FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	HAV/18UC/HNA/2025/0627
Property	**:**	11 St John's Road Exeter EX1 2HR
Applicants	**:**	Tim Daysh
Respondent	**:**	Exeter Council
Representative	**:**	James Jarvis, Counsel
Type of application	**:**	Financial Penalty Appeal – HMO Regulations 2006
Tribunal members	**:**	Judge Pattni-Evans (Chair) Tribunal Member Shaylor
Date and Venue of hearing	**:**	7th May 2026 at Havant Justice Centre
Date of decision	**:**	20 May 2026

DECISION

The Tribunal hereby:

(1) cancels the Final Notice dated 7 October 2025 which sought to impose financial penalties for alleged offences under section 234(3) of the Housing Act 2004 namely failing to comply with one or more of the Management of Houses in Multiple Occupation (England) Regulations 2006 in respect of 11 St John's Road Exeter; and,

(2) gives the reasons for the decision below.

Reasons:

The applications

1. This is the Tribunal's written decision following a remote hearing conducted by CVP. This decision addresses the appeal made on 28 October 2025 against the imposition of a Civil Financial Penalty Notice made under section 249A of the Housing Act 2004, by the Respondent housing authority for a failure to comply with one or more of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("2006 Regulations").

2. The Final Notice is dated 7 October 2025 for the total sum of £1,000.

The Hearing

3. There was no inspection, none of the parties considered that an inspection was necessary. At the hearing on 7 May 2026, the Applicant Mr Tim Daysh was unrepresented, he had set out his main points in his application statement dated 23 March 2026 and his concise reply to the Respondent's response. The Respondent was represented by Mr Jarvis of Counsel; we read his written skeleton argument which referred to the relevant authorities. The witnesses for the Respondent were Mr Brian Merchant and Mr Scott Carpenter. All the witnesses, including the Applicant, confirmed their evidence and were asked questions by the main parties and the Tribunal. For ease of reference, we will refer to the individuals by name and the Council as the 'Respondent' in this decision.

4. We are grateful to the parties for attending the hearing, giving evidence and making their contributions. The lack of mention of a particular document or submission should not be regarded as indicating that it has not been considered. The Tribunal has focused on the key issues identified that require determination and has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

5. The Applicant's case in a nutshell was that the Notice was defective: he didn't understand which specific offences he was accused of and how the Respondent had

calculated the fines. He explained that different versions of the "Management Regulations" had been referred to in the documents he received and that the alleged offences were not consistently specified in those documents. He said that the Notice was "null and void" and invited the Tribunal to determine this as a preliminary issue. Alternatively, he relied on the statutory defence of a reasonable excuse justification.

6. For the Respondent, Mr Jarvis said the underlying failings of non-compliance with the 2006 Regulations were not materially in dispute; the central question was whether the Appellant had a "reasonable excuse". He also said the penalty imposed was appropriate and proportionate.

7. We explained that we would not give a ruling on the issue of validity at the hearing, rather, we would consider the point when reaching our decision and hear the evidence in line with the approach preferred by the Upper Tribunal (which we will return to below).

8. In these types of cases, the Tribunal's task is to determine the appeal by applying the relevant statutory framework and legal tests to the evidence before it. The appeal, held by way of re-hearing, was of the Respondent's decision to impose the penalty and/or the amount of the penalty, but the Tribunal may have regard to matters of which the Respondent was previously unaware.

The general law on financial penalties

The offence

9. By subsection 249A (1) of the Housing Act 2004 (the "Act"):

> "*The local housing authority may impose a financial penalty on any person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.*"

10. By subsection 249A (3), only one financial penalty may be imposed on a person in respect of the same conduct.

11. The penalty was based on alleged offences under subsection 234(3) of the Act. This provides that, subject to a reasonable excuse defence in subsection (4), a person

commits an offence if fails to comply with a regulation made under subsection 234(1). The applicable Regulations are the Management of Houses in Multiple Occupation (England) Regulations 2006 (UKSI 2006/372) (as amended) (the "2006 Regulations").

12. The 2006 Regulations apply to any person who is the 'manager' of the HMO, Regulation 2 provides that the "manager" in relation to an HMO means the person managing it. Section 263 of the Act defines in more detail what is meant by a "person having control" and "person managing".

13. It is possible to 'breach' the 2006 Regulations in a number of ways and each breach comprises a separate offence. The Tribunal was referred to the following specific provisions in Regulation 7 during the hearing:

Duty of manager to maintain common parts, fixtures, fittings and appliances

7.—*(1) The manager must ensure that all common parts of the HMO are—*

(a)maintained in good and clean decorative repair;

(b)maintained in a safe and working condition; and

(c)kept reasonably clear from obstruction.

(2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—

(c) any stair coverings are safely fixed and kept in good repair;

(d) all windows and other means of ventilation within the common parts are kept in good repair;

(4) The manager must ensure that—

(a) outbuildings, yards and forecourts which are used in common by two or more households living within the HMO are maintained in repair, clean condition and good order;

(b) any garden belonging to the HMO is kept in a safe and tidy condition; and

(c) boundary walls, fences and railings (including any basement area railings), in so far as they belong to the HMO, are kept and maintained in good and safe repair so as not to constitute a danger to occupiers.

(6) In this regulation—

(a)"common parts" means—

(i)the entrance door to the HMO and the entrance doors leading to each unit of living accommodation within the HMO;

(ii)all such parts of the HMO as comprise staircases, passageways, corridors, halls, lobbies, entrances, balconies, porches and steps that are used by the occupiers of the units of living accommodation within the HMO to gain access to the entrance doors of their respective unit of living accommodation; and

(iii)any other part of an HMO the use of which is shared by two or more households living in the HMO, with the knowledge of the landlord.

14. In the case of *IR Management Ltd v Salford City Council 2020] UKUT 81 (LC),* the Upper Tribunal made it clear that the offence of non-compliance was a strict liability offence, subject only to the statutory defence. The burden of proof for establishing a reasonable excuse fell to the defendant to satisfy on the balance of probabilities.

Procedural requirements

15. Schedule 13A to the Act sets out the procedure which local housing authorities must follow in relation to financial penalties imposed under section 249A. Before imposing such a penalty on a person or entity, the local housing authority must give that person or entity a notice of intent setting out:

    a. The amount of the proposed financial penalty.
    b. The reasons for proposing to impose it; and
    c. Information about the right to make representations.

16. A person or entity who is given a notice of intent has the right to make written representations to the local housing authority about the proposal to impose a financial penalty. Any such representations must be made within the period of 28 days, beginning with the day after that on which the notice of intent was given.

17. The Notice of Intention is an essential pre-condition to the imposition of a of a financial penalty, and it is an important part of the statutory process. This is because after the end of that period, the local housing authority must decide whether to impose a financial penalty and, if a penalty is to be imposed, its amount. If the local housing

authority decides to impose a financial penalty on a person or entity, it must give that person a Final Notice setting out, inter alia, the reasons for imposing it (para 8(b)).

18. The right of appeal to the F-tT lies against the Final Notice, such an appeal is to be a re-hearing of the authority's decision (para 10(3)(a)). The F-tT may confirm, vary or cancel a Final Notice.

Validity of Notices

19. The Respondent referred us to the case of *Waltham Forest LBC v Younis* [2020] UKUT 0362 (LC) as authority for the proposition that a failure to comply with the statutory requirements, or to provide the recipient with sufficient reasons, will not necessarily invalidate the notice.

20. Indeed, in *Younis,* the issue before Martin Rodger KC, Deputy Chamber President of the Upper Tribunal, was precisely how clearly a local housing authority must state its reasons for taking action in a financial penalty notice. On the facts of that case, the local authority had made oblique reference to the relevant housing offence on the notice, and the F-tT considered that the Final Notice was invalid because it did not specify which section of a licence condition was being relied on. Also, the notice failed to allege the offending date or period.

21. The respondent council succeeded in overturning the F-tTs decision and it is clear from the Upper Tribunal's decision why that was.

22. When serving the notice of intent, the council simultaneously served five separate witness statements with a covering letter which accompanied the formal notice of intent to impose a financial penalty notice. The notice was accompanied by a considerable body of evidence and documents which were referred to in the notice. It was drafted in a way that it could be understood and responded to.

23. However, the Upper Tribunal observed that a notice which incorporated other documents was *'far from ideal'*. A concise statement of the facts said to amount to the breach of licence condition or other offence would be preferable to the practice of providing particulars by means of a number of repetitive witness statements. But the

'poor technique' employed by the council did not cause their notice to be defective (see paras 52, 58 of judgment).

24. Additionally, there was no credible suggestion that the recipient had been prejudiced by the notice of intent. The F-tT had erred when deciding the notice was of no effect and allowing the appeal without investigating the facts (paragraph 76).

25. The issue arose again in the case of *Maharaj v Liverpool City Council* [2022] UKUT 140 (LC) this time before His Honour Judge Hodge KC, the relevant passage is at paragraph 17:

> *"…By paragraph 3 (a) of Schedule 13A, the notice of intent must set out "the reasons for proposing to impose the financial penalty". Those reasons must be sufficiently clearly and accurately expressed to enable the recipient landlord to exercise the right conferred by paragraph 4 to "make written representations to the local housing authority about the proposal to impose a financial penalty", thereby enabling it to decide whether to impose a financial penalty on the landlord and, if so, the amount of such penalty (as required by paragraph 5). Similarly, by paragraph 8 (b) of schedule 13A, the final notice must set out "the reasons for imposing the penalty". These too must be sufficiently clearly and accurately expressed to enable the recipient landlord to decide whether to exercise the right of appeal to the FTT conferred by paragraph 10 against the decision to impose the penalty or the amount of that penalty. In the Tribunal's judgment, those reasons must be directly referable to the condition of the licence in relation to which it is said that there has been a failure to comply on the part of the landlord; and those reasons must identify clearly, and accurately, the particular respects in which it is said that there has been non-compliance on the landlord's part. The Tribunal does not regard the reasons for imposing a financial penalty, or proposing to do so, merely as giving a factual background to the offence; they should be treated as providing particulars of the offence.*

26. In *Maharaj,* the allegation recorded on the notice was not the same as that supported by the evidence so a slightly separate issue on the facts from simply unclear reasons.

27. Most recently in *Welwyn Hatfield Borough Council v Hongmei Wang* [2024] UKUT 24 the matter was considered again and the case of *Younis* was revisited. The F-tT had allowed Mrs Wang's respondent's appeal against those penalties on the grounds that the information given in the notices of intent had been insufficient to enable her to make meaningful representations and that the notices were therefore invalid. The key passages from that decision are:

> *77. In this case the notices of intent were not inaccurate in the information they conveyed. They suffered from a different defect, namely that they were vague and did not clearly identify the facts which amounted to the offence being alleged. Both pinpointed the offence and the location and date at which it was alleged to have been committed, but the only description of the regulation 4 offence was that "numerous fire safety deficiencies were identified at the premises", while the regulation 7 offence was described only as "poor management and disrepair, and poorly maintained deficiencies".*
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> *78. If notices in this form had been the only material available to the recipient, I would have had no doubt that they were incapable of informing her in sufficient detail of what it was that was being alleged against her, and the requirements of paragraph 3 of Schedule 13A that a notice of intent must set out the authority's reasons for proposing a financial penalty would not have been met.[...] Similarly, regulation 7 covers maintaining common parts in repair, and in safe working condition and free from obstruction, and extends to a catalogue of specific features including handrails and bannisters, stair coverings, means of ventilation, light fittings, common appliances, outbuildings, yards, gardens, boundary walls and fences. To be told that the Council had observed "poor management and disrepair" would leave the recipient in ignorance of the case against them, a state which would not be relieved by trying to work out what "poorly maintained deficiencies" could possibly mean.*

28. The notices of intent were "saved" by the extraneous materials from which it was possible to understand the allegations being made - they incorporated a detailed schedule of works and photographs which therefore complied with the requirements.

29. There is an important point made at paragraph 89 of the judgment which explains the reasons for the approach taken by us in these proceedings:

89. I leave one point open. That is whether the effect of a notice of intent must be determined on the basis of the material available to the recipient before the time for making representations against it expires, or whether an invalid notice can be cured by information supplied with a final notice, or in the context of an appeal to the FTT. The hearing of an appeal by the FTT takes the form of a rehearing, so it might be said that information supplied at that stage puts the recipient in a position to mount an effective defence. On the other hand, it might be argued that there is prejudice to the recipient of a defective notice, sufficient to justify treating a defective notice as a nullity, if they have to persuade the FTT to take a different view from that taken by the authority. I prefer to say nothing about that point and to leave it for decision on another occasion if it arises.

30. As such, we proceeded to hear the parties' evidence and submissions regarding the notice and the allegations.

The Evidence

31. The general background to the case was not in dispute. Mr Daysh was the owner of 11 St John's Road, Exeter EX1 2HR (the "Property"), a three-storey property which, at the time comprised five bedrooms. It was a licensed house in multiple occupation ("HMO") within the meaning of section 254 of the Act and Mr Daysh told us that he held an HMO licence continuously from 2009. It was agreed that he was also the person managing the Property.

32. On 6 September 2023, Mr Merchant, environmental health technician, carried out an inspection at the Property, following concerns raised by the occupants regarding fire safety. There were several issues observed, including the lack of fire safety measures all of which were set out in a letter to Mr Daysh on 7 September. A further visit on 18 September 2023 revealed elements of non-compliance with licence conditions and hazards such as damp and mould growth.

33. The Respondent produced an inspection report, and a Schedule of Works dated 25 September 2023. This document was very significant because it recorded the starting

point from which matters progressed. In the covering letter, we note that reference was made to the 2004 Act, the Housing Health & Safety Rating System (HHSRS) and Gas Safety (Installation & Use) Regulations 1988, and the 2006 Regulations. The covering letter explained that a failure to undertake the works "may result in formal legal action, including a Financial Penalty of up to £30,000".

34. In the Schedule of Works appended thereto, specific items are listed under the heading of the 2006 Regulations but with different times for compliance, as follows:

Management Regulation number 8: Ground floor entrance internal door has broken glass pane
Management Regulation number 7: Ground floor conservator (sic) window leaking and vegetation building up
Management Regulation number 7: Ground floor conservatory walls have water damage, causing the paint and walls to flake
Management Regulation number 7: front and rear gardens over grown, where the rear exit is blocked and rubbish left from previous tenancy
Management Regulation number 7: replace or remove front gate
Management Regulation number 7: back door is very stiff and difficult to close
Management Regulation number 7: Ground floor stair case carpet loose on a few steps

35. Mr Daysh accepted that he understood exactly what was required of him from this Schedule of Works. There also seemed to be agreement between the witnesses that Mr Daysh was quite willing to do the works and in the Tribunal's view he certainly did not present as reluctant or recalcitrant in that regard.

36. On 20 October 2023, Mr Merchant met Mr Daysh at the property and agreed to extend works to the conservatory until the end of summer 2024, as those works could be disruptive for the occupants who were students, and would be away during the summer. The remainder of the work was to continue as scheduled. In January 2024, there were email exchanges between Mr Daysh and council officers where he explained that he was having issues with contractors.

37. On 17 January 2024, Mr Merchant visited the property and noted some works had not been completed, these included fire door installation non-compliance with

"Management Regulation 8" over the ground floor entrance internal door and non-compliance of "Management Regulation 7" because of loose carpets on the staircase.

38. On 14 February 2024, Mr Merchant visited the property and again noted that fire door installation had not been completed and there continued to be non-compliance with "Management Regulation 7" regarding loose carpets on the stairs, the Respondent also raised concerns about non-compliance with "Management Regulation 7" because the front and rear gardens were overgrown and there was rubbish left at the property from the previous tenancy.

39. In 2024, there continued to be inspections and correspondence between the Respondent and the Applicant regarding the works, along the lines of the Respondent requiring an update on work and the Applicant providing an explanation as to why some matters remained incomplete. It is agreed that some progress was made, for example by March 2024, the fire doors had been installed, and the more serious issues were dealt with fairly promptly.

40. On 2 September 2024, Mr Merchant updated his inspection report identifying previously incomplete works and additional items which were added to the Schedule.

Management Regulation number 7: Ground floor conservatory vegetation building up
Management Regulation number 7: Ground floor conservatory walls have water damage, causing the paint and walls to flake
Management Regulation number 7: front and rear gardens over grown, where the rear exit is blocked and rubbish left from previous tenancy
Management Regulation number 7: replace or remove front gate
Management Regulation number 7: back door is very stiff and difficult to close
Management Regulation number 7: Ground floor stair case carpet loose on a few steps

41. These were identified as outstanding works from 2023, and accompanying the Schedule was a warning which said that if the works were not completed "you may be liable for a civil penalty or prosecution". In addition, new items were added to the Schedule as follows:

HHSRS – Damp and Mould Growth – investigate penetrating damp to the top floor bedroom
Management regulation number 7 – loose carpet to the first top floor bedrooms and top floor stair case
Management regulation number 7 – damaged wall and falling down wallpaper to the first floor hallway near the bathroom first floor front bedroom and ground floor bedroom
Management regulation number 7 – damaged wooden cable boxing on the first floor hallway at the top of the stairs

42. In relation to the new items, six months for compliance was permitted.

43. On 8 October 2024, the Mr Merchant visited the Property noting that the external works were completed. An email was sent out on 9 October 2024 confirming the findings and informing the Applicant that matters would be escalated internally. This correspondence elicited a response from Mr Daysh stating that he had difficulties in arranging access for works at the Property. Around this time, and indeed for most of 2024, Mr Daysh was awaiting a hip operation which eventually took place in November 2024. In December 2024, he cited access issues with a difficult tenant – again emails were sent to the Respondent.

44. On 7 January 2025, Mr Merchant completed an internal memo of the case which he sent to his service lead, Mr Scott Carpenter, and a civil penalty justification matrix was attached to this report. The civil penalty justification matrix, although imperfect, was certainly a much clearer document to follow because it specified in table form the allegation, regulation and calculation of fine.

45. At Appendix 3 four offences were described as follows:

Management Regulation number 7: Ground floor conservatory vegetation building up
Management Regulation number 7: Ground floor conservatory walls have water damage, causing the paint and walls to flake
Management Regulation number 7: replace or remove front gate
Management Regulation number 7: back door is very stiff and difficult to close

46. It was clear from his evidence that Mr Merchant was a diligent environmental health officer who properly applied the relevant considerations of the Respondent's enforcement policy and considered harm / culpability along with aggravating and mitigating factors. The fine to be levied in respect of each item was at an appropriate level of £450. It was agreed that the civil justification matrix was not sent to Mr Daysh at this point. In fact, it was not sent until after the Tribunal made directions for the hearing and he was therefore in receipt of it only weeks before the final hearing took place.

47. We turn then to the Notice of Intention which was sent on 17 January 2025. This was, perhaps, when matters began to take a wrong turn.

48. The covering letter for the Notice of Intention referred to a breach of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) England Regulations 2007 – which to date, had not been mentioned in any of the correspondence, and in our view would not apply to this Property because the 2007 Regulations relate primarily to HMOs defined by section 257 of the Act, whereas as previously observed this property was an HMO as defined by section 254 of the Act. The 2006 and 2007 Regulations are similar, but it is the 2006 Regulations which would apply to this Property.

49. The Notice of Intention stated the offence to be:

"Section 234 - management regulation number 7 – Duty of manager to maintain common parts, fixtures, fittings and appliances – in respect of a House in Multiple Occupation.

In that following the service of a post inspection letter requiring work to be done to address breaches of the above legislation on the 18 September 2023 which were extended to accommodate the owner's request. A subsequent inspection was made on the 7th February and 29th February 2024 found that little work had be done, where an email on the 7th January from the owner confirmed no further works had been completed."

50. The offence is alleged to have taken place from 25 September 2023 to present. We noted that references to legislation are incomplete, the allegations are unspecific and save for an oblique reference to regulation number 7 - it is difficult to understand

without reference to extraneous materials what the recipient had done wrong. Moreover, the reference in the allegation was to an inspection date rather than the letter containing the schedule of works. For completeness, we note that the 'reasons' section of the Notice of Intention did not add anything to aid the interpretation of it.

51. We were not taken to the "email dated 7th January" during the hearing and we note the absence of such an email in the bundle. The only emails from January we were referred to were those set out above. We therefore make no findings based on the alleged email dated 7 January and we note that in an email dated 13 February 2025, Mr Daysh specifically denied the purported admission. In his oral evidence, he took us to an email chain exhibited to his statement of case which started on 17 February 2025 whereby Mr Lawrence Blake, a Head of Service in the employ of the Respondent, reported his *understanding* to be that outstanding works at that stage comprised:

> *Management Regulation 7: ground floor staircase carpet loose on a few steps*
> *Management Regulation 7: Back door is very stuff and difficult to close*
> *Management Regulation 7: replace or remove front gate*
> *Management Regulation 7: front and rear gardens overgrown, where the rear exit is blocked and rubbish left from previous tenancy*
> *Management Regulation 7: ground floor conservatory walls have water damage, causing the paint and walls to flake*
> *Management Regulation 7: Ground floor conservatory vegetation building up*

52. Mr Daysh's email response recorded: "as far as the outstanding actions go 1-4 were completed some time ago. I need to visit to check on 5&6".

53. Indeed, in his oral evidence to the Tribunal, he explained that a repair had been attempted in the conservatory, but it was unsuccessful and it required further work. In his view, "*the conservatory work was two stages of work, the roof had been resealed. The conservatory had to dry out, it was more fiddly than what is presented here. It took three attempts to get the conservatory done*". He also said that "*it would have been pointless repainting the walls whilst the roof of the conservatory was leaking*".

54. On 16 April 2025, Mr Merchant carried out an inspection at the Property, Mr Daysh was not present. Mr Merchant noted that some compliance had taken place but items

remained outstanding – this included works to the conservatory. He recorded the addition problem of peeling wallpaper and a damaged wooden cable boxing on the first-floor landing. It is therefore to be deduced that the repair to the gate and the door had been completed at some point between the inspections in October 2024 and April 2025, leaving the only outstanding matter from September 2023 to be related to the conservatory (plus two items previously not included in the schedule of works).

55. On the same day, Mr Merchant updated the civil penalty justification matrix taking into account compliance with some of the works and therefore reducing the penalty from £1,800.00 to £1,200.00. The matrix was then sent to Mr Carpenter for consideration and approval.

56. The final civil penalty justification matrix records the following required works:

Management Regulation number 7: Ground floor conservatory vegetation building up
Management Regulation number 7: Ground floor conservatory walls have water damage, causing the paint and walls to flake.
Regulation number 8: First floor cable boxing at the top of the fire floor broken
Regulation number 7: Wallpaper coming off in the first floor hallways and ground floor bedrooms where there is some damage to the hallways wall to the shared bathroom and first floor front bedroom wall

57. The total "outcome" for each offence, after various adjustments were made, of £300.00, the total penalty being £1200.00.

58. Around this time, Mr Daysh was seeking to vary his HMO licence by the addition of a bedroom and as such, intended to have all the outstanding work in addition to a wider scheme of refurbishment done by 6 August 2025 except for the new carpets which were scheduled for a few days thereafter.

59. Mr Merchant completed his last inspection on 6 August 2025 noting that all the works had been completed, albeit "18 months overdue". On 18 August 2025 the Respondent issued a Final Notice of £1,000. The sum was reduced to factor in completed work. A few months later, when the Respondent contacted Mr Daysh regarding non-payment,

he explained that he had not received the Notice. It was therefore re-issued with a modified date of 7 October 2025.

60. The Final Notice recorded the following allegations:

Section 234 – management regulations in respect of a House in Multiple Occupation.

- *Management regulation number 7 – duty of manager to maintain common parts, fixtures, fittings and appliances*

Inspection on the 16th April 2025 found breaches to be still present and a further inspection on the 6th August found only one breach still present.

61. The offence date is 25 September 2023 to 6 August 2025. The reasons section referred to (but did not incorporate) the post-inspection letter dated 25 September 2023. The remainder of the narrative referred to extended compliance periods and inspections but failed to identify in any detail which allegations were being pursued. It is important to note that no extraneous material was provided with the Final Notice except for a covering letter, which made the same erroneous reference to the Licencing Regulations 2007 (UKSI 2007/1903).

62. On 14 October 2025, Mr Daysh emailed the Respondent to say that he would be challenging the penalty in the Tribunal, accordingly, he requested the Respondent's policy and evidence. The response provided him with a link to their enforcement policy and advised pursuing a "subject access request" for the evidence.

63. In the same chain of email correspondence, Mr Daysh referred to this approach as "confusing" and noted that a subject access request could take time to comply with. In his appeal form to the Tribunal dated 28 October 2025 Mr Daysh said, among other things:

> 10.14 "the notice is invalid because it is poorly written and does not make any sense"
>
> 10.18. "No calculation has been provided. Notice does not make sense"

64. This is important because the issue on this appeal was not a late technical point that was taken opportunistically, in fact it was the principal focus of his application to the Tribunal.

65. When giving evidence, Mr Merchant adopted his witness statement and exhibits. He explained the inspection and enforcement history and the basis upon which the Respondent considered that breaches of the 2006 Regulations had occurred. He stated that the second civil penalty justification matrix document contained an error in referring to regulation 8, which he said should have been a reference to regulation 7, and that the penalty was reduced to reflect progress in completing certain items of work and representations made.

66. Mr Merchant said that the matrix had been updated to take account of compliance with some items, resulting in a reduction of the penalty be he accepted that the third and fourth items, i.e. the cable boxing and the wallpaper peeling were not on the first justification matrix and therefore the allegations had changed from the first stage to the second. He was unable to point to any part of the statutory scheme under schedule 13 and section 249A of the Act that would allow him to change an allegation whilst the process was underway.

67. In cross-examination, Mr Merchant was challenged on the absence of a final matrix showing the calculation for the reduction from £1,200 to £1,000, and queried who authorised the reduction. Mr Daysh also explored issues of access and communications with tenants and contractors, including emails said to show that tenants sought to delay works and that access difficulties contributed to delay. Mr Merchant said he had not advised that works were not important and denied undermining the urgency of the works. We asked Mr Merchant to clarify the first and second ("Conservatory Allegations") and how he said that these items amounted to a breach of the 2006 Regulations, with reference to the specific provisions of Regulation 7. He was unable to assist with respect to the first allegation, and he said the second concerned the obligations to maintain the property in good and clean decorative repair (7)(1)(a) of the 2006 Regulations.

68. The Tribunal asked whether the justification matrix had been provided to Mr Daysh; the evidence was that it was an internal document only. The parties agreed that the first time Mr Daysh received the penalty notice justification matrix for the Notice of Intention and the Final Notice, followed the Tribunal's directions, around 13 April

2026, weeks before the final hearing. In his evidence to the Tribunal, he said that he had no knowledge of how the Respondent was calculating its figure and that he saw the matrix “a couple of weeks ago when I agreed the bundle”.

69. The Tribunal also explored the factual nexus between extending time for compliance with requested works and the separate statutory process for issuing a notice of intent and, if appropriate, a final penalty notice.

70. Mr Carpenter adopted his witness statement and exhibits; he gave evidence about the decision-making leading to the final penalty amount. He did not use the matrix in the Respondent’s enforcement policy to calculate the reduction from £1,200 to £1,000 and could not recall precisely which item(s) remained outstanding at a particular stage. His said that even where compliance was later achieved, enforcement action and a financial penalty could be justified in the public interest to promote compliance, deter future breaches by the offender, and deter others within the sector; he considered there had been complaints and that condition of the Property had required improvement. We should add that we accept Mr Carpenter’s evidence regarding the public interest in pursuing these matters.

71. Finally, Mr Daysh gave evidence and confirmed the truth of his witness statements and statement of case. In summary, he said that he understood the Respondent was requiring works to be carried out, but maintained that access difficulties and tenant resistance became a significant issue from around late summer 2024; that he had health and mobility difficulties (including awaiting a hip operation) which affected his ability to attend the property; and that certain works (such as remedial works to the conservatory) were more complex and required multiple attempts. He also pursued a broader refurbishment programme which ultimately improved the property and supported renewal/variation of the HMO licence.

72. We heard closing summaries from both parties. Mr Jarvis suggested that for allegation (1) recorded on the final civil penalty justification matrix, the relevant management regulation was 7(1)(c) and (b). The walls fall with (1)(a) and (6)(2)(a). Mr Jarvis said that the Notice of Intention was triggered by the culpable breaches that were sited within the Notice of Intention itself. The matrix was an internal working document; informative not determinative on the Tribunal; therefore, it was immaterial that the allegations changed. Mr Daysh had not seen the matrix at either stage; it therefore had no effect at all.

73. Alternatively, he said that the Final Notice could be partially cured. The Conservatory Allegations were outstanding from 2023 and to that end, Mr Daysh could not avail himself of a reasonable excuse defence because there were clear periods where no one was impeding access to the Property. He referred to the absence of any contractors' invoices regarding works that had been done. In terms of the whether an offence is committed beyond reasonable doubt, if Mr Daysh had an obligation to do some work and he failed to comply with that regulation then an offence has been committed. It was a strict liability issue. Mr Jarvis said that nothing turned on the extended compliance periods, this is because Mr Daysh was simply being afford more time to comply rather than no offence being committed.

74. Mr Daysh summarised his case regarding the procedural faults to say that he wasn't aware of the matrices and couldn't establish how the numbers added up. The Final Notice was vague, the wording on both documents in terms of the justification as also vague. He referred to the issues regarding access and referred to tenants being difficult. Regarding the Final Notice, he said that the "final order *(sic)* is an absolute mystery".

<u>Decision</u>

75. This decision explains the matters which are critical to the decisions we have made. It will not describe every argument in relation to this case because that would not be proportionate, but we have considered all the points made by the parties. Nothing in this decision should be taken as indicating that any other submission or evidence has been overlooked.

76. The Tribunal identifies the following sequence of issues raised in this appeal as relevant to the issue of validity:

    a. Whether the Notice of Intent and Final Notice complied with paragraphs 3 and 8 of Schedule 13A of the 2004 Act;
    b. Whether any non-compliance caused prejudice to the Applicant;
    c. Whether the Notice was partially curable on appeal.

Was the Notice of Intent compliant:

77. Paragraph 3 of Schedule 13A of the Act requires that a Notice of Intent must set out the authority's reasons for proposing to impose a financial penalty. Those reasons must be sufficiently clear and detailed to amount to particulars of the alleged offence, enabling the recipient to understand the case and to make meaningful representations.

78. Here, it is wholly unclear which allegations were comprised in the Notice of Intention, which was served as a stand-alone document. As the evidence in this case demonstrated, this did not enable Mr Daysh to exercise the right conferred by paragraph (4) of Schedule 13A to make meaningful written representations to the local housing authority. We note, with some irony, that when Mr Daysh asked for more information, he was simply told to make a subject access request, a suggestion which we found to be unhelpful and of doubtful necessity. We note too that without the civil financial penalty justification matrix, the Tribunal would not have understood the Respondent's case.

79. As such, the requirements of paragraph 3 of Schedule 13A that a notice of intent must set out the authority's reasons for proposing a financial penalty were not met.

Was the Final Notice compliant:

80. We turn then to the Final Notice, because unlike the Notice of Intent, the Final Notice did correctly refer to the 2023 Schedule in the 'reasons' section of the notice, but the Final Notice suffers from two defects. Firstly, it is materially vague and does not identify the specific acts or omissions comprised in the offence. Secondly, and more significantly, the allegations advanced differ from those which formed the basis of the Notice of Intent and introduce new matters.

81. We know this only because we, as the Tribunal, were provided with the final civil penalty justification matrix which showed different allegations to that comprised in the first one. We reject Mr Jarvis's invitation to ignore the second justification matrix because that approach does not produce a fair outcome which underlies the statutory process in Schedule 13A.

82. We found it telling that Mr Merchant was unable to point to any part of the 2004 Act that would permit such an approach. It is a fundamental cornerstone of justice and fairness that any person alleged to have committed an offence is entitled to know the case against them, and if it changes, that they have at the very least a right to respond.

Whether the defects caused any identifiable prejudice

83. The Tribunal is satisfied that these defects caused actual prejudice. Mr Daysh was not placed in a position to understand the case against him within the statutory process and was thereby denied a meaningful opportunity to make representations under paragraph 4 or to decide how to respond to the Final Notice.

84. In particular, the Tribunal finds that the absence of clear particulars and the later introduction of additional allegations deprived Mr Daysh of the opportunity to address those matters at the appropriate stage.

85. On any sensible view, Mr Daysh was denied the opportunity to respond to the third and fourth allegations pertaining to the wire box and peeling wallpaper. The fact that he did not know the allegations had changed does not assist the Respondent. It is one thing to say that Mr Daysh perfectly understood the work he was required to do in correspondence with the Respondent, but it is quite a stretch to say that he ought to have deduced from email chains referred to in the Final Notice what offences he was alleged to have committed.

86. In reaching this conclusion we bear in mind the observations of His Honour Judge Hodge KC that the reasons for imposing a financial penalty are not simply a factual background, they should be treated as providing particulars of the offence.

Could the Notice be saved?

87. The Tribunal has considered whether these defects were curable on appeal by reference to the proposition in *Wang*. There was the option, as advanced by Mr Jarvis in his alternative proposition, that the Final Notice could be partially saved in relation to the Conservatory Allegations.

88. However, this too cannot succeed for the following reasons.

89. Firstly, the Final Notice did not refer to the Conservatory Allegations. Although the 25 September 2023 post inspection letter was incorporated, it was document drafted around two years prior and in the intervening years the works schedule and compliance periods had changed. Indeed, items which Mr Merchant had identified as

"recommended" became "required" as over time they worsened, or items which were present on the post-inspection letter were carried out or incorporated as part of the larger refurbishment project. It was difficult to understand by reference to the Final Notice alone that the conservatory remained an issue, indeed there is no mention of the conservatory on the Final Notice at all, by contrast some reference is made to carpets and decorating which could assist the recipient in understanding the council's concerns.

90. Secondly, Mr Merchant was unable to tell us in evidence *how* the first of the two Conservatory Allegations breached Regulation 7 of the 2006 Regulations, where it said "vegetation building up; clear any blockages which will cause water pooling". On the facts it was unclear whether the allegation was that a windowsill needed repair or if it was guttering causing water pooling as the particulars for the Conservatory Allegations had changed over time. On this point, different regulations would be engaged depending on the part of the building and we had some doubt whether an element of the fabric of the building was properly captured by Regulation 7(6)(2). Only the second Conservatory Allegation could be accurately described as a breach of Regulation 7(1)(a) "good and clean decorative repair".

91. Thirdly, the Respondent had extended the compliance period for works to the conservatory and on the facts, this had caused a bit of a grey area. We noted that Mr Merchant, quite early on, had agreed for those works to be postponed until after the following summer. Mr Jarvis impressed upon us that the extension had no bearing on whether the strict liability offence was committed which to some extent is correct, however, it has got a bearing on the extent to which a person may have a reasonable excuse for non-compliance during the allegation period. The work required to the conservatory, when put into context of all the works required to the house and his discussions at various junctures with the Respondent, was a low priority. So, when Mr Daysh was told he could deal with it later, it was reasonable that he did so. In evidence, Mr Daysh explained that he was surprised to receive a Final Notice as he considered matters to have been resolved.

92. Fourthly, this case was materially different from *Younis* and *Wang*. The extranous document which provided clarity—the civil penalty justification matrix—was not provided to Mr Daysh until shortly before the hearing, following Tribunal directions. It did not form part of the statutory process. The defect in this case is therefore not

merely poor drafting, but the absence of accessible particulars within the statutory scheme.

93. We find that this had direct bearing on the presentation of evidence to the Tribunal. Mr Daysh had spent much of his time and energy preparing for this case, but in his evidence, he referred largely to irrelevant facts and circumstances. We heard a disproportionate amount of evidence regarding access, which we find was not the insurmountable hurdle that Mr Daysh suggested it to be. But all of this distracted unnecessarily from the real point which is that Mr Daysh had attempted to fix the conservatory leak on at least three occasions. There was plainly a factual nexus between the two stages comprised in the Conservatory Allegations in that the decorative work followed identification and repair of the fault. That is the sort of evidence that the Tribunal considers was far more relevant to the reasonable excuse defence but without knowing the conservatory was in issue, he could not have possibly known to focus on that evidence and bring relevant evidence to the Tribunal. By the time he received the Respondent's evidence, the remaining directions only permitted a "concise Reply" which was hardly sufficient to mount a defence.

94. In conclusion it would not produce a fair and just result to save part of the Final Notice based on the evidence from the Respondent during the hearing because the procedural failure had denied Mr Daysh the opportunity to properly mount a relevant reasonable excuse defence.

95. Alternatively, and in any event, on the limited evidence that was produced, we were satisfied on the balance of probabilities that Mr Daysh had a reasonable excuse for failing to comply with the Conservatory Allegations.

Conclusion

96. The Tribunal determines that deficiencies of this nature cannot be cured by material disclosed only during the appeal. To hold otherwise would undermine the statutory purpose of the notice procedure.

97. The requirements in Schedule 13A are statutory preconditions to the lawful imposition of a financial penalty. Where those requirements are not met, and where the defect deprives the recipient of a fair opportunity to respond, the resulting notice is not legally valid.

98. As the Tribunal has already observed there are irreparable procedural errors that underlie this case. The Final Notice was invalidated by the lack of information on it, the change of allegations and it could not be saved by the evidence that we heard at the hearing.

99. For the reasons set out above, we cancel the Final Notice dated 7 October 2025.

Rights of appeal

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

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

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

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

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

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