FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/00MR/HNA/2025/0631 HAV/00MR/HNA/2026/0003
Property	**:**	151 Chichester Road, Portsmouth, PO2 0AQ
Applicant	**:**	Mohammad Jamal Miah
Representative	**:**	
Respondent	**:**	Portsmouth City Council
Representative	**:**	Mr O Capildeo, of Counsel
Type of Application	**:**	Appeal against a financial penalty - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal Members	**:**	Regional Surveyor Clist MRICS Mr M Williams FRICS Mr J Reichel MRICS
Date of Hearing	**:**	30 June 2026
Date of Decision	**:**	12 August 2026

DECISION

Summary of Decision

The Tribunal quashes the two financial penalties dated 20 October 2025 and 13 November 2025 imposed on the Applicant by the Respondent.

Background

1. The Tribunal has received two appeals from the Applicant against Financial Penalty notices made under section 249A of the Housing Act 2004.

2. The first received on 16 November 2025 against the Notice of Financial Penalty dated 20 October 2025 for a penalty in the sum of £12,500.00.

3. The second received on 5 December 2025 against the Notice of Financial Penalty dated 13 November 2025 for a penalty in the sum of £4,000.

4. The appeals are to be dealt with together, by way of a re-hearing of the Respondent's decision to impose the penalty and/or the amount of the penalty, but it may be determined having regard to matters of which the Respondent was previously unaware.

5. The Tribunal was provided with a hearing bundle comprising 533 electronic pages. References in this determination to page numbers in the bundle are indicated as [ ].

6. These reasons address in summary form the key issues raised by the parties. The reasons do not recite each point referred to in submissions but concentrate on those issues which, in the Tribunal's view, are critical to this decision. In writing this decision the Chairman has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

7. The hearing was audio recorded, and the recording serves as the official record of the proceeding.

The Law

8. There is a fair amount of applicable law, case law and guidance as to how the local housing authority on the one hand and how the Tribunal on the other hand are to address matters.

9. The most pertinent law is outlined below.

10. Firstly, in terms of the offences, the relevant law is contained in the Act and in particular sections 72 and Section 234 Housing Act 2004.

11. Section 72 provides that:

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

(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.

(3) A person commits an offence if– (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed n accordance with section 67 (5), and (b) he fails to comply with any conditions of the licence.

....

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,
as the case may be.

....

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

12. It is section 72(1) and the defence at 72(5) which are the relevant sub-sections in respect of this application.

13. Section 234 provides that:

(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.

14. The relevant Management Regulations were introduced in 2006 by statutory instrument.

15. Section 263 of the Act defines a "person having control" and "person managing" of a property and often it is relevant to identify the person as one or other.

16. By amendments to the Act, effected by Schedule 9 to the Housing and Planning Act 2016, the power for local housing authorities to impose a civil penalty as an alternative to prosecution was introduced.

17. Section 249A of the Act deals with the imposition of a financial penalty on the basis of commission of a relevant offence, in relation to which it states the following:

> (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—
> ....
> (b) section 72 (licensing of HMOs),
> ....
> (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.

18. Schedule 13A to the Act sets out the procedure to be followed by the local housing authority and the requirements of the Notices required to be served, including the requirement for a notice of intent within six months, the information to be contained and the right to make representations and then the requirement to decide whether to serve a

final notice and the contents of that. As no issue arises as to the procedure adopted by the Respondent, it is not necessary to set out the requirements in full.

19. The entitlement to apply to the Tribunal is also provided for in Schedule 13A of the Act and specifically Paragraph 10. That states as follows:

> (1) A person to whom a 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.
> (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

20. It is further explained that:

> (3) An appeal under this paragraph
> (a) is to be a re-hearing of the local housing authority's decision, but
> (b) may be determined having regard to matters of which the authority was unaware.

21. In terms of the powers of the Tribunal, it is added:

> (4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.
> (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

22. So, as set out above, the Tribunal re- hears the matter but does so including on the basis of matters of which the Respondent may have been unaware and the Tribunal may decide to leave the Final Notice in place as issued, may quash it entirely or may appropriately vary it. The Tribunal has the power to determine that there was or was not an offence for which a civil financial penalty may be imposed and, if so, to confirm or vary the level of any penalty.

23. There is no mental element to a licensing offence. It is, subject to there being a reasonable excuse, what is termed a strict liability offence. In the case of *Mohamed and Lahrie v London Borough of Waltham Forest* (2020) EWHC 1083 (Admin), it was said as follows:

> "48. For all these reasons we find that the prosecution is not required to prove that the relevant defendant knew that he had control of or managed a property which was a HMO, which therefore was required to be licensed. As noted above the absence of such knowledge may be relevant to the defence of reasonable excuse."

24. There is Government guidance in respect of the Act and the offences created. The Ministry of Housing, Communities and Local Government published non-statutory guidance in April 2018 entitled "Civil penalties under the Housing and Planning Act 2016 - Guidance to Local

Authorities", ("the Guidance") [6-25]. Local authorities must, pursuant to paragraph 12 of Schedule 13A to the Act, have regard to the guidance in respect of their functions in respect of civil penalties, as the Guidance itself repeats.

25. The Guidance states the Government's intention to crack down on a "small number of rogue or criminal landlords [who] knowingly rent out unsafe and substandard accommodation" and to disrupt their business model.

26. Paragraph 1.9 of the Guidance states that civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 and Housing and Planning Act 2016 listed in the Guidance.

27. Paragraph 3.5 of the Guidance addresses in some detail the factors that a local housing authority should consider when deciding on the level of a civil penalty, as follows:

a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.

b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

f) **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

28. The Guidance also states that local housing authorities are expected to develop and document their own policy on when to impose a civil penalty and should decide which option to pursue on a case- by- case basis and also says that housing authorities "should develop their own policy on determining the appropriate level of civil penalty in a particular case", in line with that policy.

29. So, the local housing authority must have a policy to cover when a penalty should be imposed and how much that should be.

30. The approach to the Tribunal's consideration of local policies was summarised in the Upper Tribunal by Judge Cooke in *Marshall v Waltham Forest LBC* [2020] UKUT 35 (LC); [2020] 1 WLR 3187, which involved appeals against penalties imposed under section 249A of the Act. At para 54 the Judge stated:

> "The court [or Tribunal] is to start from the policy, and it must give proper consideration to arguments that it should depart from it. It is the appellant who has the burden of persuading it to do so. In considering reasons for doing so, it must look at the objectives of the policy and ask itself whether those objectives will be met if the policy is not followed."

31. Judge Cooke also considered the weight to be attached to the local housing authority's decision in any appeal at para 62, stating as follows:

> "the court is to afford considerable weight to the local authority's decision but may vary it if it disagrees with the local authority's conclusion".

32. In *Sutton* it was said by the Upper Tribunal that:

> "It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities, and not by courts or tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred. The authority is well placed to formulate its policy and in *London Borough of Waltham Forest v Marshall* [2020] UKUT 35 (LC) the Tribunal (Judge Cooke) gave guidance on the respect that should be afforded to a local authority's policy by the FTT when hearing an appeal from a civil penalty imposed by the authority. As Wilkie J put it, concerning the approach which should be taken by magistrates, in *Darlington Borough Council v Kaye* [2004] EWHC 2836 (Admin): "The Justices ... ought to have regard to the fact that the local authority has a policy and should not lightly reverse the local authority's decision or, to put

it another way, the Justices may accept the policy and apply it as if it was standing in the shoes of the council considering the application.

If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision."

33. Nevertheless, as explained in Marshall at paragraph 76:

> "... if a court or tribunal finds, for example, that there were mitigating or aggravating circumstances of which the original decision-maker was unaware, or of which it took insufficient account, it can substitute its own decision on that basis."

34. The policy of the local housing authority is therefore the starting point, although not the end point.

35. With regard to the amount of the penalty, the Tribunal's power to vary it includes a power to increase as much as it does to reduce it, subject to the maximum of £30,000.00.

36. It was also explained in Sutton as follows:

> "The ability to pay, or the means of the offender, is relevant to any financial punishment; although not mentioned specifically in the Secretary of State's Guidance, it is an important component of both punishment and deterrence.
>
> A corporate or individual appellant who wishes the Tribunal to have regard to their own financial standing when considering the appropriate financial penalty to impose, should provide up-to-date evidence of their assets and liabilities."

The Hearing

37. The hearing took place at 10am on the 30th June 2026 at Havant Justice Centre. Mr Miah, the Applicant was in attendance as a litigant in person, alongside Mr Mozibur Rahman as a witness. The Tribunal was assisted by Mr Alam as an interpreter for Mr Miah.

38. For the Respondent, Mr Capildeo of counsel represented, Ms Clare Green (Housing Regulation Officer at Portsmouth City Council) attending as a witness and was accompanied by her colleague Mr Michael Conway.

39. The Tribunal is grateful to both parties' for their submissions and in particular to Mr Alam for providing interpretation.

40. At the outset of the hearing, Mr Capildeo raised a preliminary objection to Mr Miah giving evidence. He submitted that Mr Miah had not provided a witness statement and that the letter he had submitted did not comply with the requirements of a witness statement. He argued that

allowing oral evidence in those circumstances would be unfair to the Respondent as it had not been given an opportunity to review the evidence beforehand.

41. Mr Miah explained that he did not have the hearing bundle in front of him. He said that he had written the letter in response to a request from the local authority and that a friend had assisted him in preparing it because of his language difficulties. Mr Capildeo expressed concern about the fairness of permitting oral evidence where there had been no advance written statement, particularly as the document did not contain a statement of truth. He also questioned the reliability of the contents if the document had not been entirely written in Mr Miah's own words.

42. Mr Miah stated that he could not afford legal representation and requested the opportunity to resubmit his evidence in full compliance. The Tribunal determined that, although the document did not strictly comply with the requirements of a witness statement as it lacked a statement of truth, it was nevertheless addressed to the Tribunal, signed and dated. Taking into account that Mr Miah was a litigant in person and that the proceedings concerned alleged offences, the Tribunal decided to admit the statement and permit Mr Miah to give oral evidence, although the same would be confined to the contents of his statements within the bundle. Mr Capildeo was informed that he could challenge any aspect of the evidence which he considered to be newly introduced.

43. The Tribunal requested that the Respondent make their opening statement and give evidence prior to the Applicant, in order to assist the Tribunal. The parties were content to do so.

44. In opening, Mr Capildeo explained that the Tribunal was dealing with two appeals concerning 151 Chichester Road. The first related to a financial penalty of £12,500 for operating a licensable HMO without a licence. The second related to a penalty of £4,000 for breaches of HMO management regulations.

45. He submitted that the Council carried the burden of proving the offences beyond reasonable doubt. If the offences were established, it would then be for Mr Miah to demonstrate any reasonable excuse on the balance of probabilities.

46. The Council's case was that the property was clearly occupied as a licensable HMO. Evidence from occupiers showed that multiple unrelated households, including couples and children, were living there. There was no HMO licence in force and no temporary exemption notice had been obtained.

47. Mr Capildeo argued that the key issue was not whether Mr Miah had personally placed each occupier in the property. Rather, the question was

whether he was a person having control of, or managing, the HMO. The Council maintained that he was. Mr Miah was the sole registered proprietor and accepted that he was the freehold owner. He had let the property to Mr Haque, received rent from that arrangement, and retained a sufficient practical connection with the property to bring the occupation to an end.

48. Mr Capildeo noted that Mr Miah relied upon his trust in Mr Haque, lack of knowledge, remedial works undertaken after the Council's intervention, and financial hardship. The Council's position was that none of those matters amounted to a reasonable excuse. It was argued that Mr Miah had failed to take reasonable steps before the Council became involved to understand how the property was being occupied or to ensure compliance with HMO licensing requirements.

49. In relation to the management regulations penalty, the Council's case was that Mr Miah was a person managing the property. Reliance was placed upon his ownership, the tenancy arrangement with Mr Haque, his entitlement to rent, the involvement of Mr Rahman in receiving and distributing rental income, and Mr Miah's ultimate ability to regain possession and require occupiers to leave. Mr Capildeo concluded by submitting that both penalties had been lawfully imposed and should be upheld.

50. Ms Green gave her evidence on behalf of the Respondent. She confirmed the contents of her witness statement and associated documents.

51. Ms Green stated that during her inspection she found at least seven adults and two children living at the property. She confirmed that Land Registry records identified Mr Miah as the sole registered proprietor. She also confirmed the existence of a tenancy agreement between Mr Miah and Mr Haque under which Mr Haque paid rent of £1,700 per month.

52. She referred to Mr Miah's response to a section 16 information request. In that response, Mr Miah identified himself as the freeholder and listed the individuals residing at the property. The document also recorded that those occupiers were paying rent to Mr Haque. Ms Green considered this information to be consistent with Mr Miah's earlier correspondence to the Tribunal.

53. Turning to the penalties, Ms Green stated that the Council had considered both its enforcement policy and the relevant statutory guidance. For the licensing offence, the Council applied a starting point of £10,000 in accordance with its published policy. A further £2,500 uplift was added because Land Registry information suggested that Mr Miah was the owner and, on the Council's analysis, claimed to reside at the property when he did not. Additional factors considered included the

appointment of Mr Haque as an apparent agent, the absence of planning consent for HMO use, council tax records indicating that Mr Haque was registered at the property when he was not resident there, and Mr Miah's assertion that he did not receive rental income from the property.

54. In relation to the management regulations offences, Ms Green confirmed that no additional premium had been applied beyond the Council's starting point and that there had been no defects in the enforcement process identified.

55. Mr Miah asked Ms Green how she had concluded that Mr Haque was acting as his agent. She replied that although Mr Haque held a tenancy agreement, he did not live at the property. Instead, he lived elsewhere and had placed multiple occupiers into the house. In her view, that meant he was acting either as an agent or under a rent-to-rent arrangement.

56. In answer to questions from the Tribunal, Ms Green explained that this conclusion was based principally upon the tenancy documents and evidence showing that Mr Haque did not reside at the property. She referred to documents showing addresses connected with Mr Haque at Highbury Grove.

57. Ms Green confirmed that Mr Miah had not been interviewed under caution, but rather cautioned in writing.

58. Ms Green also gave evidence about the involvement of Mr Rahman. She explained that correspondence had been received from Mr Rahman, although the Council initially did not know who he was. Following enquiries, Mr Miah informed the Council that Mr Rahman and another individual, Mr Jaba, had contributed financially towards the purchase of the property. Neither individual, however, appeared on the Land Registry title.

59. Ms Green accepted that following the Council's investigation Mr Miah took steps to address the problems. He had instructed Mr Haque to remove the occupiers, the property was subsequently emptied, and repairs and cleaning work were undertaken. A further notice concerning waste left in the forecourt was served, although no additional financial penalty resulted from that.

60. She also explained that the Council had chosen to address issues such as overcrowding, fire safety concerns, obstructed escape routes, storage of e-bikes, damp, disrepair and other hazards through the management regulations penalty rather than by increasing the licensing penalty with a premium.

61. When questioned further by the Tribunal, Ms Green confirmed that two children had been living in the property, one of whom was a newborn

child and the other nearly three years old. She also referred to financial evidence showing that occupiers paid rent to Mr Haque, generating income in excess of £2,700 per month, whilst the tenancy agreement required Mr Haque to pay only £1,700 per month. She stated that funds appeared to pass through Mr Rahman's account before being distributed, leading her to conclude that Mr Haque was acting in some form of agency capacity on behalf of the owner. Ms Green confirmed that Mr Miah had not been interviewed under caution.

62. In his evidence, Mr Miah stated that he had rented the property to Mr Haque on the understanding that Mr Haque's nephew would be living there. He said he had no knowledge that other individuals were occupying the property and trusted Mr Haque, whom he regarded as a respected member of the community.

63. Mr Miah explained that if he had known about the actual occupation arrangements he would have stopped them immediately. When the Council discovered the situation, he did not personally remove any tenants but instructed Mr Haque to empty the property. Mr Haque subsequently informed him that he had suffered a heart attack, no longer wished to be responsible for the property, and returned control of it.

64. Mr Miah said that if he had known Mr Haque was receiving approximately £2,700 per month from occupiers, he and his associates might instead have obtained an HMO licence and operated the property as a HMO themselves.

65. Reference was made to his difficult financial circumstances, explaining that he lived in rented accommodation and struggled to meet his obligations. He also stated that he had carried out repairs as soon as the Council requested them and asked the Tribunal to reduce the penalties.

66. Under cross-examination, Mr Miah accepted that he was the freehold owner and sole registered proprietor and that he let the property to Mr Haque in return for rent of £1,700 per month.

67. He acknowledged that in correspondence sent to the Tribunal he had stated that Mr Haque was solely responsible for occupation arrangements. He also accepted that in his response to the section 16 notice he identified himself as the freeholder, described himself as the landlord, listed the occupiers, and recorded that rent was paid to Mr Haque by those occupiers.

68. Mr Miah maintained that although he was the registered proprietor there were two other beneficial owners. He explained that they had contributed funds towards the purchase of the property but were not included on the Land Registry title because of mortgage and family circumstances.

69. He further accepted that he had failed to inspect the property regularly, keep occupancy records, restrict subletting, check whether an HMO licence was required, or generally monitor the use of the property. He agreed that, with hindsight, he should have monitored matters more closely.

70. Mr Miah also accepted that repairs and remedial works were carried out only after the Council became involved. He agreed that money generated by the property was used towards mortgage payments and that he therefore retained a financial connection with the property.

71. When challenged by Mr Capildeo, Mr Miah acknowledged that he was pleading ignorance to many matters and accepted a suggestion that he had sought to place blame on Mr Haque.

72. Mr Rahman gave evidence explaining that he is a beneficial owner rather than a legal owner of the property. He explained that he collected rent from Mr Haque before transferring funds to Mr Miah to cover mortgage repayments. Remaining monies were shared between those with beneficial interests and were also used to meet expenses associated with the property.

73. Mr Rahman stated that neither he nor Mr Miah believed an HMO licence was required because they understood that the property had been let only to Mr Haque. He said they believed that either Mr Haque or Mr Haque's nephew would reside there and that they were unaware of any multiple occupation arrangement.

74. When questioned about his witness statement, which referred to collecting rent from tenants (plural), Mr Rahman said this had been an error and that he collected rent only from Mr Haque. He maintained that bank statements supported that position.

75. In closing, Mr Capildeo submitted that both offences had been proved. He argued that the evidence clearly established that the property was a licensable HMO occupied by multiple households, including children, and that no licence or exemption was in place. He contended that Mr Miah was either a person having control of, or a person managing, the property within the meaning of the Housing Act 2004. Reliance was placed upon his ownership, his self-description as landlord, his entitlement to rent, his ability to direct occupiers to leave, and his continuing financial interest in the property.

76. Mr Capildeo submitted that Mr Miah had not established a reasonable excuse. Reliance on Mr Haque was insufficient. Mr Miah had failed to inspect, monitor or control occupation, failed to investigate licensing requirements, and only took action after the Council intervened. While

the subsequent repairs and regaining of control might be relevant mitigation, they did not excuse the original offences.

77. In relation to the management regulations offences, Mr Capildeo argued that the extensive disrepair and fire safety failings were established and largely accepted by Mr Miah, who responded by carrying out works rather than disputing the existence of the defects.

78. Mr Miah, in his closing remarks, emphasised that he was a lay person. He denied that Mr Haque was his agent and maintained that he genuinely believed Mr Haque would occupy the property himself. He stated that his trust in Mr Haque explained both his failure to inspect the property and his lack of awareness of the unlawful occupation. He argued that Mr Haque, rather than he, was responsible for the offences. He said that he had never known the occupiers, had not personally removed them, and had not exercised control over the property in the way alleged by the Council. He concluded by apologising for what had occurred and asked the Tribunal to reduce or cancel the penalties.

Consideration and reasons

79. The hearing ran slightly over its scheduled time which resulted in the need for the Tribunal to reconvene for its deliberations on 13 July 2026.

80. The Tribunal records that regrettably, it did not find Mr Miah nor Mr Rahman to be reliable witnesses. During the course of the evidence, Mr Miah admitted that he had received assistance in responding to the Council and in making his written statements for the Tribunal. Further, correspondence to the Council appeared to have been sent from Mr Rahman's email address.

81. Furthermore, Mr Rahman attempted to assist Mr Miah at several points in the hearing including whilst Mr Miah was giving evidence, despite having been previously requested not to interrupt the proceedings. Mr Rahman was reseated to the rear of the courtroom for Mr Miah's remaining evidence.

82. For these reasons, it appeared to the Tribunal that Mr Miah was influenced somewhat by Mr Rahman, who, appeared to be particularly vested in the proceedings.

83. The Tribunal also noted that Mr Miah did not, at all times, answer questions directly and accordingly. This may of course be a natural consequence of the language barrier and translation, in which case this was unfortunately somewhat unavoidable.

84. The Tribunal therefore found both Mr Miah's and Mr Rahman's evidence to be of little assistance.

85. The first matter for the Tribunal to consider is Mr Miah's liability in relation to the offences under Section 72(1) and Section 234(3) of the Housing Act 2004.

86. The Tribunal reminds itself that the burden of proof is to the criminal standard, that being beyond reasonable doubt that the alleged offences have been committed. With reference to S72(1) Housing Act 2004, above, the offence is committed by a person 'in control of or managing the HMO'. A Section 234(3) offence can only be committed by a person managing the premises as the duty is imposed only upon the same under sub paragraph 2.

87. The definitions of a person in control or managing are found within Section 263 Housing Act 2004:

(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.

88. It was the Respondent's submission that Mr Miah was both a person in control and managing the property. It was said that Mr Haque was Mr Miah's agent. This was on the basis that Mr Haque did not reside in the Property with the tenancy agreement providing his home address, the rent payments from Mr Haque to Mr Miah and Mr Miah's submissions following the Section 16 return of information [258] describing himself as the Landlord who had quickly regained possession of the Property. Mr Miah had further provided names of occupiers [257]. Further, Mr Miah was the registered legal owner of the Property. This was said to demonstrate a financial connection with the Property and an element of control that Mr Miah had over it. Mr Capildeo had advanced that of Mr Haque was not an agent, he could be considered a trustee in the alternative. This proposition was not expanded upon further.

89. The Tribunal firstly turned its attention to the tenancy agreements between Mr Haque and Mr Miah, dated 1 January 2024 and 1 January 2025 [259-262]. Both agreements appeared to incorporate the same terms. Mr Haque's address is listed as 15 Highbury Grove on both documents. The Tribunal further notes clauses 2.8 and 2.9 which does not permit subletting, lodgers or use of the Property as a HMO.

90. The Tribunal does not find it unusual that Mr Haque's address was at 15 Highbury Grove for the first tenancy agreement, as is common before a tenant takes occupation. Whilst the Tribunal considers the inclusion of the address in the second tenancy agreement unlikely to be an error given the document was handwritten, the fact that Mr Haque was not occupying the Property personally was not persuasive evidence, to the required standard, that Mr Haque was an agent for Mr Miah, operating the Property as a HMO.

91. With respect to Mr Miah's return of information to the Respondent, Mr Miah described himself as the Landlord of the Property and with regards to the occupiers, stated that 'all of them given notice to evacuate the property…'. It was the Respondent's submission that this demonstrated an element of control over the Property. The Tribunal did not consider this to be conclusive of the same. The statement was not written in possessive language. Mr Miah did not state that he himself had given notice to the tenants, just that notice had been given. His oral evidence was that he had told Mr Haque to empty the Property. This could indeed demonstrate a relationship as an owner and agent, but it could also refer

to the relationship between Mr Miah and Mr Haque as Landlord and Tenant, Mr Miah exercising control of his tenancy with Mr Haque, albeit seemingly with little regard to regaining possession in the proper manner.

92. It was said that Mr Haque's monthly rental payment made to Mr Rahman, who then distributed the money to Mr Miah and the third owner, Mr Jaba after the mortgage payment and expenses, established a direct financial connection to the Property and the rents received by the tenants.

93. The contractual rent under the tenancy agreements between Mr Miah and Mr Haque was £1700. This was consistent with the monthly payment Mr Haque made to Mr Rahman. Further, the parties had accepted that the tenants had cumulatively been paying some £2700 each month to Mr Haque.

94. The Tribunal notes that the evidence contained within the bundle of the occupier statements and proof of rent payments arrives at a sum of £2675. The Tribunal finds, on the evidence contained within the bundle, that the rack rent of the Property is £2675, as an unlicensed HMO.

95. The Tribunal considers that the apparent ownership arrangement between Mr Miah and Mr Rahman is opaque. It was not clear why Mr Haque paid rent to Mr Rahman rather than to Mr Miah who was the legal owner, mortgagor and person he had contracted with under the terms of his tenancy agreement. It was Ms Green's evidence that this arrangement suggested that Mr Haque was an agent. The Tribunal were not convinced of the same, considering that it called into question whether Mr Rahman's role was beyond that of a beneficial owner, although nothing turns on the same given it is the appeal of Mr Miah.

96. The Tribunal considered that it was unfortunate that Mr Miah had not been interviewed under caution. Further, there had been no evidence included within the bundle of an interview under caution with Mr Haque. The same may have adduced further evidence as to the arrangement between Mr Miah and Mr Haque.

97. Given the limitations and suppositions from the evidence before it, the Tribunal was not convinced that Mr Haque was an agent, preferring to make a finding that he was the tenant of Mr Miah.

98. With respect to its findings, the Tribunal applies Section 263 Housing Act 2004.

99. The Tribunal does not consider that Mr Miah could be a person in control as he was not in receipt of the rack-rent, nor was he entitled to the same. Mr Miah received only a share of the £1700 rental payment from Mr Haque. Aside from the arrangements as to the distribution of that rent, Mr Miah was entitled to receive £1700 under the terms of the tenancy with Mr Haque, a figure that represents only 63.55% of the monthly rack rent of £2675. That does not equate to at least two-thirds, or 66.67 % as required under the Act. Nor was Mr Miah entitled to receive the rack-rent of the Property owing to his tenancy with Mr Haque. It was only Mr Haque that was entitled to receive the rack rent.

100. The Tribunal did not consider that Mr Miah was a person managing the premises owing to its earlier finding in respect of Mr Haque being Mr Miah's tenant. Mr Miah could not, therefore, be said to have received rents from the occupiers of the HMO either directly or indirectly via an agent or trustee, nor was he entitled to receive the same but for having entered into an arrangement with a person other than an owner or lessee.

101. As the Tribunal finds that Mr Miah is not a person in control or managing the premises, it therefore follows that Mr Miah is not liable for committing any of the alleged offences under Section 72(1) and Section 234(3) Housing Act 2004. The Tribunal would comment that its findings are made in respect of the evidential standard required, that being beyond reasonable doubt. Had the standard been lower, on the balance of probabilities, the Tribunal may have been minded to find the offences had been committed.

102. As a result the Tribunal finds that neither of the two financial penalties can be imposed and accordingly both are quashed.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

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

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