FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CS/HNB/2025/0003**
Subject Property	**:**	**105-106 Oldbury Road, Smethwick,B66 1JE**
Applicant	**:**	**Mr Jaswant Singh Bhatia**
Representative	**:**	**Mr Hussain**
Respondent	**:**	**Sandwell Metropolitan District Council**
Representative	**:**	**Mr Bahadur, solicitor** **Letitia Powell – Enforcement Officer**
Type of Application	**:**	**An appeal against a Financial Penalty - section 249A & Schedule 13A to Housing Act 2004**
Date of Hearing	**:**	**18 May 2026**
Tribunal Members	**:**	**Deputy District Judge Stephen Haythorne** **Mr Robert Chumley-Roberts MCIEH, JP**
Date of Decision	**:**	**5 June 2026**
Date of Issue	**:**	**14 July 2026**

DECISION

Introduction

1 This is the Tribunal's determination on an appeal made by Mr Jaswant Singh Bhatia (the Applicant) against the decision of Sandwell Metropolitan District Council (the Respondent) to impose a financial penalty under section 249A of the Housing Act 2004 (the 2004 Act) relating to 105 -106 Oldbury Road, Smethwick,B66 1JE (the Property).

2 The Applicant is the leasehold owner of the Property and the Respondent is the local housing authority which imposed the financial penalty.

3 The 2004 Act introduced licensing for certain categories of residential accommodation. Under Part 2 of the 2004 Act and the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (the Order) properties which fall within the definition of a house in multiple occupation (HMO) and within a prescribed description are required to be licensed with the local housing authority.

4 Under section 72 of the 2004 Act any person who as landlord under a tenancy or licensor under a licence to occupy has an estate or interest in, or a right in relation to an HMO, commits an offence if that person fails to obtain a licence.

5 Under the Management of Houses in Multiple Occupation (England) Regulations 2006 (the Regulations) a person who manages a HMO has certain duties in respect of the HMO, including:

- To provide information to occupiers
- To take safety measures
- To maintain common parts, fixtures, fittings and appliances
- To provide waste disposal facilities

6 Under s.234 of the 2004 Act a person commits an offence if they fail to comply with duties imposed by the Regulations.

7 Under Part 1 Chapter 2 of the 2004 Act, the service of an improvement notice where there are category 1 and/or category 2 hazards at a property, is a course of action which is open to a local housing authority.

8 Under s.30 of the 2004 Act, a person on whom an improvement notice was served commits an offence if they fail to comply with the notice.

9 Commission of offences under ss.30, 72 and 234 of the 2004 Act may lead to criminal prosecution and conviction or to the imposition by the local housing authority of a financial penalty pursuant to section 249A of the 2004 Act.

Background and the Parties' cases

10 The Property is described as a large 2 storey flat above commercial premises. Access to the flat is to the rear of the building through a wooden gate and where there is a shared small, slabbed garden. The door to the flat opens directly into a small hallway. There is a WC and wash hand basin to the right hand side of the hallway and to the left is a door into the kitchen. There are

stairs from the hallway to the first floor landing. Adjacent to the top of the stairs is a bathroom, with shower cubicle and this is also where the boiler is situated. There are 4 bedrooms off the landing and a shared communal living room. There is a second flight of stairs from the first floor landing and there are another 2 bedrooms on the second floor. There is a small access door on the second floor landing to a small loft area.

11 The Applicant confirmed that they are the registered leasehold owner of the Property and that the flat is 105 Oldbury Road, Smethwick,B66 1JE.

12 On 1 July 2022 the Applicant entered into an assured shorthold tenancy agreement with a single tenant whom the Tribunal will refer to as the Tenant, for the property described in the tenancy agreement as Flat 105 Oldbury Rd, Smethwick, B66 1JE. The term of tenancy was stated to be 1 year. Clause 19 of the tenancy agreement prohibits subletting or assignment of the tenancy.

13 On 11 October 2022 the private rented sector and housing standards team of the Respondent received an email which raised concerns about the Property being used as a HMO as well as raising issues about disrepair and fire safety matters. It appears that the Applicant was present when the inspection, to which the email refers, took place. The email states that upon inspection 10 sleeping spaces were found, that there were 4 males present at the address and the rest were at work.

14 On 11 October 2022 a prohibition notice under Article 31 of the Regulatory Reform (Fire Safety) Order 2005 was served in respect of the Property by West Midlands Fire and Rescue Authority (the Fire Service), due to fire safety concerns at the Property. The prohibition notice prohibited the use of the Property for sleeping and residential use. The prohibition notice was withdrawn by the Fire Service by letter dated 25 October 2022 as a result of the Applicant taking the necessary remedial action. The letter from the Fire Service stated that undertaking a fire risk assessment would help identify any further safety measures which may be required. The letter also stated that the Applicant should appoint competent people to help put safety measures in place.

15 The Applicant says that on or around 13 October 2022 he was contacted by an employee who advised the Applicant that immigration officers were at the Property. The Applicant attended the Property and found 4 adult males who stated that they were staying temporarily.

16 On 20 October 2022 there was email correspondence between the Applicant and Respondent whereby the Applicant set out remedial action undertaken and the Respondent expressed concern that there were locks on each bedroom and provided information about HMO's. The Respondent stated that '*...you may be liable to prosecution or fines if the property is discovered to being used as a HMO without the necessary standards, licences and permissions in place.*'

17 On 10 July 2023 the Applicant confirmed to the Respondent that there was one tenant in the Property, but they had moved in their family.

18 On 19 July 2023 the Respondent attended at the Property and the Applicant was present. There were no occupants when the visit took place. The Respondent says that there was evidence that 4 people were living at the Property due to belongings and food being stored individually in each room. The Respondent could not access all rooms.

19 On 8 August 2023 the Respondent wrote to the Applicant advising that it considered that the Property was operating as an HMO without a licence contrary to s.72 of the 2004 Act. The Respondent also stated that it considered the Applicant to be in breach of the Regulations. The letter requested a response and made clear that answers given were under caution. The Respondent's answers stated that as of 19 July 2023 only the Tenant lived at the Property and that the Respondent receives the rental income on a monthly basis from the Tenant.

20 On 27 September 2023 the Respondent says that it attended at the Property and spoke to the Tenant. The Tenant confirmed that they were living at the Property with 5 other people and that the Applicant was aware of who all the occupants were. The Tenant advised that they collect rent from 4 other occupants and pay the Applicant £1100 per month. The Tenant stated that another occupant, a male of Nepalese nationality who occupies a room on the second floor, pays the Applicant directly a sum of £400.00 in cash.

21 The Respondent says that there were 2 other people present at the visit on 27 September 2023; the Nepalese national and a female. The female occupied a room on the first floor. The Respondent says that it cautioned the Applicant under the provisions of the Police and Criminal Evidence Act 1984 (PACE) and that the Applicant admitted that there were 6 occupants at the Property. The Respondent produced a contemporaneous handwritten note written in Mrs Powell's PACE notebook.

22 The Respondent provides photographs from a visit on 27 September 2023 which show bottles of water, food and toilet rolls in individual rooms, as well as shoes left outside some of the rooms, which the Respondent says is evidence of use as a HMO.

23 The Applicant disputes that they admitted there were 6 people living at the Property and says that they did not know who was living there. The Applicant also states that their grasp of English is not good. The Applicant also disputed that they received any money in cash and stated that all monies were paid by the Tenant through the bank.

24 On 25 January 2024 an Improvement Notice under sections 11 and 12 of the 2004 Act was served on the Applicant by the Respondent. The covering letter dated 25 January 2024, explained why the Improvement Notice was served, explained that the Property required a HMO licence, that there were breaches of the Regulations and requested copies of various certificates.

25 The Improvement Notice listed 9 hazards in schedule 1, 7 of which were category 1 hazards and which were fire, electrical, falling on stairs, position and operability of amenities, excess cold, falling on level surfaces and entry by intruders. There were 2 category 2 hazards, which were falling between levels and collision and entrapment. Schedule 2 contained 17 items of required

remedial action which the Respondent considered to be practical and appropriate. The appropriate remedial work had to be completed by 8 April 2024.

26 The Improvement Notice contained information about the right of appeal. No appeal was requested by the Applicant and by virtue of section 15(6) of the 2004 Act, the notice is final and conclusive as to matters which could have been raised on appeal. The Tribunal cannot consider whether any of the relevant works identified in the Improvement Notice were works that were properly the subject of an Improvement Notice.

27 On 1 February 2024 the Applicant served a section 21 Housing Act 1988 notice on the occupants of the Property.

28 On 5 February 2024 the Applicant's representatives, Pro-Let Legal Limited, sent an email to the Respondent which stated that the Applicant had understood that they were letting the Property to a family of 5 and the Tenant must have let the other rooms to other people without the Applicant's permission. The Respondent responded by pointing out that this was not what the Applicant said to the Respondent in September 2023.

29 On 4 April 2024 the Applicant made a claim for possession of the Property.

30 The Respondent attended at the Property on 10 April 2024 to inspect the Property. Some works were completed, but many were outstanding. The works outstanding included fire prevention works, electrical works, works to secure the entrance door to the Property and works to prevent falls between floors.

31 The Applicant says that they carried out some works to the Property, but after it was made clear to the Tenant that the Tenant would have to leave, the Tenant became difficult and the Applicant could not complete the works at the Property.

32 On 13 June 2024 the Applicant obtained a possession order in respect of the Property.

33 On 29 August 2024 the Respondent served a Notice of Intent to Issue a Financial Penalty (Notice of Intent) on the Respondent pursuant to section 249A and Schedule 13A Housing Act 2004. The Notice of Intent advised the Applicant that a financial penalty of £21,500 was proposed in relation to sections 30, 72 and 234 of the 2004 Act. The breakdown of the calculation is as follows:

- 4 x regulation breaches of the Regulations £4000 (£1000 for each breach);
- Operating a HMO without a valid licence £10,000
- Non-compliance with the Improvement Notice £2500
- Acts or omissions demonstrating high culpability £2500

34 On 10 September 2024 the Applicant's representatives responded to the Notice of Intent by email to the Respondent. The Applicant stated that there had been significant improvement at the Property by the time of the visit on

10 April 2024. The Respondent stated that they did not intend the Property to be used as a HMO and referred to the assured shorthold tenancy agreement which named the Tenant only and that it was the Tenant who had sub-let the rooms in breach of the tenancy. The email advised that a possession order had been obtained and that the Tenant and other occupants would be evicted.

35 On 30 October 2024 the occupiers of the Property were evicted and on 7 November 2024 the Respondent's representatives confirmed this to the Respondent. The Applicant says that the bailiffs encountered hostility from the occupiers at the time of the eviction.

36 On 13 February 2025 the Respondent served on the Applicant a Final Notice to Issue a Financial Penalty (the Final Notice) pursuant to section 249A and Schedule 13A of the 2004 Act. The Final Notice confirmed the financial penalty of £21,500.00

37 The Respondent appealed to the Tribunal by an Appeal Form dated 17 February 2025.

The Law

38 The regime of financial penalties as an alternative to prosecution for certain housing offences came into force on 6 April 2017

39 Section 249A of the 2004 Act, provides

> (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
> (2)In this section 'relevant housing offence' means an offence under—
>
> > (a)Section 30 (failure to comply with an Improvement Notice)
> > (b)Section 72 (licensing of HMO's)
> > (c) ....
> > (d)............
> > (e) Section 234 (management regulations in respect of HMO's)
>
> (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
> (4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority but must not be more than £30,000.
> (5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—
>
> > (a) the person has been convicted of the offence in respect of that conduct, or
> > (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
>
> (6) ....
> (7) ....
> (8)................
> (9)For the purposes of this section a person's conduct includes a failure to act.

40 S.249A of the 2004 Act has been amended by the Financial Penalties (Housing Offences and Breach of Banning Orders) Regulations 2026 from 1 May 2026 so as to increase the maximum amount of financial penalty to £40,000. These changes do not apply to conduct which amounted to an offence which occurred before 1 May 2026. The Tribunal is therefore concerned with the position before the commencement of the change as the conduct alleged occurred before the increase from £30,000 to £40,000. The law as it stood at that time is therefore set out above.

41 Section 55 of the 2004 Act provides:

(1) This Part provides for HMOs to be licensed by local housing authorities where—

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

(a) any HMO in the authority's district which falls within any prescribed description of HMO ……….

42 Paragraph 4 of the Order states:

4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a)is occupied by five or more persons;

(b)is occupied by persons living in two or more separate households; and

(c)meets—

(i)the standard test under section 254(2) of the [2004] Act;

(ii)the self-contained flat test under section 254(3) of the [2004]Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii)the converted building test under section 254(4) of the [2004] Act.

43 Section 254(2) of the 2004 Act provides (so far as material) –

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.

44 Section 61(1) of the 2004 Act provides –

Every HMO to which this Part applies must be licensed under this Part unless—
(a) a temporary exemption notice is in force in relation to it under section 62, or
(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

45 Section 30 of the 2004 Act states:

(1)Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

(2)For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—
(a)(if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);
(b)(if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and
(c)(if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3)A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4)In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5)The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6)In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

……………………………….

46 Section 72 of the 2004 Act states:

(1)If an HMO is required to be licensed under this Part (see section 61(1)) but is not so licensed, an offence is committed by—
(a)any person within subsection (1A), and
(b)any person who as landlord under a tenancy or licensor under a licence to occupy has an estate or interest in, or a right in relation to, the HMO that is superior (whether directly or indirectly) to the estate, interest or right of any person within subsection (1A).
(1A)The following are within this subsection—

(a)any person having control of or managing the HMO, and
(b)any person who is the landlord or licensor in relation to a person occupying the HMO under a tenancy or licence.

(2)A person commits an offence if—

(a)he is a person having control of or managing an HMO which is licensed under this Part,
(b)he knowingly permits another person to occupy the house, and
(c)the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

………………………

(4A)In proceedings against a person for an offence under subsection (1)(a) it is a defence for them to prove that they had a reasonable excuse—

(a)for having control of or managing the HMO, or
(b)for being the landlord or licensor in relation to a person occupying the HMO under a tenancy or licence, in circumstances in which the HMO was required to be licensed under this Part but was not so licensed.

(4B)In proceedings against a person for an offence under subsection (1)(b) it is a defence for them to prove that they—

(a)did not know, and had a reasonable excuse for not knowing, that the building or part of the building concerned was an HMO,
(b)took all reasonably practicable steps to ensure that the HMO was licensed under this Part, or
(c)had some other reasonable excuse for failing to ensure that the HMO was so licensed.

(4C)For the purposes of subsection (4B), a term in the tenancy agreement or licence to occupy relating to the occupation of the building or part of the building that is an HMO does not on its own constitute a defence under any of paragraphs (a) to (c) of that subsection.

………………………………

(7A)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England)

47 Section 234 of the 2004 Act states:

(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.

……………………………………………

(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) …………………………………

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

…………………………………

48 The Regulations state, so far as is material:

Regulation 1

(1) ....

(2) These Regulations apply to any HMO in England other than a converted block of flats to which section 257 of the Act applies.

Regulation 2 (c)

“the manager”, in relation to an HMO, means the person managing the HMO

Regulation 3

The manager must ensure that—
(a)his name, address and any telephone contact number are made available to each household in the HMO; and
(b)such details are clearly displayed in a prominent position in the HMO.

Regulation 4

(1) The manager must ensure that all means of escape from fire in the HMO are—
(a)kept free from obstruction; and
(b)maintained in good order and repair.
(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.
(3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.
(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—
(a)the design of the HMO;
(b)the structural conditions in the HMO; and
(c)the number of occupiers in the HMO.
(5) In performing the duty imposed by paragraph (4) the manager must in particular—
(a)in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and
(b)in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.
(6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.

Regulation 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—

(a)all handrails and banisters are at all times kept in good repair;
(b)such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided;
(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;
(e)the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and
(f)subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.

(3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(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.

(5) If any part of the HMO is not in use the manager shall ensure that such part, including any passage and staircase directly giving access to it, is kept reasonably clean and free from refuse and litter.

(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.

Regulation 9

The manager must—

(a)ensure that sufficient bins or other suitable receptacles are provided that are adequate for the requirements of each household occupying the HMO for the storage of refuse and litter pending their disposal; and
(b)make such further arrangements for the disposal of refuse and litter from the HMO as may be necessary, having regard to any service for such disposal provided by the local authority.

49 Paragraphs 1 – 8 of Schedule 13A of the 2004 Act provides the procedure to be followed by local housing authorities before imposing a financial penalty which includes:

i. Service of a notice of intent within 6 months before the end of a period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates and which states the amount of financial penalty, the reasons for such penalty and the right to make representations;
ii. Service of a final notice if the authority decides to impose a financial penalty, which must include information about the amount of financial penalty, the reasons for such penalty, the payment period, the right to appeal and consequences of failure to comply.
iii. The final notice must require the financial penalty to be paid with a period of 28 days beginning with the day after the day on which the notice is serve.

50 By paragraph 10(1) Schedule 13A of the 2004 Act, a person to whom final notice is given may Appeal to the First-Tier Tribunal against:

a) the decision to impose the penalty or
b) the amount of the penalty

51 By paragraph 10(3) of Schedule 13A of the 2004 Act, an appeal under this paragraph is to be a rehearing of the local housing authority's decision, but may be determined having regard to matters which the authority is unaware, and by clause 10(4), the Tribunal may confirm, vary or cancel the final notice.

Determination of the Tribunal

52 The Tribunal considered the application in three parts –

(i) Whether the Tribunal was satisfied beyond reasonable doubt that the Applicant's conduct amount to a 'relevant housing offence' for the purposes of section 249A of the 2004 Act. A 'relevant housing offence' includes offences under sections 30, 72 and 234 of the 2004 Act.

(ii) Whether the Respondent complied with the requirements and procedures regarding the imposition of the financial penalty contained within section 249A and Schedule 13A of the 2004 Act.

(iii) Whether the Financial Penalty was set at an appropriate level, having regard to any relevant factors, including:

(a) the offender's means;

(b) the severity of the offence;

(c) the culpability and track record of the offender;

(d) the harm (if any) caused to a tenant of the premises;

(e) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or

(f) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

<u>Relevant Housing Offence under section 249A of the 2004 Act</u>

The requirements of the offence

53 The evidence provided by the Respondent includes direct evidence from Mrs Powell that at their visit on 19 July 2023 there was no one present in terms of potential occupiers.

54 Mrs Powell visited the Property on 23 September 2023 and there were 3 people present who all represented that they lived at the Property. The Tenant told Mrs Powell that there were 5 other people living there. There were signs that the rooms had things such as food, water and toilet rolls.

55 In order for the Property to be a HMO, the Tribunal must be satisfied, beyond reasonable doubt, that it meets the definition at s.254 of the 2004 Act. The Property as described consists of 6 bedrooms, 2 WC's, a kitchen and a living area. The bedrooms do not have an individual toilet or cooking facilities and the bedrooms are not self-contained units.

56 There is direct evidence from Mrs Powell of seeing 3 occupants at the Property on 27 September 2023, none of whom appeared to be related or living together as a family. All 3 people represented that they lived at the Property. The Tribunal was satisfied, on the evidence before the Tribunal, that the 3 people who were present on 27 September 2023, shared kitchen and bathroom facilities, lived there as their only or main residence and that the 3 people did not consist of a single household.

57 The Tribunal was satisfied that as at 27 September 2023 the Property was operating as an HMO and continued to operate as an HMO until the occupants were evicted on 30 October 2024.

58 The Tribunal noted that not all HMO's require a licence. Mandatory licensing for HMO's is set out in Part 2 of the 2004 Act. In terms of the number of people who must live in a HMO as their only or main residence, that number is 5 people or more, forming 2 or more separate households, as set out in the Order.

59 Whilst there was evidence that the bedrooms of the Property had occupants, the Tribunal did not consider that there was sufficient evidence that all of those rooms were occupied by people who use the Property as their only or main residence.

60 The Applicant stated that the Tenant had informed him that people had come to stay at the Property for a short while, such as the Tenant's mother. There is a difference between people who may occupy the Property from time to time and those who use the Property as their only or main residence. Given the high standard of proof required in a case such as this, the Tribunal could not be satisfied, beyond reasonable doubt, that everyone who used the Property was using the Property as their only or main residence and could not therefore be satisfied that the Property was a HMO which required licensing.

61 The Tribunal did note however, that the Regulations apply to any HMO and not just an HMO's which is required to be licensed.

62 As the Property was a HMO during this period, the Applicant was required to comply with the Regulations.

63 The Applicant's evidence is that he did not intend the Property to be a HMO and did not wish to take steps, such as applying for a HMO licence, as he did not want the Property be a HMO. The Applicant concentrated on evicting the

occupants as a means of ending the HMO status, as opposed to complying with the requirements of an HMO.

64 The Respondent has provided evidence of a lack of any management system in place at the Property which complied with the Regulations. The Applicant has not provided any evidence which rebuts this, such as photographs of signs etc. The Tribunal is satisfied, beyond reasonable doubt, that the Applicant failed to provide information to the occupants, failed to take required safety measures, failed to maintain common parts, fixtures, fittings and appliances and failed to provide waste disposal facilities and was therefore in breach of s.234 of the 2004 Act.

65 The Tribunal is satisfied that an Improvement Notice was served on 25 January 2024 which required compliance by 8 April 2024. The Tribunal noted the certificate of delivery which confirms service and the Applicant did not dispute service.

66 The Tribunal notes that the Respondent inspected the Property on 10 April 2024 and has provided evidence that the remedial action required was not fully completed. The Applicant has not provided any substantive evidence that the works were carried out by 8 April 2024. Indeed, the Applicant states that some works are still outstanding and these have not been done because the occupants were evicted.

67 The Tribunal is satisfied, beyond reasonable doubt, that the Improvement Notice was not complied with and that the Applicant committed an offence under section 30 of the 2004 Act

Reasonable excuse defence

68 Although the Respondent did not expressly raise a defence of reasonable excuse under sections 30 and 234 of the 2004 Act, the substance of the Respondent's representations require the Tribunal to consider whether the Respondent might have such a defence: see *IR Management Services Limited v Salford City Council* [2020] UKUT 81 (LC) at paragraph 31.

69 Although the Tribunal must be satisfied beyond reasonable doubt as to the elements of the offence listed in sections 30 and 234 of the 2004 Act, the standard of proof in relation to the defences in those sections is the balance of probabilities.

70 In relation to the HMO, the Applicant's case is that they let the Property to the Tenant and that the only other people who would be living at the Property would be the Tenant's family who would form a single household.

71 The Applicant's case is therefore that they that did not know and had a reasonable excuse for not knowing that the Property was being used as an HMO.

72 There is insufficient evidence to show that the Applicant originally let the Property as a HMO. There is only one tenancy with the Tenant and that tenancy refers to the whole of the Property, not just a single room. There is also insufficient evidence that the Property was operating as an HMO before September 2023.

73 After the inspection of the Property on 27 September 2023, it should have been obvious to the Applicant that the Property was operating as an HMO and

that the Regulations had to be complied with. The Respondent had written to the Applicant on 8 August 2023 setting out what was required.

74 The Tribunal's decision is that the Applicant has failed to show that they had a reasonable excuse for failures to comply with the Regulations.

75 In terms of the Improvement Notice, the Applicant's case appears to be that he had a reasonable excuse for not complying with the notice in that he was unable to access the Property because of the occupants living there without permission.

76 It is noted that the occupants granted access to the Respondent without any issues. The Applicant says that this is because they are authority figures, but provides no evidence in support. Further, the Applicant has failed to provide any evidence that they attempted to gain access, but were frustrated by the occupants. The Applicant has failed to prove that they had a reasonable excuse for failing to comply with the Improvement Notice.

77 The Tribunal is not satisfied, on the balance of probabilities that the Respondent had a reasonable excuse for breaches of sections 30 and 234 of the 2004 Act.

78 However, in the view of the Tribunal, the matters referred to by the Applicant above, may be appropriate to assessing the level of any financial penalty.

<u>Whether the Respondent complied with the relevant procedures</u>

79 The notice of intent was served on 29 August 2024 and the Respondent provides a certificate of delivery.

80 The notice of intent set out why the financial penalty was being imposed, the amount of penalty and advised of the right to make representations.

81 The Applicant made representations and a final notice was served on 13 February 2025 and the Respondent once again provides a certificate of delivery.

82 The final notice sets out the amount of penalty, the reasons for imposing the penalty, how to pay the penalty, the date for payment, which was within 28 days and set out the right to appeal.

83 The Tribunal is satisfied that the Respondent complied with the procedures at Schedule 13A of the 2004 Act.

<u>The amount of Financial Penalty</u>

The Respondent's decision

84 The Respondent has provided its charging table for determining financial penalties (the Charging Table), which is attached to the Notice of Intent.

85 The Respondent has provided a case summary which sets out its reasoning for imposing the financial penalty.

86 The case summary has guidance notes attached to it which refers to the Regulators Code produced under s.23 Legislative and Regulatory Reform Act 2006 and notes that departing from the Code is a serious step which must be properly reasoned and based on material evidence.

87 The case summary also has guidance notes on the evidential and public interest tests.

88 The Respondent notes that the Applicant states that they had not intended the Property to be used as an HMO, but that inspections carried out by the Respondent showed that the Property was being used as an HMO.

89 The Respondent considers that there was high culpability on the Applicant because the Respondent did inform the Applicant of the breaches, but the Applicant did little or nothing to remedy the breaches.

90 The Respondent considered that the correct process had been followed, with fair escalation and assistance from the Respondent throughout the matter.

91 The Respondent considers that the evidential test is met from visits, representations from the Applicant and timescales in the case notes.

92 The Respondent considers that the public interest test is also met as safe housing is a fundamental right and the Respondent has a duty to uphold the law.

93 The recommendation is to impose a financial penalty for each of the breaches, along with a single additional premium. This is on the basis that it is the Applicant's responsibility to mange the Property and ensure that it is safe.

The Tribunal's decision

94 The Tribunal notes that by virtue of paragraph 10 of Schedule 13A of the 2004 Act, the appeal is by way of re-hearing of the Respondent's decision, but the Tribunal may have regard to matters which the Respondent was unaware. The Tribunal may confirm, vary or cancel the final notice.

95 The Tribunal noted that the Respondent, in its decision, had failed to refer back to the Regulators Code and the guidance notes on the evidential and public interests test to fully explain how it had come to its conclusions.

96 As set out above (paragraphs 57- 67), the Tribunal is satisfied that the offences under sections 30 and 234 were committed by the Applicant. In terms of the evidential test, given the evidence produced by the Respondent regarding visits, correspondence, lack of rebuttal evidence from the Applicant and a lack of a reasonable excuse defence, there was a realistic prospect of a conviction.

97 HMO's involve a number of different people living in a single property and the purpose of the licensing regime is to ensure such properties are safe and well managed. Failing to hold a licence, failing to properly manage the Property and failing to remedy hazards at the Property, including fire safety and electrical issues, which are a risk to occupiers health and safety, is a very serious matter. The Tribunal is satisfied that it would have been in the interests of justice to prosecute the Applicant for the offences.

98 The Tribunal noted that the Charging Table did not really account for mitigating factors, other than a landlord having a low income of less than £440.00 per week. Whilst the Tribunal had some concerns about a lack of such mitigating factors, the Tribunal did not consider it was necessary to depart from the Charging Table.

99 In terms of the Improvement Notice, the Tribunal noted that the starting point within the Charging Table is £5000.00 for a first offence. The Tribunal

noted that many of the requirements of the Improvement Notice related to issues which could effect occupiers health and safety. The Tribunal saw no reason to depart from the £5000.00 imposed.

100 In terms of breaches of the Regulations, the Tribunal noted that the starting point was £1000 for each breach. Once again, the Tribunal noted that the purpose of the Regulations is to ensure that the HMO is well managed and occupants are safe. The Tribunal considered that the total of £4000.00 was correct.

101 The Tribunal noted that the Charging Table permits a premium of £2500 for each breach.

102 The Tribunal was satisfied that the Applicant did not intend the Property to be used as an HMO. However, the Applicant was advised by the Respondent that it was a HMO and that the Regulations needed to be complied with. Further, the Tribunal is not satisfied that there is good reason for not complying with the Improvement Notice.

103 The Tribunal considers that an additional premium of £2500 is appropriate in this case to reflect high culpability.

104 The Applicant advised that their income was around £1800 per month, but that they had recently lost their job and were looking to apply for welfare benefits. However, the Applicant also stated that they were paying for university fees and private tuition for family members, which suggests an income well above what was disclosed. The Tribunal noted that the Charging Table, at note 6, required the Applicant to provide sufficient evidence of income to qualify for the discount due to low income. The Tribunal's decision is that the Applicant did not provide sufficient evidence that their income was less than £440.00 per week and the Tribunal did not apply any discount in this respect.

105 The Tribunal calculated the amount of financial penalty as follows:

- Breach of the Improvement Notice (Section 30) - £5000
- Breach of the Regulations (x4 at £1000 each) (s.234) - £4000
- Premium -High Culpability - £2500

Total Financial Penalty Payable : **£11,500**

Summary

106 The Tribunal varies the financial penalty imposed by the Respondent to reflect that the Applicant's conduct amounted to 2 relevant offences under sections 30 and 234 of the 2004 Act and in the sum of **£11,500.00** (eleven thousand five hundred pounds).

Appeal

107 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.

108 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

109 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

110 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

5 June 2026

Stephen Haythorne
Deputy District Judge