicant is also the manager of the Property.

41. That conclusion is reinforced by section 263(5) of the 2004 Act which provides that references in that Act *"to any person involved in the management of a house in multiple occupation ... include references to the person managing it"*. As the Applicant was managing the Property, it is accordingly caught by the definition of manager in section 263 in any event.
42. Accordingly, the Applicant fulfils the requirements of the definition of managing the Property. As a result, the Tribunal determines that the Applicant was managing the Property at the relevant time for the purposes of section 263 of the 2004 Act.
43. This means that the Applicant was both controlling and managing the Property between 8th May 2025, when the Respondent inspected the Property, and 5th August 2025. Throughout this period the Property was an HMO which required to be licensed but was not licensed.
44. As a result, the Tribunal is therefore satisfied beyond reasonable doubt, based on the evidence provided, that the Applicant was during this period both controlling and managing an unlicensed HMO which required to be licensed. It has therefore potentially committed an offence pursuant to section 72(1) of the Housing Act 2004.

Reasonable excuse

45. The question then arises as to whether the Applicant has a defence to the commission of the offence, which it needs to establish only on the basis of a balance of probability.
46. The Applicant argued that it had upgraded the Property at its own cost and it was the Owner's responsibility to obtain the HMO licence; they had informed her of this obligation, did their best to get her to apply and assisted her with the application. They contended that they did not know they could apply themselves until told by the Respondent; in any event, the Management Agreement prevented them from applying. They accepted that new leases were granted at the Property after the Respondent's licensing scheme came into force but argued that this was required to generate income to pay the Owner. Their contention is this all amounts to a reasonable excuse.
47. The Respondent argues that the Applicant knew a licence was required; they reject their argument they were not aware they could apply, as ignorance of law is no defence. In addition, the Management Agreement does not prevent them from applying for a licence or place the obligation on the Owner to apply. They did little to chase the Owner to apply and continued generating income for themselves, even granting new leases. The Respondent therefore contended that there was no excuse for the Applicant's behaviour and the resulting penalty was justified.

48. The Tribunal considered the Applicant's arguments with care.
49. The Applicant is a professional managing agent and should be conversant with the law; their belief that they could not apply for a licence is therefore no defence. In addition, their argument that the Management Agreement prevented them applying for a licence is fallacious, as it contains no such prohibition.
50. They contended that they "*repeatedly advised and reminded the Landlord in writing of her obligation to apply for HMO licence, but she refused to proceed despite our guidance*". This not supported by the evidence; prior to the Respondent requiring a licence to be applied for in May 2025, there is only evidence of one email to the Owner about applying for a licence, in May 2023. That email is ambiguously worded (referring to the impending scheme as meaning "*that we will have to apply for the HMO License for these properties*", it being unclear who "we" is for these purposes). The Owner did not reply, which does not amount to a refusal to apply; the Applicant has no evidence that it followed up with the Owner until August 2025. The Tribunal does not therefore accept that the Applicant's argument about repeatedly chasing the Owner or her refusal to apply. Instead, it finds that the Applicant did next to nothing to ensure the Owner applied.
51. The Applicant says that the Management Agreement provides that the Owner "*must comply with HMO obligations*" and points to clause 2.2.2.6; this contains an obligation on the Owner "*to ensure that the Property shall comply with all legal requirements*" and to provide up to date energy performance certificates, gas certificate and electric installation condition reports. This is not an express obligation on the Owner to apply for an HMO licence. The Tribunal therefore rejects the Applicant's arguments that the Management Agreement required the Owner to comply with HMO obligations.
52. It therefore determines that the Applicant's lack of awareness of the law and misinterpretation of the Management Agreement do not amount to a reasonable excuse or a defence to the offence. This is compounded by their claims of repeatedly advising the Owner to apply for a licence and she refusing to do so not being supported by the evidence. As professional agents, there is no excuse for the Applicant's actions.
53. The Tribunal therefore concludes that the 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

54. 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 7 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 7 August 2025 and the inspection at which the evidence was gathered took place on 8 May 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;
- 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 23 September 2025;
- 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.

55. Accordingly, the Tribunal is satisfied beyond reasonable doubt that the offence under section 72(1) of the Housing Act 2004 has been committed by the 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. As a result, 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

56. The Respondent argued that the penalty of £10,000 imposed on the Applicant was appropriate. It justified this by relying on its own enforcement policy.

57. 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 been determined by the Respondent by a proper application of the policy, including by reducing the penalty from £12,500 by £2,500 by reason of not being able to evidence the size of the Applicant’s management portfolio. £10,000 is the starting point under the policy for a first offence of this type. The Applicant has not challenged the policy itself. The Tribunal finds it a legitimate and compliant enforcement policy.

58. In considering the appropriate level of the penalty, the Tribunal considered the following factors, this is to assist its approach to considering and applying the enforcement policy:

- the severity of the offence
- culpability and track record of the offender
- the harm caused to the occupiers
- punishment of the offender
- deterrence of repeat offences
- deterrence of others from committing similar offences
- removing any financial benefit from committing the offence

59. The Tribunal began by considering the seriousness of the offence and the Applicant’s culpability for it. It accepted that HMO licences were intended to protect the health and safety of occupiers. It is noted that no major health and safety risks have been noted but also that the Owner has spent around £6,000 bringing the Property into a licensable condition, expenditure which the Applicant avoided whilst still benefiting from the HMO income. The Applicant knew about the requirement for a licence but did little to get the Owner to apply and did not apply for a licence itself. It says it did not know it could apply itself until told by the Respondent but as managing agents operating it should have known what was required. The argument that the Management Agreement prevented applications is not accepted as there is no such provision. All this leads to high degree of culpability, even if the offence was not the most serious and was the first offence.

60. The Tribunal then considered the Respondent’s own Enforcement Policy; this has as a starting point for a first offence a penalty of £10,000. This can be increased for various aggravating factors; the only potential one of these is

where the offender has a housing portfolio of 10 or more units of accommodation. The Applicant said it had “around 10” properties but this has not been investigated or verified. The Tribunal therefore considered no adjustment for this was appropriate and agrees with the Respondent’s decision in this regard.

61. The policy also allows reductions for various mitigating factors, at the council’s discretion. The Respondent applied a reduction of 25% to the Owner’s penalty to reflect the submission of an HMO licence application. However, no such reduction was applied to the Applicant, arguing that it had made no application. The Tribunal supports this decision, noting that the Applicant could and should have made its own application but chose not to do so, instead continuing to benefit from the unlicensed HMO whilst seeking to pass the responsibility and blame to the Owner.
62. Reductions may also be made for an acceptance of guilt and showing extenuating circumstances for the omission, each up to 10% (or £1,000 each in this case). A further 10% can be reduced for other mitigating factors. However, there is a minimum fine of £5,000.
63. The Tribunal considers no further reductions should be applied. Although it notes that the Applicant has co-operated with the Respondent and taken steps to prevent this happening again, this is outweighed by the likely financial gain the Applicant will have made from an unlicensed HMO – based on a likely income of £2,500 per month and adjusted for payments to the Owner and an assumed one third allocation towards costs, the Tribunal estimates this could well be in the region of £715 per month.
64. It finally considered whether the Applicant’s financial circumstances should be taken into account as an additional mitigation. However, no details were provided by the Applicant and so it was not possible to review these. As a result, no adjustment is considered appropriate.
65. Taking all this into account, the Tribunal considered that a penalty of £10,000 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 Applicant and others and remove any financial gain from the breaches.
66. Overall, the Tribunal considers a financial penalty of £10,000 a fair and appropriate level under the circumstances, including when taking into account the mitigating factors. This is also in line with the Respondent’s enforcement policy.
67. Accordingly, the Tribunal determines that the financial penalty imposed on the Applicant by the Respondent should be £10,000.

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.