FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00CW/HNA/2025/0001** **BIR/00CW/HML/2024/0005**
Properties	**:**	**37 Bushbury Lane, WV10 9TN** **33 Upper Villiers Street, Blakenhall, Wolverhampton WV2 4NU**
Appellant	**:**	**Mr Carl Reynolds**
Representative	**:**	**Mr D Coward (counsel) by direct access**
Respondent	**:**	**Wolverhampton City Council**
Representative	**:**	**Ms M Caney (counsel) (instructed by Wolverhampton City Council Legal Department)**
Type of applications	**:**	**Appeal against refusal to grant an HMO licence under section 64 Housing Act 2004 (1)** **Appeal against the imposition of a financial penalty under section 249A Housing Act 2004 (2)**
Tribunal members	**:**	**Judge C Goodall** **Mr R Chumley-Roberts MCIEH, J.P.**
Date and place of hearing	**:**	**7, 8, and 9 April 2026 at the Tribunal Hearing Centre, Centre City Tower Birmingham**
Date of decision	**:**	**7 July 2026**

DECISION

Background

1. This is an appeal against two decisions made by Wolverhampton City Council ("the Council") being:

    a. A decision on 26 June 2024 to refuse the Applicant an HMO licence for his property at 33 Upper Villiers St, Blakenhall, Wolverhampton WV2 4NU ("33UV"); and

    b. A decision on 17 December 2024 to impose two financial penalties each of £17,000.00 upon the Applicant for two breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Management Regulations"), relating to 37 Bushbury Lane, Wolverhampton, WZ10 9TN ('37BL").

2. The Appellant is the freehold owner of 33UV. The freehold of 37BL is owned by a Mr Maurice Malcolm ("MM"). The first question raised in the case is whether 37BL was an HMO as at 8 May 2024, and if so whether the Appellant was managing 37BL to the extent that he was required to comply with the Management Regulations. The second question is whether the information about the actions and conduct of the Appellant in relation to 37BL demonstrated that he was not a fit and proper person to hold an HMO licence for 33UV.

3. The appeals were lodged separately, (the licensing appeal on 24 July 2024 and the Financial Penalty appeal on 13 January 2025) but were ordered to be consolidated. They are so inter-related that the Tribunal has decided to issue one consolidated determination in respect of both appeals.

4. The Tribunal conducted a hearing of the appeals at the Tribunal's hearing centre in Birmingham on 7, 8, and 9 April 2026, at which oral evidence was heard. Final submissions could not be dealt with at the hearing and have been provided later, each party also providing a response to each parties' final submission.

5. With the agreement of the parties representatives, on 7 and 8 April 2026, the Tribunal heard the Respondent's oral witness evidence first, given by four members of its environmental health team, being Ms Bev Patel ("BP") who is a housing standards enforcement officer, Ms Juliet TsoTsoma ("JTS") who is a housing standards officer, Mr Bikramjit Singh ("BS") who is a senior private sector housing licensing officer, and Mr James Turner ("JT") who is the Team Leader of the Council's private sector housing enforcement team, and by Mr Matthew Foottit in relation to proving the service of a document. On 9 April 2026, the Tribunal heard the oral witness evidence of the Appellant. The Tribunal has also considered a hearing bundle comprising 1,384 pages. In the following paragraphs, we set out the law, the facts that were found, and our discussion on the merits of the appeals, before setting out our final determination. Occasionally,

pages reference to the hearing bundle are given for the assistance of the parties.

Law

Licensing and the fit and proper person test

6. The Housing Act 2004 ("the Act") creates a statutory regime for licensing of HMOs. All parties accept that 33UV could be an HMO which would be subject to compulsory licensing under Part 2 of the Act were the Appellant to choose to operate it as one. A person who has control of an HMO as defined in the Act or manages it without a licence when the HMO is required to be licensed commits a criminal offence under section 72 of the Act. Alternatively, the appropriate local authority can impose a financial penalty on that person (section 249A).

7. Under section 64 of the Act, when an application for a licence is made, a local authority must either grant or refuse it. Before granting a licence, the local authority must be satisfied on matters that are referred to in section 64(3). The matters in that sub-section that are relevant in this case are those set out in sub-sections 64(3) which provides that the relevant matters are:

"(a) that the house is reasonably suitable for occupation by not more than the maximum number of households [specified in the application or some other maximum decided by the local authority]

(b) that the proposed licence holder—

(i) is a fit and proper person to be the licence holder, and

(ii) is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder;

(c) that the proposed manager of the house is either—

(i) the person having control of the house, or

(ii) a person who is an agent or employee of the person having control of the house;

(d) that the proposed manager of the house is a fit and proper person to be the manager of the house;

(e) that the proposed management arrangements for the house are otherwise satisfactory. ..."

12. Section 66 of the Act provides:

S66 Tests for fitness etc. and satisfactory management arrangements

(1) In deciding for the purposes of section 64(3)(b) or (d) whether a person ("P") is a fit and proper person to be the licence holder or (as the case may be) the manager of the house, the local housing authority must have regard (among other things) to any evidence within subsection (2) or (3).

(2) Evidence is within this subsection if it shows that P has—

(a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);

(b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;

(c) contravened any provision of the law relating to housing or of landlord and tenant law; or

(d) acted otherwise than in accordance with any applicable code of practice approved under section 233.

(3) Evidence is within this subsection if—

(a) it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) has done any of the things set out in subsection (2)(a) to (d), and

(b) it appears to the authority that the evidence is relevant to the question whether P is a fit and proper person to be the licence holder or (as the case may be) the manager of the house.

(3A – 3C) not relevant to this case

(4) For the purposes of section 64(3)(b) the local housing authority must assume, unless the contrary is shown, that the person having control of the house is a more appropriate person to be the licence holder than a person not having control of it.

(5) In deciding for the purposes of section 64(3)(e) whether the proposed management arrangements for the house are otherwise satisfactory, the local housing authority must have regard (among other things) to the considerations mentioned in subsection (6).

(6) The considerations are—

(a) whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved;

(b) whether any person proposed to be involved in the management of the house (other than the manager) is a fit and proper person to be so involved; and

(c) whether any proposed management structures and funding arrangements are suitable.

(7) Any reference in section 64(3)(c)(i) or (ii) or subsection (4) above to a person having control of the house, or to being a person of any other description, includes a reference to a person who is proposing to have control of the house, or (as the case may be) to be a person of that description, at the time when the licence would come into force.

<u>*Management Regulations*</u>

8. Management Regulations may be made under section 234 of the Act. The Management of Houses in Multiple Occupation (England) Regulations 2006 were duly made under that section. They impose seven specific duties, though each duty is described in broad terms. Those duties that relate to maintenance or keeping in repair are to be assessed to a standard defined (in Regulation 11(2)) as is "reasonable in all the circumstances taking account of the age, character and prospective life of the house and the locality in which it is situated".

9. Breach of the Management Regulations is an offence under section 234, subject to a reasonable excuse defence, and on conviction a fine or a financial penalty may be imposed.

10. Section 234 itself provides:

234. Management regulations in respect of HMOs

(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—

(a) there are in place satisfactory management arrangements; and

(b) satisfactory standards of management are observed.

(2) The regulations may, in particular—

(a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;

(b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

(3) A person commits an offence if he fails to comply with a regulation under this section.

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

11. As can be seen, the Management Regulations apply to HMOs, and do not apply if a property is not an HMO. They also impose duties upon the person managing the HMO.

12. The definition of an HMO is set out in section 254 of the Act. It was common ground that the relevant test for 37BL and 33UV is the standard test, which is set out in section 254(2) and is:

"(2) A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence, or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

13. The definition of a person managing is set out in section 263 of the Act, which provides:

"263 Meaning of "person having control" and "person managing" etc.

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

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

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

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

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

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

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) 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.”

Financial penalties

14. Financial penalties are imposed under the provisions of section 249A of the Act. An offence under section 234 of the Act is one of the provisions that permit a local authority to impose a financial penalty. There is a statutory limit to the amount of the penalty of £30,000.00 for each offence. Schedule 13A of the Act applies to the procedure, the appeal process, enforcement, and guidance on the imposition of financial penalties.

The appeal process

15. The provisions of Schedule 5 of the Act apply to appeals against a refusal to grant a licence (see section 71). Paragraph 34 of the Schedule applies. The appeal is to be way of re-hearing, but may be determined having regard to matters of which the Council were unaware. The Tribunal may confirm, reverse, or vary the local authority’s decision, and it may direct the local authority to grant a licence on such terms as the Tribunal may direct.

16. Schedule 13A of the Act provides for a notice of intent to be issued first before a financial penalty is imposed, giving the right to make representations within 28 days of the notice. Thereafter, a final notice may

be issued. Like licensing appeals, an appeal is by way of rehearing, but may be determined having regard to matters of which the local authority were unaware. The Tribunal may confirm, vary, or cancel the final notice.

17. In *Waltham Forest v Hussain & Others* [2023] EWCA Civ 733 ("*Waltham Forest*"), the Court of Appeal decided that in conducting the re-hearing of a decision not to grant a licence, the Tribunal should only take account of material that was available to the Council as at the date of its decision not to grant the licence. There is one exception: matters arising of which the Tribunal becomes aware after the date of the Council's decision can be used to assist the Tribunal if they endorse or support a view that the local authority had in mind at the time of its decision (paragraph 70 of *Waltham Forest*). The example given is of a conviction after the local authority's decision arising from circumstances existing <u>before</u> the decision.

18. Our interpretation of *Waltham Forest* is that we should not take into account events or facts that occur after the date of the Council's decisions (unless, in rare cases, paragraph 70 applies), but if facts that were true as at the date of the decision (perhaps as a result of establishing those facts at the re-hearing of the decision) come to light, we may take account of them even though the Council was unaware of them at the time it made its decision.

19. As to the way in which the Tribunal must approach the question raised in the appeals, the authorities suggest (see paragraph 16 *of Brent London Borough Council v Reynolds* [2001] EWCA Civ 1843) that our task is:

    "to make [our] own decision on the application, in place of that made by the local housing authority, and not merely to act as a court of review of the LHA decision. That said, however, the [Tribunal's] jurisdiction is subject to the very significant condition that [it] should pay great attention to any view expressed by the local housing authority and should be slow to disagree with it."

Facts

20. Mr Carl Reynolds ("the Appellant") describes himself as a bathroom fitter and builder. He also owns other rental properties (the precise number is a little unclear), apart from 33UV. Because of dyslexia, he says he has difficulty reading and writing. The Tribunal does not accept that he "cannot" read and write, as it was obvious to us from his ability to navigate the hearing bundle during his evidence that he does have some capability, but in the absence of evidence to the contrary, we accept that his ability is limited.

21. In 2019, the Appellant met Mr Maurice Malcolm ("MM") at an event. The Appellant believed that MM was a solicitor because he said he was. There is independent evidence that MM held himself out as a solicitor from an

email sent by a person working for MM to the Council dated 1 September 2023, in which MM was described as a “duty solicitor”. [C194]

22. It has subsequently come to light that MM is not in fact a solicitor; at least he is not registered as one on the Solicitors Regulation Authority website.

23. MM owned two investment properties, being 37BL and a close-by property at 25 Bushbury Lane. At some point in 2020, MM told the Appellant that 37BL was being used as a cannabis factory and would the Appellant quote for renovating it. The Appellant duly visited 37BL. He noted that it was indeed being used as a cannabis factory and he immediately called the police. At some point, the Appellant and MM agreed that the Appellant would carry out repairs and reinstatement to 37BL, which were finished at the end of October 2020. The bill was part settled by MM, but not in full. The Appellant agreed to accept the balance by accepting the transfer of another property at a reduced price, allowing £50,000.00 of MM’s debt to be regarded as settled through this transaction.

24. MM then asked the Appellant to renovate 25 Bushbury Lane. Work was undertaken in 2021, and the work was completed by July 2022. There was an initial quoted price for this work of £62,000.00. MM though asked for additional works to be carried out, probably on both properties. The documentation supporting the total cost for renovating 25 Bushbury Lane is a little confusing, but the Tribunal accepts (because MM has played no part in this case and the Tribunal therefore accepts the Appellant’s uncontested evidence) that the whole cost was not paid by MM, leaving a debt owing to the Appellant.

25. In April 2022, a few months before the work on 25 Bushbury Lane had been finished, but whilst the Appellant was also still carrying out works on 37BL, a local charity noted that 37BL might be a good prospective home for some clients for whom they were seeking housing. At this point, there was still a working relationship between the Appellant and MM. The Appellant’s evidence is that MM was struggling to find tenants for 37BL and he offered to assist. He had arranged for an advert to be placed on Facebook saying that rooms were available and giving his and MM’s contact details.

26. The local charity probably obtained details of 37BL through knocking on the door whilst the Appellant was working there, or possibly through the advert. However, there is no doubt that the charity regarded the Appellant as the agent, whether that was the correct title or not. The charity required a local authority visit to 37BL as they would not let rooms without confirmation that it met current health and safety standards. Via a Council housing officer from Wolverhampton Homes, a member of the Council’s environmental health team, BP, agreed to carry out an inspection on 4 May 2022. [C47]

27. BP duly met the Appellant at 37BL on 4 May 2022. The property was empty. The Appellant does not accept that he was there in the capacity of letting agent; he was merely the builder carrying out works. It is understandable that BP considered that he was the letting agent, but this may well simply be as a result of the Appellant having been given the title of agent by the charity (who may have grasped the wrong end of the stick – there was no evidence from them), and BP not having had any reason to establish the Appellants precise relationship with the owner of 37BL.

28. BP made some notes of the meeting in an electronic management software programme. They are short, simply identifying that the property was empty, there are works to be done, and she would send a letter with links to fire safety guidance [C766]. In her statement she says she had no basis for believing that the Appellant held a key for the property.

29. BP followed up her meeting at 37BL with a letter to the Appellant's company, Aqua Properties WM Ltd, dated 9 May 2022. [C50] The letter simply noted some details of the accommodation and provided a link to the Council's requirements for fire safety. There was no form of "approval" of the property for letting, nor any suggestion that it would not be suitable for letting. Neither of these are remarkable. The Tribunal has not been provided with any details of subsequent correspondence with Wolverhampton Homes. Ms Patel notes that she closed the enquiry following the issue of the letter.

30. The Appellant's case is that works to both 25 Bushbury Lane and 37BL were complete by around July 2022. At that point the Appellant expected to be paid for the works by MM but payment was not forthcoming. MM became evasive and refused calls. The Appellant instructed solicitors in the autumn of 2022 to pursue the debt, which the Appellant believed was in the region of £40,750.00. He recalls a conversation with MM in around December 2022 during which MM suggested that the Appellant take the rent from 37BL as settlement for the debt in instalments.

31. It has been suggested to the Council by MM that the Appellant seized control of 37BL without authority, had changed the locks, and had created tenancy agreements in his own name when tenants commenced occupying a room at 37BL. The Appellant denies these accusations.

32. In making findings of fact in this case, the Tribunal has to consider the best evidence available. The fact that neither party called MM to give evidence, or provided the Tribunal with a witness statement from him, means that there is no real challenge to the Appellant's version of the facts, at least up to the end of 2022. We therefore accept his version of the facts at least to that point, the most important elements of which are:

    a. He is a bona fide builder with some property interests;

b. He entered into a commercial arrangement with MM for works on 25 Bushbury Lane and 37BL as a result of which MM owes him substantial sums;

c. As a means of settling this debt, MM agreed that he could collect rent on 37BL;

d. MM remained the owner of 37BL and approved tenants and the terms of tenancy agreements. There is a dispute about who signed the tenancy agreements;

e. This does not mean that the Appellant is not an agent, within the meaning of section 263 Housing Act 2004, for the purposes of the Management Regulations 2006.

33. Email correspondence between a Council Environmental Health employee called Aisha Khan and solicitors for MM was exhibited to the witness statement of JTS. These emails appeared to show that MM had made applications for an HMO licence in respect of both 25 Bushbury Land and 37BL in or by around March 2023, which the solicitors were following up. The applications were said to have been made because MM's new mortgage company required copies of the licences. It was also said in the emails that MM was unable to gain access to the properties as the locks were alleged to have been changed by the Appellant. The Council queried the need for a licence for 37BL as the applications suggested there were four occupants only, pointing out that a licence was only required for a property with five or more occupants in two or more households, and referring to other conditions required to be satisfied before a licence was required. It was later discovered that these HMO licensing applications by MM had been started but in fact never submitted.

34. On 22 June 2023, the Appellant submitted an application for an HMO licence for 33UV. The application was handled by BS and BP. Certain information was missing, which the Council requested from the Appellant by letter dated 23 June 2023.

35. JTS decided to seek further information about 37BL as she had received service requests to conduct HMO investigations into 25BL and 37BL. She served notices on MM, dated 4 July 2023, to inspect the properties under section 239 of the Act. Both visits were unsuccessful, by which we take it that access was not gained. [C188]

36. JTS then contacted MM by telephone, no doubt in order to ask about her concerns over the failed inspections. MM's explanation was that the Appellant had taken over the properties without his consent. She then received an email dated 1 September 2023 from a lady known now to be Lesley Rainey, who we understand is a mortgage adviser who was working for MM, confirming that MM had been denied access to his properties by

the Appellant, who had changed the locks, installed tenants himself, and who had issued threats to kill MM.

37. JTS made various unsuccessful attempts to contact the Appellant to discuss these allegations. Eventually, the Council realised it had the Appellants contact details via his ongoing application for a licence for 33UV, and JTS spoke to him on 5 October 2023. He provided information explaining how he came to be collecting rent at least for 37BL, as has been set out above. JTS's evidence was that the Appellant informed her that he was collecting rent from occupants at both properties as part payment of the debt he was owed by MM. The Appellant disputes this; he agrees that he collected rent from 37BL but not from 25BL (on which he was pushed strongly in cross-examination). There is no evidence from any of the tenants at 25 Bushbury Lane that any of them in fact paid rent to the Appellant. There was nothing in JTS's written or oral evidence confirming that the Appellant specifically described himself as the manager of 25 Bushbury Lane in their telephone conversation on 5 October 2023.

38. Meanwhile, the Council notified the Appellant of a proposed HHSRS inspection of 33UV on 13 October 2023, in connection with the HMO licence application. This was carried out by BP who noted certain works were still required, [C17 – 22] but was otherwise content to grant the licence with a requirement that the works be completed within a set timescale. A draft licence for five years was issued on 17 October 2023.

39. Going back to JTS's investigation, she arranged a pro-active visit to 25 Bushbury Lane on 2 November 2023. She found it occupied by six persons (including a baby) with the baby's mother saying her husband also stayed there, and it had not been possible to access another room. The occupants however refused to give any details of how they came to occupy the property or to whom they were paying rent.

40. Following the inspection, JTS issued what she described as "warning letters" to MM and to the Appellant. The letters are both dated 8 December 2023. The letter to MM identifies him as the owner of the property; the letter to the Appellant alleges that he was the manager as "from our previous telephone conversation you identified yourself as the person managing the property". As appears above that fact is disputed.

41. The warning letters go on to allege that 25 Bushbury Lane was being let to three or more tenants who form two or more separate households and share facilities such as kitchen bathroom and toilet without a licence, contrary to section 72 of the Act. The letter required that an application for an HMO licence be submitted. It also alleges breach of regulations 3(a), 3(b), 4(c), 4(2) and 4(4) of the Management Regulations. It demands (under the authority of regulation 4(2)) that the recipient install a Grade D LD2 fire protection system with specific installations specifications being given.

42. We find these to be a curious letters. There is an obvious misunderstanding on the part of the writer in alleging that an HMO requires a licence if occupied by three or more occupants from two or more separate households. The statutory obligation to licence only arises (inter alia) if five or more people occupy the property. The reference to regulation 4(c) must be a reference to regulation 4(4)(c). Regulation 4(2) gives no authority for the Council to demand a new fire protection installation; that would normally be the outcome of a decision to serve an improvement notice (or the owner / manager agreeing to install one as a result of an informal recommendation). The letters were therefore inaccurate in setting out the Council's powers of enforcement and in making regulatory demands upon the recipient.

43. It may have been the case that JTS made a slip in referring to three occupants triggering the need to licence the property. However, she repeated her view that this was the trigger number during her cross-examination and eventually accepted when challenged that she mistakenly thought this was the law.

44. Clearly JTS acted, from the middle of 2023, on the basis that in respect of both 25 Bushbury Lane and 37BL the Appellant was potentially committing an offence under section 72 of the Act. There was a real basis for that view in respect of 25 Bushbury Lane following the inspection on 2 November 2023 if the Appellant was truly managing that property (though that inspection and subsequent action came to nothing), but, as will be seen, there was never a basis for believing that 37BL was an unlicensed HMO at any time.

45. It appears that neither MM nor the Appellant responded to the warning letters. JTS says that by March 2024, 25 Bushbury Lane was now unoccupied.

46. At this point, focus shifted to action regarding 37BL. On 12 December 2023, the mother of one of the occupants of 37BL raised a concern with the Council that the occupants had received a large utility bill for the property when the rent was meant to be inclusive of utility costs. The person dealing with the concern eventually informed JTS that it had been resolved and there was no need to visit 37BL; the timescale for resolution has not been disclosed. But JTS had concerns about the use of 37BL as an HMO.

47. The narrative of JTS's witness statement suggests that at this point in time her concern was indeed 37BL and that on 12 February 2024, she sought further information from MM and the Appellant about 37BL through the issue of notices under section 16 Local Government (Miscellaneous Provisions) Act 1976 asking them to declare their interests in the property, and under section 235 of the Act requiring the production of documents. Both notices were sent on 12 February 2024 with a compliance deadline of 26 February 2024. The section 16 Notice had been dated 23 January

2024, but it seems from the covering letter that it may not have been posted until 12 February 2024.

48. However, all four notices (two to the Appellant and two to MM) were raising queries about 25 Bushbury Lane, not 37BL.

49. Notwithstanding, the Appellant responded to the s16 notice on 23 February 2024 by emailing JTS. In his email be reiterated that he is not the landlord and his "only connection to [the properties] is the debt that [MM] still owes me for work we carried out on the property's (sic)". The email confirms that the Appellant has an arrangement with MM for him to take the rent from "his properties" until he's paid the invoice in full.

50. On 27 February 2024, the Appellant provided a set of documents in purported compliance with the section 235 Notice under cover of an email. That email set out more detail of the work undertaken by the Appellant on MM's properties and restated the Appellant's agreement with MM that he would take the rent from 37BL to discharge the debt incurred by MM. He stated that he was receiving rent from Gary Taylor (Room 1) and Thomasz Rakowski (Room 4). He denied receiving any rent from 25 Bushbury Lane.

51. Documents supplied included copies of the Appellant's bank statements showing the payment of rent in December 2023 from these two occupants (Thomasz Rakowski's rent being received as a universal credit payment).

52. Unfortunately, it seems that MM never formally replied to the Notices, or if he did his replies were not shared with the Tribunal. A person purporting to be his representative promised to send documents but apparently never did. She did however share a crime reference number on 5 March 2024. The Tribunal has not been informed what crime is alleged.

53. JTS informally arranged to visit 37BL on 25 April 2024. No notification of this visit was provided to the Appellant or (it seems) MM, so it was not a visit to carry out an HHSRS inspection. The purpose was to determine who is responsible for managing 37BL, and for handling repairs, to inspect any tenancy agreements, and ensure fire safety within the property.

54. The visit was duly made on 25 April 2024 by JTS, with her colleagues BS and BP. BP was present to conduct a structural inspection. The property is on the ground and first floor. The front door opens onto a hallway with a bedroom with ensuite bathroom on the front left. The hallway then leads into a lounge and follows through into a kitchen, and behind that there is a bathroom with toilet, WHB, washing machine and dryer. On the first floor there are three bedrooms, all with ensuite facilities.

55. The Council representatives were let in to the property by Gary, who said his room was the ground floor bedroom, Room 1. JTS talked to Gary and then moved upstairs where she found BP talking to a man called Paulo. He said he was homeless and was visiting his friend Marta. However,

Paulo became distressed and the Council representatives decided to terminate the visit and left, but not before taking photos of Paulo's and Marta's Polish passports.

56. JTS arranged to revisit 37BL on 8 May 2024, this time accompanied by the Police. Again, it seems neither the Appellant nor MM were informed. On this visit, JTS was accompanied by BS only. They met Gary and Paulo again and also met Thomasz for the first time. Marta was not present. The Council representatives completed pre-prepared information sheets with Gary, Paulo, and Thomasz. The answers given were:

   a. [C299] Gary. Gary reported that the landlord was the Appellant. His rent was £440 per month. He produced an undated tenancy agreement [303] showing the Appellant as the landlord. He could not recall how long he had been at the property. He had no accommodation elsewhere in the UK.

   b. [C343] Paulo. Paulo reported that his landlord was Marta. He had only been at the property for a week, having moved there with a friend, assumed to be Marta. Marta's rent was £400 per week, paid to Carl. He also had accommodation elsewhere in the UK – an address was provided.

   c. [C66] Thomasz. Thomasz reported that his landlord was the Appellant. He had moved in in May 2022, paying rent of £440 per month. He claimed universal credit. He had no accommodation elsewhere in the UK. He also produced a letter from Aqua Properties WM Ltd, addressed to the Job Centre, signed by the Appellant, and dated 15 June 2022, confirming that he was not liable to pay utility bills or council tax for his occupation of Room 4 at 37BL.

57. In her witness statement, JTS has recorded her observations of the condition of 37BL. She noted in the statement:

   a. In Gary's bedroom that the sink was blocked, there was mould near the bay window, and signs of a leak on the front external wall;

   b. Fire safety issues, being dust covered fire alarm, items in the ground floor storage exacerbating fire risk, a key operated rear exit door, broken architrave on the kitchen fire door from the lounge, in Room 2 - no window restrictors, no fire door brush fittings, no self-closing hinge and the fire alarm was held together with Sellotape;

   c. Disrepair items being a boiler leak, a broken and missing window in the ground floor bathroom, a broken toilet bowl lid, dirty floor in the shared bathroom, some damaged plaster, vegetation in the gutter, overgrown garden, and poor external cosmetic condition.

58. Following this inspection, JTS decided to invite the Appellant and MM to attend an interview under caution (a PACE interview). In doing so, she must have considered there was at least a prima facie case that they had committed criminal offences. A letter of invite was delivered to them both on 15 May 2024. The interviews were to be held on 30 May 2024.

59. The letter of invite [C359] sent to the Appellant was headed with the 37BL address. It stated:

"It is alleged that you are responsible for the below offence:

1. Failure to licence a house in multiple occupation that is required to be licensed in accordance with Section 72 of the Housing Act 2004.

2. Failure to comply with duties imposed by Regulation 4 of the Management of Houses in Multiple Occupation (England) 2004, an offence under section s237 Housing Act 2004. …"

60. In addition, JTS also served a notice on the Appellant under s16 Local Government (Miscellaneous Provisions) Act 1976, also dated 15 May 2024, seeking information about the Appellant's interest in 37BL, with a date for compliance of 29 May 2024.

61. It is worth pausing at this point to step back and consider the factual basis for the allegation that the Appellant had committed these offences as at 15 May 2024. None of the evidence available to JTS suggested the commission of an offence under section 72. At both inspections, on 25 April and 8 May 2024, there were only three people at 37BL, Gary, Thomasz, and Paulo. There was some evidence that a fourth person, Marta, was also living there. As five occupants are required for a property to be licensable, we find that there was never any basis for alleging that an offence under section 72 had been committed.

62. So far as breach of the Management Regulations is concerned, JTS needed to be satisfied, beyond reasonable doubt, before she could with confidence pursue the offence, that 37BL was an HMO, the Appellant was the manager, and that the deficiencies alleged existed. So far as the first of these criteria is concerned, all elements of section 254 of the Act were required to be satisfied. We will discuss this in more detail below.

63. We also note that the letter of invite did not particularise the alleged breaches of the Management Regulations. In fact, at no time prior to the issue of the Notice of Intention to issue a Financial Penalty Notice, which was dated 17 October 2024, were the details of these allegations put to the Appellant.

64. The PACE interviews with MM and the Appellant took place as arranged on 30 May 2024. The interview with the Appellant was conducted by JTS, with BP also being present and asking questions. There is no record of the length of the interview, but the transcript covers 65 pages. It was clearly a difficult interview. The Appellant was highly defensive and evasive. He pointed out that he had dyslexia. We draw some factual points from the transcript:

a. The Appellant stuck to his story that he was not the manager of 37BL;

b. He freely admitted that he received rent from Gary and Thomasz;

c. He explained again the circumstances under which the arrangement for him to collect the rent had been agreed with MM, namely that MM owed a substantial debt for work on 37BL and had said he could collect the rent on the property;

d. He denied receiving rent from any other occupant of 37BL. No allegation that he received rent from any other person was put to him (including Marta);

e. He denied entering into a written tenancy agreement with Gary. His suggestion was that the agreement the interviewers were in possession of was a forgery;

f. The Appellant's view was that the whole allegation that he was the manager was a set up on the part of MM which the Council had swallowed;

g. At no time did the Council interviewers explain that a person receiving rent was treated in law as being the manager of a property;

h. Allegations that the Appellant had breached the Management Regulations were not put to the Appellant at all.

65. Returning to the chronology concerning the Appellant's HMO licensing application, BS sent the Appellant a notice of proposal to refuse the licence on 19 June 2023. The notice stated that representations may be made to the Council by 3 July 2023, that being the consultation period required under paragraph 12(2)(a) of Schedule 5 of the Act.

66. On 26 June 2023 (i.e. before the end of the consultation period set out in the notice of refusal), the Council sent a notice of refusal of the HMO licence for 33UV. The reason for refusal of the licence was given as:

"The application cannot be granted as Fit and Proper person criteria has not been met to the satisfaction of the Authority in relation to both the proposed Licence Holder and Manager for 33 Upper Villiers St Blakenhall Wolverhampton WV2 4NU.

Reasons for Decision:

3. Mr Carl Reynold has been found to be involved in recent relevant offences relating to breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 in an HMO: 37 Bushbury Road Wolverhampton WV10 9TN. Offence under S234 Housing Act 2004

4. Mr Carl Reynold has provided false and misleading statements in relation to involvement as a landlord and manager of HMO: 37 Bushbury Rd Wolverhampton WV10 9TN. Offence under S238 Housing Act 2004"

67. Following the PACE interview, JTS completed an internal Council form called an Authorisation to Take Further Action, seeking authorisation to issue a financial penalty. This was discussed internally with her team leader, JT. On 16 October 2024, JT and Mr John Rosendale, Director of Resident Services, signed a Notice of Intent to issue a financial penalty with was issued on 17 October 2024.

68. The Appellant said that he never received the Notice of Intent to impose a financial penalty. The Respondent called evidence from Mr Simon Foottit, of A V Couriers, who they had engaged as their process server. His documentary evidence included a written record of the collection from JT of a package for delivery to the Appellant's address on 17 October 2024, and oral evidence supported by photographs that that package was posted through the letterbox of the Appellant's house at 11.29am that day. Mrs Hilary Foottit provided evidence from a tracking device on the vehicle being used by Mr Foottit, that on 17 October 2024 the vehicle was outside that address at that time.

69. JT's evidence was that he prepared the envelope into which he said he placed a copy of the Notice of Intention which was the envelope collected by Mr Foottit on 17 October 2024. The Tribunal finds that the Notice of Intent to impose a financial penalty was duly served on the Appellant on 17 October 2024.

70. The Notice of Intention proposed a financial penalty of £43,000.00, imposed for three alleged offences under the Management Regulations, being:

   a. Offence under Regulation 3 – duty to provide information to occupiers – Penalty £9,000.00

   b. Offence under Regulation 4 – duty to take safety measures – penalty £17,000.00

c. Offence under Regulation 7 – duty to maintain common parts, fixtures, fittings and appliances – penalty £17,000.00

71. However, applying its policy relating to the totality principle, the Regulation 3 penalty was withdrawn, reducing the total penalty to £34,000.00.

72. The alleged breaches under Regulation 4 were:

- Key-operated rear exit door
- Items stored in GF Storage room posing fire risk
- Dust-covered entrance fire alarm
- No fire door fittings in Room 2
- Fire alarm in Room 2 held together with Sellotape
- Damage to kitchen fire door

73. The alleged breaches under Regulation 7 were:

- Broken architrave on the kitchen door from the lounge
- Leak from the boiler
- Damaged plaster with holes on the 1st floor landing
- Broken and missing window at the rear of the ground floor
- Vegetation in the guttering
- Broken toilet bowl lid in the ground floor shared bathroom
- Dirty floors in the shared ground floor bathroom and kitchen

74. The Council has adopted an enforcement policy for financial penalties using the two criteria of culpability and level of harm, with a judgement to be made in respect of each of those criteria as to whether the offence fell into a High, Medium, or Low category. In relation to both alleged offences, it assessed the culpability level to be High, and the level of harm to be Medium. On the matrix, this produced a penalty amount of £15,000.00.

75. The justification for the selection of a High level of capability arose from the following factors:

- The Appellant has been obstructive as part of the investigation
- Serious and/or systematic failure to comply with their legal duties

76. The policy then provides for adjustments to be made to reflect aggravating and mitigating factors. The Council considered that the following aggravating factors justified an increase in the financial penalty:

- Motivated by financial gain
- Obstruction of the investigation
- Number of items of non-compliance
- Deliberate concealment of the activity/evidence

77. The Council took into account in mitigation that this was a first offence.

78. The Council's decision was to adjust the penalty upwards by a further £2,000.00 for each offence to reflect the aggravating and mitigating factors.

79. The Notice of Intention invited representations and the provision of financial information from the Appellant, but no further information was provided. The Notice of Intention was therefore confirmed as a Final Notice of Financial Penalty in the form set out in the Notice of Intention on 17 December 2024.

80. After both decisions made by the Council, it carried out a further visit to 37BL on 28 January 2025. The visit was made by JTS and BS and, in the words of BS in his statement, was a:

> "Pro-active visit to establish contact with Marta Albina Witowska whom we never managed to see on our previous visits. The purpose of the visit was to obtain information from Marta, if present, on her occupancy status at 37 Bushbury Lane."

81. Marta was indeed present. She confirmed that she moved into 37BL in March 2024 (exact date not given). She confirmed that she paid rent to the Appellant. Screenshots of her banking app on her phone confirmed monthly payments of £400.00 (with an initial payment of £800.00 in March) to the Appellant from March to September 2024. Marta provided a witness statement and said she would give evidence to the Tribunal, but in the event, the Council did not call her to give evidence.

Discussion – Financial Penalties

82. In order to justify the imposition of the financial penalty, the Council must:

    a. Establish that 37BL was an HMO at the date of the alleged offence(s) under section 234 of the Act;

    b. Establish that the Appellant was the manager of 37BL;

    c. Establish that the Management Regulations had been breached;

    d. Follow the procedural requirements contained in Schedule 13A of the Act.

83. We consider the financial penalty decision first.

Was 37BL an HMO?

84. The relevant test is whether 37BL met the standard test in section 254(2). It was not in dispute that all elements of section 254(2) were met in respect of the occupation by the two occupants the Council met during their inspections on 25 April and 8 May 2024, namely Gary and Thomasz.

85. The difficulty is whether there was a third occupant who occupied as his/her only or main residence. If not, there were only two occupants and accordingly due to paragraph 7 of Schedule 14 of the Act, the property was not an HMO.

86. We can be clear about Paulo, the occupant who was said to be a friend of Marta. His evidence was that he was only visiting, and he gave a second address to the inspecting officers when they talked to him. The evidence is that on 25 April 2025, he was not in occupation of 37BL as his only or main residence, and no additional evidence was provided to suggest there had been any change in that position on 8 May 2024.

87. Factually, our decision on this question therefore comes down to whether the Council are able to establish that Marta was occupying 37BL as her only or main residence on 25 April and / or 8 May 2024.

88. No council witnesses met Marta until 28 January 2025. She was not present at either of the inspections in 2024. The written evidence of occupation obtained when the 2024 inspections occurred is summarised in paragraph 56 above. There is clear evidence that Gary and Thomasz were permanent occupants of 37BL, but that evidence does not provide information about Marta's status. Indeed, in so far as we can make any finding based on it, it suggests that Marta had only very recently moved to 37BL and her friend, Paulo, was somewhat itinerant at that point, and in any event did not pay rent.

89. On 8 May 2024, Gary told JTS that Marta lived at the property but provided no further details of commencement date or whether she was occupying as her only or main residence.

90. Marta's friend, Paulo, told JTS that he was living at the property with his friend Marta. No details were provided by Paulo about Marta's occupation or whether she lived at the property as her only or main residence.

91. The other occupant, Thomasz, was interviewed by BS on 8 May 2024. He named Marta as an occupant but did not provide any dates for the commencement of her occupation, nor was he asked to provide any information about whether she was occupying as her only or main residence.

92. The next matter for discussion is whether the January 2025 evidence can be taken into account to determine whether Marta was occupying 37BL as her only or main residence in April / May 2024. There are obvious evidential difficulties arising from the Council's failure to call Marta to

give evidence. Leaving that aside, we agree that the later evidence goes some way towards establishing that Marta did start to live at 37BL in around March 2024 and paid rent to the Appellant, but we note that the crucial point we have been considering was not put to Marta by either JT or BS. They needed to ask about whether she had other accommodation elsewhere and whether 37BL was her only or main residence. They did not do so. The questionnaires they asked Gary and Thomasz to complete about their occupations did include a question on that topic, but no questionnaire was completed for Marta. Because of that omission and the absence of evidence from the other tenants, on the direct evidence available, we are not persuaded that we can find that Marta occupied 37BL as her only or main residence on either of 25 April or 8 May 2024, and there is therefore no direct evidence that 37BL was an HMO in April / May 2024.

93. Ms Caney invites us to infer that Marta was occupying as her only or main residence, relying on case law in *Williams v Horsham District Council* [2004] EWCA Civ 39 ("*Williams*") and *Opara v Olusemo* [2020] UKUT 96 (LC) ("*Opara*"). Her submission was that the following evidence available in May 2024 should satisfy the Tribunal:

    a. She kept her passport in her room;

    b. Her room appeared to be lived in;

    c. She had been identified as the tenant by the other occupants.

94. In addition, Ms Caney pointed out that evidence obtained in January 2025 confirmed that she had paid a deposit of £800.00, she had continued to pay rent through from March or April 2024 until November 2024 to the Appellant.

95. The paragraphs quoted from the two authorities cited by Ms Caney are:

    a. From *Williams:*

       "a person's main Residence will generally be the dwelling that a reasonable onlooker with knowledge of the material facts would regard as that person's home (per Lord Philips)

    b. From *Opara*

       31. … In the absence of co-operation from other residents, cast-iron certainty is not going to be achievable on this point because of the difficulty of proving a negative; and of course cast-iron certainty is not required, only proof "beyond reasonable doubt". How is the tenant to show that another occupant has no other home, or no other main home? This element of the offence must to some extent be a matter of inference from the circumstances.

> …
>
> *32. … This is low-value housing – cheap rooms, to be blunt. The tenants were not people who were likely to have had a second home.*
>
> …
>
> *34. … It is highly likely that persons who rent a room in such a house live there as their only or main residence.*

96. We do not know the full facts in *Opara* (a rent repayment case where the tenant had to establish that the property was an HMO). In the Upper Tribunal decision, it appears that the two residents who the FTT found not to be in occupation as their only or main residence, had clearly both resided at the property for some time. In contrast, at the time of the inspections in 2024, Marta had only very recently arrived.

97. A subsequent Upper Tribunal case not brought to our attention by the Respondent – *Mitterhuber v Hernandez and Balota* [2025] UKUT 194 (LC) – is a case which suggests this Tribunal should satisfy itself that occupants were in fact occupying a property as their only or main residence where that is a relevant question in a case (see paragraph 19 of that decision).

98. In this case it is the Council who have to prove the only or main residence criteria, and they had never seen Marta in occupation until January 2025. They were told by the two tenants that she lived at the property on 8 May 2024, but they never asked those tenants anything about her compliance with the only or main residence test, nor did they call those tenants (or Marta) to give evidence to the Tribunal. The evidence is that at the time of the 2024 inspections, Marta had only recently arrived at the property. The evidence provided to us of the circumstances under which she arrived was from BS [C828] who said that she had arrived "after initial contact with Carl Reynolds". We do not know who granted her a tenancy, its terms (there is no tenancy agreement), or her personal circumstances.

99. None of the three factors set out in paragraph 95 above prove by inference that Marta was occupying 37BL as her only or main residence. The fact that belongings are there and the room "appears lived in" can apply to both a temporary and a permanent occupation.

100. Finally, Ms Caney places reliance on the Appellant's admission under cross-examination that Marta was a tenant of 37BL. We agree that he did make such an admission when a copy of Marta's deposit payment of £800.00 was put to him. But again, the crucial question about whether she occupied as her only or main residence was not admitted by the Appellant.

101. We do not take the view that we can simply gloss over section 254(2)(c). It is a constituent part of the definition of an HMO, and our view is that we must be satisfied that it has been met if we are to find that 37BL is an HMO. We are not so satisfied. Our finding on this question is likely to be determinative in finding whether the Appellant has committed a criminal offence, the standard of proof being beyond reasonable doubt.

102. Our conclusion is that there is no direct evidence that Marta occupied 37BL as her only or main residence on either of 25 April or 8 May 2024. There were therefore only two occupants who met the criteria in section 254 and the property was therefore not an HMO.

103. It follows that we must therefore conclude that as of April / May 2024 37BL was not an HMO means that the financial penalty appeal must succeed, due to an offence under the Management Regulations only being committed if the property is an HMO. Nevertheless, in case we are wrong, we will continue to review the other elements of the offence we identified above, though in less detail.

Was the Appellant the Manager of 37BL

104. On the facts, the Appellant accepted that he received rent from Gary and Thomasz in respect of their occupation of 37BL.

105. An offence under the Management Regulations is committed by the "person managing the house" (section 234(2)(a)).

106. That phrase is defined in section 263(3). It applies to the person who "receives (whether directly or indirectly) rents" from the persons in occupation of the house … and includes, where those rents … are received through another person as agent or trustee, that other person.

107. Our view is that the Appellant was holding the rents as agent or trustee even though immediately afterwards he applied the funds to part discharge the debt owed to him by his principal. No legal argument was advanced to the contrary.

108. In his response to the Council's closing submissions, Mr Coward said that to find that the Appellant was managing 37BL under section 263(3) would be an oversimplification of the statutory test. In his view, the Tribunal should take account of the whole context of this case where:

   a. Mr Malcolm remained the owner of 37BL;

   b. Mr Malcolm is responsible for repairs and maintenance;

   c. The Appellants involvement arose solely from a debt recovery arrangement;

d. The rents were going towards the discharge of a pre-existing debt.

109. He submitted that Section 263 is directed toward identifying persons exercising practical and operational management functions in relation to an HMO. The evidence before the Tribunal does not establish that the Appellant undertook such a role.

110. He said the Respondent's submissions effectively reduce the statutory test to a simple question of whether rent was received. That is an incomplete and legally inadequate analysis. The test should be who in substance exercises management and control of the property.

111. We do not agree with Mr Coward's submissions. Section 263 is clear in its language and there is no basis for not applying it in its clear meaning here. Receipt of the rents means that the Appellant was the person managing 37BL.

Were the Management Regulations breached?

112. Virtually all of the focus in this case has been on the definition of an HMO and identification of the manager. There has been very little focus on the breaches themselves. We will simply make some short points in view of the fact that this is no longer a live issue.

a. The alleged breaches were never put in writing to the Appellant at any point before he was served with a Notice of Intention to impose a financial penalty. We find that surprising, and Mr Turner in his evidence accepted that that is not how the Council normally deals with Management Regulation breaches;

b. In particular, despite saying at the beginning of the PACE interview with the Appellant that the purpose of the interview was to put allegations of breach of the Management Regulations, the interviewers never put those allegations to him;

c. Whilst any breach that might expose occupants to heightened risk of fire is clearly a serious matter, taken in the round, the breaches here were not of the most serious type;

d. It is not compulsory for a local authority to proceed straight to financial penalty for Management Regulation breaches. Indeed, paragraph Ei of the Black Country Local Authorities Enforcement Policy says that compliance advice, guidance and support is an appropriate first response in the case of many breaches, sometimes in the form of a warning letter. We would have seriously considered whether this would have been the right approach in this case;

e. We would have found (and indeed did), on the basis of the Council's process servers' evidence, that the Notice of Intention was duly served on the Appellant;

f. In any event, a penalty of £34,000.00 seems to us to be right at the top end of what is appropriate. Statutory guidance entitled Civil Penalties under the Renters Rights Act 2025 and other housing legislation published in November 2025 suggests starting point penalties at significantly lower levels than those imposed on the Appellant.

Discussion – refusal to grant licence

113. We remind ourselves that our task is to assess the Council's decisions on both the refusal to grant a licence, and the imposition of a financial penalty, as at the date the Council made their decisions, but we may take into accounts facts of which the Council were unaware if they shed light on the true facts which could have been known as at the date of that decision.

114. The licence was refused because the Council determined on 26 June 2024 that the Appellant was not a fit and proper person to hold a licence due to:

a. The Appellant being found to be involved in recent relevant offences relating to breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 in an HMO: 37 Bushbury Road Wolverhampton WV10 9TN. Offence under S234 Housing Act 2004 and

b. The Appellant providing false and misleading statements in relation to involvement as a landlord and manager of HMO: 37 Bushbury Rd Wolverhampton WV10 9TN. Offence under S238 Housing Act 2004"

115. As we have decided that no offence under section 234 has taken place, ground a. cannot stand.

116. Ms Caney's submissions regarding ground b. [para 6.5 of Respondents closing submissions] are that the evidence establishing that the Appellant is not a fit and proper person is:

a. The Applicant repeatedly denied being the landlord or manager of 37 Bushbury Lane, contrary to the true position;

b. The Applicant supplied historic tenancy agreements naming Mr Malcolm as landlord [C274; C278] when his own tenants were paying him rent directly by BACS;

c. When shown Mr Taylor's and Mr Rawowski's tenancies during his PACE interview, he asserted that they were forged [C467] and that the tenants didn't even know him;

d. He failed to acknowledge Marta's occupation during his PACE interview despite later admitting she was an occupier and having received rent from her since March 2024;

e. The contemporaneous evidence – tenancy agreements, multiple independent occupiers identifying him as landlord; rent paid by BACS to him; the absence of any other person identified by occupiers as landlord – directly contradicted his account;

f. The false nature of the Respondent's statements and representations came plainly to the fore during cross-examination

117. In addition, Ms Caney's submission [para 6.12 of Respondents closing submissions] is that the Tribunal is entitled to have regard to matters of which it was unaware at the date of the decision to refuse a licence insofar as those matters shed light on the position as at that date. She suggests the following such matters:

a. Marta Witowska's subsequent statement and bank records confirming rent paid to the Applicant from March 2024 onwards, prior to the Applicant's PACE interview;

b. The Applicant's abandonment of the "forgery" allegation for the tenancy agreements;

c. The Applicant's radical shift in his position concerning the tenants at the property, and his admission that it was his signature on the tenancy agreement shown to him;

d. The Applicant's late and inconsistent disclosure of his property portfolio during his PACE interview, including his omission, of properties registered in his sole name;

e. The correspondence from the solicitors instructed by the Applicant to write to Mr Malcolm in 2022 which painted a wholly different picture from the one he has tried to create in these proceedings – including his connection to 25 Bushbury Lane;

f. The Applicant's belated acceptance during cross-examination that he was served with the Notice of Intent in October 2024, in stark contrast to his Appeal Notice;

118. The direct evidence provided to us by the Council came from BS, who advances (in his first written statement) the following issues he took into

account when deciding whether the Appellant was a fit and proper person, being:

a. The Appellant's denial that he was the manager of 37BL despite him being identified as such and the existence of evidence that he was receiving rent (see also Ms Caney's submission above);

b. BS's attendance at both inspections of 37BL on 25 April and 8 May 2024 during which he received evidence that the Appellant was receiving rent;

c. That the Appellant had allegedly harassed Mr Malcolm over a debt and was continuing to claim that Mr Malcolm had not discharged the debt (meaning that rent from 37BL was merely reducing the debt), whereas in his PACE interview Mr Malcolm had said that the debt was now fully discharged following a property transaction involving the sale of 25 Penkside from Mr Malcolm to the Appellant;

d. The allegation by Mr Malcolm that the Appellant had taken over both 37BL and 25 Bushbury Lane without Mr Malcolm's consent;

e. That there were disrepair issues at 37BL.

119. We make the following findings of fact.

Collection of rent – 25 Bushbury Lane

120. We are not able to make any finding that the Appellant collected rent from tenants of 25 Bushbury Lane during the period that was relevant for the Respondent's enquiries and investigations, which we assess to be around February – May 2024. The evidence is:

a. In a letter dated 6 December 2022, the Appellant's solicitors wrote to Mr Malcolm's solicitors and expressly claimed that the Appellant had agreed to source tenants for both 25 Bushbury Lane and 37BL and that he received rent from both properties [D33-35];

b. JTS's evidence was that she had a telephone conversation with the Appellant on 5 October 2023, in which he said (among other things) that he was collecting rent on that property;

c. JTS visited the property on 2 November 2023. The tenants refused to provide information about the person to whom they paid rent;

d. The Appellant said in an email to JTS dated 23 February 2024 that he had an arrangement with Mr Malcolm to collect rent on "his properties" (which suggests both 25 Bushbury Lane and 37BL) [C265];

e. In another email dated 27 February 2024, also to JTS [C274], the Appellant appeared to change his position, asserting that "I do not take rent from any of the tenants at 25 Bushbury Lane".

121. The significance of this issue is not so much about whether tenants of 25 Bushbury Lane paid rent to the Appellant. There would have been nothing illegal or improper about it if they did (subject to the separate private dispute between the Appellant and Mr Malcolm). The point is in fact that if they did, the Appellant may have been the person having control of or managing that property, and so liable to comply with Housing Act 2004 obligations to licence and / comply with management obligations as a result.

122. The evidence summarised above does not prove that the rent was paid to the Appellant by tenants of 25 Bushbury Lane. The only way of establishing that one way or the other is through evidence from the tenants that they paid rent to the Appellant, or evidence from, or an admission on the part of, the Appellant that he received the rent. No such evidence has been presented to us. The evidence summarised in paragraph 119 above only establishes that the Appellant's story varied over time. The existence of an inconsistent account does not prove that one of the two inconsistent versions of the story is true. In the absence of evidence from the Appellant, Mr Malcolm or any of the tenants at 25 Bushbury Lane, we can take this point no further. We are unable to enter into speculation about whether 25 Bushbury Lane was an HMO, and if so whether the Appellant should have applied for a licence.

Collection of rent and tenancy agreement – 37BL

123. We do find that the Appellant was being paid rent by Gary and Thomasz, the two tenants at 37BL from December 2022 - October 2024. This was freely admitted by the Appellant. There is nothing illegal or improper in him doing so on the basis of his assertion (which was not challenged in the hearing) that it was an arrangement agreed with Mr Malcolm in order to discharge the debt owed to the Appellant.

124. Under cross-examination, the Appellant accepted that he had signed Gary's tenancy agreement [C60] despite saying in his PACE interview that any tenancy agreement with Gary must have been forged [C463]. We find that the Appellant did sign Gary's tenancy agreement, and that his denial that he did so in the PACE interview was a false statement.

Forgery

125. The Appellant's position during the PACE interview was that, although he never denied he received rent from the tenants at 37BL, he denied that he

had entered into tenancy agreements with them [C463]. Under cross-examination though, he admitted that the signature on Gary's tenancy agreement [C58 – 60] was his signature (see paragraph 124 above). Separately, in the PACE interview, the Appellant alleged that Gary's tenancy agreement was a forgery. In the light of the Appellant's admission, the allegation of forgery must also be a false statement.

Marta and Paulo

126. Under cross-examination, the Appellant accepted that rent payments from Marta came to him from a date in March 2024 [C594] despite saying in his PACE interview that he did not get rent money from any persons other than Gary and Thomasz [C470 – 471]. We find that this denial was a false statement. The Appellant had known in March 2024 that Marta was living at the 37BL. We should say that this is not proof that Marta was occupying it as her only or main residence.

Property portfolio etc

127. The Respondent's case is that the Appellant gave false and misleading answers to questions about his property portfolio and other business activities, particularly in failing to mention 93 Walsall Street and 7 Milton Street when asked to list his properties.

128. We agree that the Appellant's evidence about his other properties and business activities was far from clear and concise. He answered questions very defensively. But the Respondent did not provide any evidence of what it alleged to be the Appellant's true position. We are not able to go further than to say that the extent of his property portfolio is unclear and was unlikely to be clarified due to the manner in which the Appellant responded to Ms Caney's cross-examination.

Credibility of the Appellant

129. We need to say something about what we made of the Appellant as a witness, and whether we accept, as urged upon us, that under cross-examination, false statements came plainly to the fore.

130. We formed the view that the Appellant is a complex man with some significant communication difficulties. He declares himself to suffer from dyslexia to the extent that he is unable to read. There is no medical evidence in support, but that disability was not challenged by the Council and was strongly asserted by the Appellant.

131. Additionally, the Appellant was clearly distressed and angry about the actions of the Council which appear to have prevented him from letting out 33UV as he would wish as it requires a licence to be let as an HMO. There is evidence that his son applied for a licence in his stead, but the

Council have refused to progress that application pending the resolution of this case.

132. The Appellant was also critical of the Council's actions in holding the PACE interview, in that he had not been provided with details of why he was being interviewed and the allegations that he had to answer.

133. The other reason the Appellant was angry is that in his view the Council have accepted Mr Marshall's version of events as a result of which he is being punished by the actions of the Council when Mr Malcolm is under no sanction. This is not an entirely hopeless point. As the owner of 37BL, the benefit of the rental payments, in law, accrued to Mr Malcolm, whether because his debt to the Appellant was being reduced, or (if there was no outstanding debt) because Mr Malcolm would be able to recoup the payments by action for conversion or restitution, or the bringing of criminal charges of theft, obtaining by deception, or some other legal remedy. In effect, Mr Malcolm was receiving the benefit of the rent. If so, Mr Malcolm should arguably have been pursued as well as the Appellant at least for disrepair issues at 37BL.

134. With these points being in the background, we nevertheless found the Appellants evidence to lack clarity and rationality and to be rambling and frequently off the subject. At many points when giving evidence, he was emotional, angry, and clearly distressed.

Decision

135. Our analysis of whether the evidence and submissions above led the Council to make the right decision to refuse the licence follows below.

136. Our view is that far too much is made by the Council of the Appellant's denial that he was the manager of 37BL. He consistently and robustly denied that he was and continues to do so now. His counsel's submissions stated the basis on which the denial is based as we have outlined above (see paragraph 108).

137. The point (which has beset this case) is that the word "manager" can mean different things to different people. It has a narrow technical meaning under section 263, and it has a broader general meaning as it might be understood in the wider world. It is telling that at no point, either in writing or in the PACE interview, was the technical meaning explained to the Appellant. The detailed intricacies of the Housing Act 2004 are not well understood by many people (sometimes including trained EHOs) and we cannot criticise the Appellant for insisting that he was not the manager of 37BL. His was an understandable, even though incorrect, position at the time.

138. This being said, we have found above that the Appellant made false statements in his explanations about this case. To summarise, these are:

a. Denial that he had signed Gary's tenancy agreement (para 124 above);

b. Claiming that Gary's tenancy agreement was a forgery (para 125 above);

c. Denial that he received rent payments from Marta in March 2024 (para 127 above).

139. On an appeal against refusal of a licence, our powers are to confirm, reverse, or vary the Respondent's decision. We can direct the Respondent to grant a licence on such terms as we may direct. We must give the Respondent's decision to refuse a licence due weight, but we are not bound by it, and we must make our own decision.

140. Section 64 and 66 of the Act give the Respondent (and so the Tribunal also) considerable discretion to decide whether a person is fit and proper to hold a licence. There are specific matters that the Respondent and the Tribunal are directed to have regard to, but these are not exclusive matters; clearly regard can be taken of other factors too.

141. Taking account of all the factors discussed above, our decision is that we do not consider the Appellant to be a fit and proper person to be granted an HMO licence. We therefore confirm the Respondent's decision.

142. Our reasons are:

a. The Appellant has been shown to have made false statements in his evidence in his PACE interview, and whilst giving evidence to this Tribunal. The matters about which he made false statements are significant in the context of the operation of an HMO, and making such false statements is a serious matter going right to the root of suitability to manage an HMO;

b. The Appellant has also failed to persuade us, because of his wayward, over-emotional, and sometimes aggressive conduct when giving evidence, that he has the necessary interpersonal skills to maintain a relationship of openness and honesty with the Respondent that is required for a person holding the significant responsibilities of an HMO licence holder.

Determination

143. The Tribunal:

a. cancels the financial penalty Notice issued against the Appellant on December 2024; and

b. confirms the decision of the Respondent dated 24 June 2024 to refuse the Appellant an HMO licence for 33UV on the grounds that he is not a fit and proper person to hold the licence.

Appeal

144. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)