

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	HAV/43UD/HNA/2026/0018
Property	**:**	43 Ashenden Road, Guildford, Surrey, GU2 7XE
Applicants	**:**	Mr Suresh Pavanantham
Representative	**:**	None
Respondent	**:**	Guildford Borough Council
Representative	**:**	Ms Plested
Type of Application	**:**	Appeal against a financial penalty – section 249A and Schedule 13A to the Housing Act 2004
Tribunal members	**:**	District Judge Pain, sitting as a Judge of the First-tier Tribunal (Property Chamber) Mr C Davies, FRICS
Date of Hearing	**:**	24 September 2026
Date of Decision	**:**	9 November 2026

DECISION

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Summary of the Decision

1. **The decision by the Respondent to impose a financial penalty against the Applicant is upheld. The financial penalty imposed by the Respondent was £5,000. For the reasons set out below, the Tribunal has determined that the financial penalty should be £1,000.**

2. **The Applicant's appeal against the financial penalty, imposed on him by the Respondent pursuant to section 249A and schedule 13A of the Housing Act 2004, is therefore allowed to the extent of the amount of the financial penalty being varied to £1,000, but is otherwise dismissed.**

3. **The Tribunal also makes an order for the re-imbursement of the Applicants' fees, in the sum of £341, pursuant to rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, to be paid within 28 days.**

4. **The Tribunal gives the Respondent 14 days from the date of this decision to apply to set aside paragraph 3, above.**

The application

5. On 27 January 2026, the Tribunal received an application from the Applicant, pursuant to paragraph 10 of schedule 13A to the Housing Act 2004 ('the 2004 Act'), seeking to appeal against the civil financial penalty imposed by the Respondent on the Applicant on 12 January 2026 ('the Financial Penalty').

6. The Financial Penalty was imposed by the Respondent pursuant to section 249A of the 2004 Act in respect of the Applicant's commission of an offence of being a person managing a house in multiple occupation ('an HMO'), who failed to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 ('the 2006 Regulations'), contrary to section 234(3) of the 2004 Act. The Financial Penalty imposed on the Applicant was in the sum of £5,000.

7. In his application notice, the Applicant sought to appeal against the Respondent's decision to impose the Financial Penalty.

8. A Legal Officer issued directions to the parties on 10 July 2026. Those directions included directions for the filing of statements of case, all relevant evidence, and for the preparation of a bundle ahead of a 3-hour final hearing. Paragraph 18 of those directions also required the Respondent to provide, among other things, a copy of the Respondent's local policy relating to the imposition of Financial Penalties.

9. Insofar as the Tribunal does refer to specific pages from the bundle in this Decision, the Tribunal does so by numbers in square brackets [ ], and with reference to PDF bundle page-numbering.

10. No inspection of the property has taken place, neither party having made an application for the Tribunal to do so.

Background

11. The Applicant is, with his brother, Mr Sudharshan Pavanantham, a joint legal owner of the property known as 43 Ashenden Road, Guildford, Surrey, GU2 7XE ('the Property'), having inherited the same from his father in or around 2006. The Applicant states that the Property has been rented out since that time and that, in doing so, the Applicant has engaged, and relied on, the services of Foxtons Property Management ('Foxtons').

12. An HMO licence was granted to the Applicant by the Respondent in respect of the Property on 20 December 2023 ('the HMO licence'), subject to complying with attached licence conditions [84] to [98]. Those conditions included, at paragraph 6.5 [91] that the licence holder must ensure that the manager of the property complies with the requirements of Regulations 3 to 9 of the 2006 Regulations. The licence holder was also required, at paragraph 2.1 [87], to carry out improvements works specified in schedule B to the HMO licence [94] to [98].

13. On 5 September 2025, the Respondent sent an email to the Applicant stating that an inspection of the Property to determine his compliance with the HMO licence conditions would take place on 17 September 2025. Foxtons asked the Respondent to postpone the planned inspection as they said works were still being completed ahead of tenants moving in the following week; an inspection on 24 September 2025 was agreed. Having received a further request for a delay on 23 September 2025, the Respondent issued the Applicant and the occupiers with a notice of entry pursuant to section 239 of the 2004 Act, stating that access would be required on 30 September 2025 [111].

14. Ms Plested, an Environmental Health Officer then employed by the Respondent, attended the Property on 30 September 2025; but while she was able to observe its exterior on that day, she could not gain entry to the Property itself. Having thereafter been made aware of a complaint made to the Respondent by a parent of a tenant of the Property, Ms Plested re-attended the Property on 1 October 2025 and was able to enter the Property and carry out an inspection.

15. On inspection, Ms Plested noted that, except for the requirement to investigate and remedy dampness to the ground floor hallway of the Property, the works required by the HMO licence had been carried out. However, she recorded a lack of compliance with the 2006 Regulations.

16. On 9 October 2025, Ms Plested sent the Applicant a letter [210] and attached schedule of alleged breaches, including photographs taken by her during her inspection on 1 October 2025. The letter informed the

Applicant that the issuing of a civil financial penalty was being considered.

17. The Respondent issued the Applicant with a Notice of Intent to Issue a Financial Penalty on 29 October 2025, that recorded the intention to impose a financial penalty of £10,000 ('the Notice of Intent') [217] to [219]. The Notice of Intent identified the following breaches of the 2006 Regulations:

(a) Regulation 3: no details of the manager or contact information was displayed in a prominent position in the HMO;
(b) Regulation 4: (safety measures) the means of escape from fire was not kept free from obstruction as there was a wardrobe located in the ground floor hallway; and the front door is not fitted with a thumb turn lock to enable escape without the aid of a key;
(c) Regulation 7: (maintenance of common parts) the Notice of Intent listing 27 separate breaches at [218];
(d) Regulation 8: (maintenance of living accommodation) the Notice of Intent identifying breaches relating to the two first floor rear bedrooms, and the ground floor front bedroom at [218]; and
(e) Regulation 9: (provision of waste disposal facilities) insufficient provision, with overflowing bins.

The Notice of Intent invited the Applicant to make representations against the proposed civil financial penalty by 27 November 2026.

18. Formal representations were received by the Respondent from the Applicant on both 26 [226] and 27 November 2026 [260] to [262]. Therein, the Applicant noted that: the Property had been managed and let by Foxtons since 2007; Foxtons had failed to notify the Applicant of any issues making the Property unfit to rent at the pre-tenancy inspection carried out in September 2025; and the Applicant had relied on Foxton's expertise as a reputable agent. The Applicant further stated that, on being notified of the problems by the Respondent, he had spent more than £15,000 addressing the same; and he stated that he had acted swiftly and transparently whenever concerns have been raised. The Applicant stated that he considered the proposed £10,000 penalty to be excessive and unjust.

19. On the stated basis that the Applicant had arranged to address the management deficiencies following the issuing of the Notice of Intent, the Respondent decided to lower the civil financial penalty to £5,000, issuing a Final Notice to Issue a Financial Penalty in that sum on 12 January 2026 ('the Final Notice') [27] to [28].

20. On 27 January 2026, the Applicant sent his application to the Tribunal. Therein, the Applicant invited the Tribunal to set aside the Financial Penalty.

The Law

The power to impose a financial penalty

21. Section 249A of the 2004 Act provides that:

> *(1) The local housing authority may impose a financial penalty on any person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.*
>
> *(2) In this section, "relevant housing offence" means an offence under-*
>
> *...*
>
> *(e) section 234 (management regulations in respect of HMOs)*
>
> *...*
>
> *(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.*

The relevant offence

22. Section 234 of the 2004 Act 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) ...*
>
> *(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 that regulation.*

23. The relevant regulations issued pursuant to section 234(1) of the 2004 Act are the Management of Houses in Multiple Occupation (England) Regulations) 2006 (that is, the 2006 Regulations).

24. Section 263(3) of the 2004 Act defines "person managing" as meaning, 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… 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 or 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.

25. In considering whether a defence of reasonable excuse has been established pursuant to section 234(4) of the 2004 Act, the Tribunal has regard to the Deputy Chamber President Martin Rodger KC's approval, in *Marigold and others v Wells* [2023] UKUT 33 (LC), of paragraph 81 of the Upper Tribunal's decision in *Perrin v HMRC* [2018] UKUT 156:

When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?

26. In *Aytan v Moore and others* [2022] UKUT 27 (LC), the Upper Tribunal noted (in the context of a landlord's knowledge of licensing requirements) that:

… a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lives abroad.

Procedure: imposing a financial penalty

27. The procedures to be followed by a local housing authority when imposing a financial penalty pursuant to section 249A of the 2004 Act are set out in paragraphs 1 to 8 of schedule 13A to the 2004 Act.

28. Before imposing a financial penalty, the local housing authority must give the person on whom the penalty is to be imposed notice of the authority's proposal to do so (a "notice of intent").

29. The notice of intent must be given before the end of the 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, or, if the person is continuing to engage in the conduct on that day, at any time when the conduct is continuing, or within 6 months beginning with the last day on which the conduct occurs: see paragraph 2 of schedule 13A to the 2004 Act. For this purpose, a person's conduct includes a failure to act.

30. The notice of intent must set out:

(a) the amount of the proposed financial penalty,
(b) the reasons for proposing to impose the financial penalty, and
(c) information about the right to make representations to the local authority (to be made within 28 days beginning with the day after that on which the notice of intent was given).

31. At the end of the period for representations, the local housing authority must decide whether to impose a financial penalty and, if it does so, the amount of that penalty. If imposing a financial penalty, the local housing authority must give the person a notice imposing that penalty (a 'final notice') that requires the penalty to be paid within 28 days beginning with the day after that on which the notice was given.

32. The final notice must set out:

(a) the amount of the financial penalty,
(b) the reasons for imposing the penalty,
(c) information about how to pay the penalty,
(d) the period for payment of the penalty,
(e) information about rights to appeal, and
(f) the consequences of failure to comply with the notice (as set out in paragraph 11 of schedule 13A to the 2004 Act).

33. A local authority may, at any time, withdraw its notice of intent or final notice, or may reduce the amount specified in a notice of intent or final notice, by giving a notice in writing to the recipient of the earlier notice.

The Role of Statutory Guidance and Local Policy

34. Paragraph 12 of schedule 13A to the 2004 Act requires the local housing authority to have regard to any guidance given by the Secretary of State about the exercise of its functions under section 249A of the 2004 Act. 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") [275] to [294].

35. 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.

36. 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.

37. 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:

    (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.

38. 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.

39. In *Sutton v Norwich City Council* [2020] UKUT 0090 (LC), the Deputy President stated that:

> 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.

Procedure: appeal to the Tribunal

40. A person who has been given a final notice (but not a notice of intent) may appeal to the Tribunal against either the decision to impose the penalty or the amount of the penalty. The final notice remains suspended until the appeal is finally determined or withdrawn.

41. Paragraph 10(3) of schedule 13A to the 2004 provides that such an appeal is to be a re-hearing of the local housing authority's decision but may be determined having regard to matters of which the authority was unaware.

42. The Tribunal may confirm, vary or cancel the final notice. It may not, however, vary the final notice to impose a financial penalty that is greater than the local housing authority could have imposed.

43. 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. 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.

[at paragraph 54]

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.

[at paragraph 62]

... 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.

[at paragraph 76].

44. In *Kazi v Bradford Metropolitan District Council* [2023] UKUT 263 (LC), Judge Cooke stated (at [13]) that:

It is a principle of administrative law that a public body may not adopt a policy that has the effect of "fettering its discretion"; that means, in the present context, that it must not adopt a rigid policy that deprives it of the ability to consider the merits of the case and reflect them in its decision... The FTT is likely to depart from a local housing authority's policy if it has that effect.

The hearing

45. The hearing took place remotely by video on 24 September 2026. The Applicant attended in person, and the Respondent was represented by Ms Plested, who was employed by the Respondent until January 2026.

46. The Tribunal considered the bundle filed by the Applicant pursuant to the Tribunal's directions. The bundle contained the Applicants' application notice and two witness statements, the Respondent's statement of case and a witness statement of Ms Plested. Those documents, including any attached documents, ran to 465 pages.

47. Whilst the Tribunal makes it clear that it has read the bundle and any other documents admitted, the Tribunal does not refer to all the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to pages or documents in this Decision, it should not be assumed that the Tribunal has ignored or left them out of account.

48. The hearing proceeded by hearing the oral evidence of the Applicant, who was cross-examined by Ms Plested, followed by the oral evidence of Ms Plested, who was asked questions by the Applicant. Both witnesses were also asked questions by the Tribunal. The Tribunal also heard the oral submissions of the Applicant and Ms Plested.

49. At the conclusion of the hearing, it was apparent that, while a copy of the Respondent's Regulatory Enforcement Policy appeared in the bundle (at [454] to [462]), the policy and charging structure to be used in respect of the Respondent's powers under section 249A of the 2004 Act had not been provided to the Tribunal in a legible form. Accordingly, further directions were given for a legible copy to be provided by the Respondent and for the parties to make any further written submissions thereon. In the event, neither party filed further written submissions.

50. This Decision seeks to focus on the key issues. The absence of any reference to findings about every statement or document mentioned is not, therefore, a tacit acknowledgement of the accuracy or truth of statements made or documents received.

Assessment of witnesses

51. In his written evidence, the Applicant noted the stress caused by needing to find significant sums of money in a short period of time to rectify the problems identified by the Respondent, his shame that the tenants had not been happy in the home that had previously been his family's home, and his own embarrassment at being cast as an offender by the Respondent. These emotions – together with the Applicant's belief that the actions he had taken having been made aware of the problems at the Property made it unjust to impose a financial penalty on him – were evident in the way he gave oral evidence to the Tribunal. Nevertheless, the Tribunal was satisfied that the Applicant sought to give a clear and honest account of his actions and his interactions with the Respondent and with Foxtons.

52. The evidence of Ms Plested was given carefully and clearly. Again, the Tribunal was satisfied that Ms Plested sought to give a clear and honest account of her involvement with the Applicant and the Property.

53. Having set out these assessments, the Tribunal nevertheless notes that, in reaching any factual findings on disputed accounts, it must also consider any of the documentary evidence available and the inherent probabilities of any account.

The Issues

54. It is not in dispute between the parties that:

(1) the Property was subject to mandatory licensing as an HMO;
(2) the Applicant was the holder of an HMO licence in respect of the Property, granted by the Respondent in December 2023, subject to conditions set out therein;
(3) at the date of inspection, the Property was occupied by tenants under the terms of an assured shorthold tenancy granted in September 2026; the Applicant received rents from tenants at the Property, albeit through his agents, Foxtons;

(4) the Respondent's Notice of Intent was given to the Applicant on 29 October 2025; the Respondent made representations to the Respondent within the required 28 days; and the Respondent issued a Final Notice to the Applicant on 12 January 2026; and
(5) the Applicant's appeal against the financial penalty imposed was received by the Tribunal within time, on 26 January 2026.

55. Despite that common ground, the Tribunal must nevertheless be satisfied, to the appropriate standards, that an offence has been committed, and that the Applicant does not have a defence. As such, the remaining issues for the Tribunal to determine can be summarised as follows:

(1) whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant has committed an offence contrary to section 234(3) of the 2004 Act;
(2) if so, whether the Tribunal is satisfied, on the balance of probabilities, that the Applicant had a defence to that offence;
(3) if not, whether the financial penalty has been properly imposed by reason of the requirements in section 249A and paragraphs 1 to 8 of schedule 13A to the 2004 Act; and
(4) if so, whether the Tribunal should exercise its discretion to impose a financial penalty on the Applicant,
(5) if so, what is the appropriate penalty sum, and
(6) what, if any, order should be made in respect of the reimbursement of the Applicant's fees pursuant to r. 13(2) of the Tribunal Rules.

56. The Tribunal sets out below its findings in respect of each of these issues, having referred to the material parts of the parties' evidence and submissions on each issue.

Determination

Issue 1: Is the Tribunal satisfied that the Applicant has committed an offence contrary to section 234(3) of the 2004 Act

(i) Was the Applicant a person managing the Property as an HMO?

57. The Applicant accepts that he is a joint freehold owner of the Property. He is the holder of a HMO licence in respect of the Property, granted to him by the Respondent on 26 September 2023 and expiring on 25 September 2028.

58. The Applicant accepts that the Property has been let out to tenants by him, with Foxtons acting as his agent. The Applicant has produced a copy of the tenancy granted by him on 19 September 2025. While this is a single tenancy agreement granted to five named tenants, the Applicant has not contended that these tenants, or any earlier tenants, occupied the Property as a single household. Accordingly, the Tribunal is satisfied beyond reasonable doubt that the Property is an HMO, as defined by section 254 of the 2004 Act, that was subject to mandatory licensing and

that the Applicant is a person managing an HMO for the purposes of section 234 of the 2004 Act.

(ii) Did the Applicant fail to comply with the 2006 Regulations?

59. The breaches of the 2006 Regulations relied on by the Respondent are set out in the Final Notice and summarised at paragraph 17 above.

60. In support thereof, the Respondent relies on the written witness statement of Ms Plested, who had inspected the Property externally on 30 September 2025, and fully on 1 October 2025. Therein, Ms Plested stated that, on her first visit, she noted that the front garden was in a poor condition with loose paving slabs on the steps leading to the front door and that the inspection chamber cover was broken and had been replaced with a piece of wood; she exhibited photographs taken of the same (at [114] to [117]). On her further visit, Ms Plested recorded breaches of the 2006 Regulations and exhibits a case summary prepared by her [118] to [128] that provides a short narrative description of each of the breaches with supporting photographic evidence in respect of the breaches of Regulation 7 and 8.

61. In cross-examination, the Applicant stated that he considered a lot of the problems with the Property identified by the Respondent were "cosmetic". However, the Applicant has not argued that he was not in breach of the 2006 Regulations as alleged by the Respondent.

62. Having considered the written evidence of the Respondent, including the witness statement of Ms Plested and the photographic evidence in support, the Tribunal is satisfied, beyond reasonable doubt, that the Applicant has failed to comply with the 2006 Regulations as alleged in the Final Notice and that he has, accordingly, committed an offence contrary to section 234 of the 2004 Act.

Issue 2: Is the Tribunal satisfied, on the balance of probabilities, that the Applicant has a defence of reasonable excuse to the offence?

63. Although the Applicant's application expressly stated that he does not have a defence of reasonable excuse pursuant to section 234(4) of the 2004 Act, he did assert such a defence in his closing submissions. In any event, as the Tribunal is required to consider whether a defence of reasonable excuse has been made out even if that issue is not raised by an applicant (see *Thurrock Council v Palm View Estates* [2021] EWCA Civ 1871), it sets out its findings in respect of the Applicant's explanation for any breaches below, and determines whether he has shown, on the balance of probabilities, that he had a reasonable excuse.

64. As noted above, the Applicant states that he relied on Foxtons, his agent, to provide any advice about any HMO licensing requirements and to notify him of any related issues at the Property. In his witness statement, he stated that he had entered into a contracts with Foxtons for the provision of letting and management of the Property since 2007, and

produced a signed agency agreement between the Applicant and Foxtons dated 25 June 2025 ('the Agency Agreement') [41] to [47]. He also stated that he has always dealt promptly with any reports from Foxtons about actions that he needed to take. However, he was, he said, not made aware of any such problems following the pre-tenancy check carried out by Foxtons on 20 September 2025. He stated that:

> … I had believed that [Foxtons] would properly ensure the Property was in (and being kept in) a suitable condition; if the Property was not as such, then that steps were taken swiftly to address whatever was required; advice be provided to be fully compliant with any legal requirements, including the Regulations etc. I did not expect that, with the involvement of a company like [Foxtons], I would be facing a financial penalty due to the state of the Property. Otherwise, I would not have paid significant sums time and time again to [Foxtons] for so many years.

He continued:

> In any event, I am aware that it will always be said that the landlord is the one who is ultimately responsible, including in respect of all matters upon which reasonable reliance is placed on the professionals ([Foxtons]) being paid by the said landlord (me).

65. In cross-examination, the Applicant stated that he had visited the Property a couple of times since the HMO licence was issued. He said that he would normally visit the Property before new tenants moved in, but he did not have a chance to do so prior to the September 2025 tenancy and had relied on Foxton's advice that the Property was ready for viewing and for tenants. In addition, he noted that, as he had taken court proceedings to get the previous tenants evicted, he had not felt like visiting the Property at that time – he just wanted to rely on Foxtons. He stated that the annual inspection reports produced by Foxtons had not raised any issues that had needed his attention. He also said that he did not accept that the problems identified by the Respondent were long-standing problems.

66. The Agency Agreement identifies (at [41]) the parties, the Property, and a contact address in Woking for the Applicant, while also recording that the Applicant will be resident overseas. The Agency Agreement also records that the Applicant has chosen both the Lettings and Management Service for long term lettings (at a combined fee of 17% plus VAT, although reducing to 11% plus VAT after 2 years).

67. Clause 1.25 of the attached terms and conditions [45] provides as follows:

> 1.25.1 Local authorities operate Mandatory, Additional and/or Selective licensing schemes. In each case, failure to hold a licence where required carries significant penalty.
>
> 1.25.2 You must hold or have applied for a licence before any letting is agreed or when a new scheme is introduced You must ensure a licence is held throughout the period for which it is required.

1.25.3 You remain responsible for complying with whichever scheme applies to your property/you. You must give us a copy of any licence… and conditions… You warrant to Foxtons that you have checked all applicable licensing requirements and must comply with all the conditions of a local authority property licence. The warranty is ongoing. You agree to advise us of any specific licensing conditions…

1.25.4 An annual up-front licensing management fee of £125.00 + VAT… will be applied to cover the additional work required to manage a licensed property.

1.25.5 Due to the strict nature of HMO/licensing conditions you must provide us with an inventory/check-in report at the start of the tenancy…

1.25.6 Where we manage your property we will provide one routine inspection report per annum free of charge. Where the licence conditions require (or where we reasonably consider) additional property inspections are necessary we will arrange these. The costs of these additional property inspections is £100 + VAT… per inspection.

68. The terms of Foxtons's management service are set out in clause 2 of the terms and conditions: see [45] to [46]. Clause 2.5 provides for Foxtons to attend to day-to-day minor repairs and maintenance of the property and its contents, and that Foxtons are authorised to carry out that work without prior consent of the landlord if such work is required "to comply with any obligation relating to any licence held for the property under the Housing Act 2004." Clause 2.7 states that Foxtons would "endeavour to undertake one inspection of the property in each twelve-month period… [a]n inspection can only provide a cosmetic examination of the property and does not constitute a structural survey or an inventory check."

69. The Tribunal accepts that the Applicant relied entirely on Foxtons to manage the Property on his behalf and to identify any issues he needed to address. However, the Tribunal is not satisfied that it was reasonable for the Applicant to do so. While the terms of Foxtons's Management Service required it to carry out an annual inspection of the Property, and entitled it to carry out any works required to comply with any licensing obligation without the prior consent of the landlord, clause 1.25.3 states clearly that the Applicant remains responsible for complying with the terms of the HMO licence, and noted that the Applicant was giving an on-going warranty that the conditions of the HMO licence were met. As such, the Agency Agreement does not provide for Foxtons to have contractual responsibility for the Property's compliance with the Applicant's HMO licence. Further, or in any event, the Applicant has not shown that there was any good reason why he could not – particularly during periods between tenancies – take steps to visit the Property to satisfy himself that all was well. Although the Agency Agreement records the Applicant as living overseas, the Applicant has not contended that he was in fact overseas in the relevant period or sought to rely on the same as part of any defence of reasonable excuse.

70. Accordingly, the Tribunal is not satisfied that the Applicant has shown, on the balance of probabilities, that he had a reasonable excuse for failing to comply with the 2006 Regulations, contrary to section 234 of the 2004 Act.

Issue 3: has the Financial Penalty been properly imposed

71. As noted above, the procedural requirements for imposing a financial penalty pursuant to section 249A of the 2004 Act are set out in paragraphs 1 to 8 of schedule 13A to the 2004 Act.

72. The Applicant has not sought to argue that any of these procedural requirements have not been met. In any event, having considered the Notice of Intent and Final Notice given to the Applicant by the Respondent, the Tribunal is satisfied, beyond reasonable doubt, that those requirements have been met in this case.

Issue 4: should the Tribunal exercise its discretion to impose a financial penalty on the Applicant?

73. As noted above, the Applicant's appeal proceeds by way of a re-hearing of the local housing authority's decision but with the Tribunal entitled to take account of matters of which the authority was unaware when it reached its decision. The Tribunal must give considerable weight to the local housing authority's decision but may depart from it when it disagrees with the decision. For example, it may do so if there is an aggravating or mitigating feature of which the local housing authority was unaware, or to which it has given insufficient weight.

74. In carrying out that assessment, the Tribunal is required, as the local housing authority was in reaching its own decision, to have regard to the Guidance and to the local housing authority's own policy developed as required by the Guidance.

75. As noted above, in his application, the Applicant invited the Tribunal to set aside the Financial Penalty. The Applicant stated that he has always complied with HMO licensing requirements and made sure his tenants had a good home. Additionally, he relied upon his instruction of Foxtons and their failure to identify any problems with the Property. He also stated that he acted immediately on being made aware of problems raised by the Respondent and has now spent over £50,000 in carrying out repairs to the Property. He also stated that he has always co-operated with the Respondent.

76. The Respondent's regulatory enforcement policy ('the General Policy') [455 to 463] states that it "provides a regulatory framework that supports economic prosperity by providing a level playing field for businesses to thrive whilst protecting residents, workers and visitors to the Borough."

77. In addition, the General Policy states that:

3.1 Effective and well-targeted regulation is essential in promoting fairness, protection from harm and protecting the amenity of the area. Our aim is to work in a transparent, accountable, proportionate and consistent way, to assist individuals and businesses to comply with the relevant legislation.

3.2 We do this by:

- helping and encouraging regulatory bodies, businesses and individuals to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches.

3.3 We will normally take a supportive approach to achieving compliance with regulatory requirements, especially those who take positive steps/actions and actively take steps to achieve compliance. Where required, however, we will consider the use of all necessary and proportionate enforcement action against those who commit serious breaches, flout the law, or take no steps to achieve compliance in a timely manner

…

5.1 Where we discover non-compliance, the decision about the most appropriate enforcement action will be made on a 'case by case' basis and in accordance with this policy, legislation, statutory guidance and any specific procedures that are relevant.

…

5.3 We aim to relate the level of enforcement action to the risks presented. The action we take will be proportionate to the seriousness of the breach and in reaching a decision we will consider:

- the risk that non-compliance poses to the safety, health, or economic welfare of the public or individuals;
- the effect on the environment or community;
- evidence that suggests that there was pre-meditation in the commission of an offence;
- whether the offence involved a failure to comply in full or in part with the requirements of a statutory notice or order;
- whether there is a history of previous warnings or the commission of similar offences;
- aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public;
- whether the offence, although not serious, is widespread in the area where it is committed and enforcement action will help dissuade others from committing the same offence;
- the gravity of the alleged offence, taken together with the seriousness of any actual or potential harm;
- the general record and approach of the offender;
- whether there has been reckless disregard of requirements;
- whether there has been a repetition of a breach that was subject to previous warning or formal action; and/or
- whether false information has been supplied wilfully, or there has been an intent to deceive.

…

8.2 Where a civil penalty is applied, the level of penalty will be determined using the relevant charging structure, developed in accordance with the guidance issued to local authorities and approved by the Council.

78. In January 2020, the Respondent adopted a charging structure for the imposition of financial penalties under section 249A of the 2004 Act ('the 249A Policy'). The introductory background to the charging structure noted that: "The new enforcement provisions will provide an additional tool to regulate standards of accommodation in the private rented sector… Advice, education and cooperation is the primary approach that we would take in order to secure improvements in housing standards before invoking the more formal enforcement route." The document also noted that:

3.15 The charging structure takes into account the following criteria set out in [the Guidance]. These should be considered when determining the appropriate level of penalty:

a) severity of the offence
b) culpability and track record of the offender
c) the harm caused to the tenant
d) punishment of the offender
e) deterring the offender from repeating the offence
f) deterring others from committing similar offences
g) removing any financial benefit the offender may have obtained from committing the offence.

…

4.3 The purpose of the civil penalty is to both act as a deterrent to noncompliance with housing standards or licensing requirements and where officers have spent time identifying property the costs of the investigation can be recovered.

4.4 The use of civil penalties will be utilised for low-high level offences. Where the offence is serious and significant, prosecution will be considered as the alternative. Low level offences such as identifying well managed yet unlicensed HMOs operating without a licence are currently taking up vast amounts of time to get to the prosecution stage. This time spent producing an evidence file takes officers away from responding to service requests or undertaking licensing inspections delaying officers from identifying and tackling potentially serious hazards to health throughout the Borough.

4.5 Low to high level offence CPN's will send a clear message and act as a financial deterrent to others that the Council will not tolerate non-compliance with housing law. The Council will communicate via social media when enforcement action achieves compliance with the law, to encourage private sector housing reports from members of the public. The Council will also use social media to promote proactive interventions that support private sector housing duty holders to achieve ongoing compliance with the law.

4.6 The Council understands that most landlords and property managers want to comply with the law. The Council will continue to publish information that will support private sector housing duty holders to achieve compliance with the law and help tenants to understand their rights.

4.7 The issuing of a CPN will follow Guildford Borough Council's enforcement policy and as such a graduated approach will be taken.

79. In her witness statement, Ms Plested states that, having considered the Applicant's representations, the imposition of a financial penalty remained appropriate given the long-term and extensive nature of the management failings at the Property and to provide a deterrent to prevent recurrence and ensure ongoing compliance.

80. Having regard to the Respondent's General and 249A Policies and the Guidance, the Tribunal is satisfied that it should, in the exercise of its discretion, impose a financial penalty on the Applicant. The Tribunal notes that the 249A Policy indicates that a financial penalty will be considered, as an alternative to prosecution, in low level offences such as a "well managed but unlicensed HMO". The breaches of the 2006 Regulations as found above show that the Property was not well managed; the Tribunal also finds, based on the photographic evidence produced, that the Property had been poorly managed over a significant period. Further, the Tribunal determines that neither the instruction of Foxtons on the terms referred to above (in circumstances in which the Applicant is unable to establish any proper oversight of Foxton's management of the Property), nor the other factors relied on by the Applicant provide sufficient mitigation to satisfy the Tribunal that it should not, in the exercise of its discretion, impose a financial penalty in this case.

Issue 5: what is the appropriate financial penalty?

81. The Final Notice imposed a penalty of £5,000. That sum was calculated by reference to the charging structure appended to the 249A Policy ('the Charging Structure'). The Charging Structure utilised the following table:

Housing and Planning Act 2016
Civil Penalties – Charging Structure

Factors Select score based on following guidance	**Score 10**	**Score 20**	**Score 30**	**Score Selected**
Severity of Offence score should reflect the seriousness of offence & if actions were deliberate	Minor offence – isolated incident, unforeseen, possibly some effort made to remove risk.	Moderate severity knowingly committed offence without considering consequences	Severe high-risk breach deliberate and flagrant disregard of law	
Previous History previous history of offending, & previous willingness to co-operate & comply	No previous history of non-compliance.	Some low-level previous history	Previous history of non-compliance & enforcement action	
Deter & Prevent Severity of offence & level of penalty required to prevent reoffending	Penalty will prevent reoccurrence	Penalty likely to deter repeat offending	Repeat offending likely unless penalty is very high	
Harm to Tenants impact on tenant, vulnerable group, discrimination etc?	Minor risk of harm to tenants. No vulnerable groups affected	Moderate risk of harm. Vulnerable group may be affected. Possible discrimination.	High level of harm with vulnerable group affected, intentional discrimination.	
Removal of financial benefit Level of financial benefit gained from offending, include asset values and rental income.	Small or no financial gain from non-compliance	Moderate financial gain and income from non-compliance	High financial gain, significant assets & income	
			TOTAL SCORE	

82. Below that table is a further table setting out the financial penalties that should apply to different total scores:

Score	**Fee**
50-60	£1,000
61-70	£5,000
71-80	£10,000
81-90	£15,000
91-100	£20,000
101-150	£30,000

83. The Respondent's initial assessment, conducted prior to the Notice of Intent being served on the Applicant, is set out at [214] to [215], on an annotated version of the above Charging Structure that contains both a score for each factor and a narrative justification for that score. The Applicant's case was recorded as follows:

- Severity of Offence: 20 –

- Previous History: 10
- Deter & Prevent: 10
- Harm to Tenants: 20
- Removal of Financial Benefit: 20

The Applicant was therefore given a total score of 80 which, applying the further table, generated a financial penalty of £10,000. Each score was accompanied by text explaining why that individual score had been applied.

84. Following receipt of the Applicant's representations, the Respondent revised its scoring of the Applicant's case, reducing the score for 'Severity of Offence' to 10 from 20. As a result, the Applicant's total score was 70 and a lesser financial penalty of £5,000 was applied. In her witness statement, Ms Plested records that the previous score of 20 for 'Severity of Offence' was reduced, "as some effort had been made to address the non-compliance."

85. In her closing submissions, Ms Plested stated that the Tribunal should not vary the financial penalty imposed by the Respondent for the reasons given on the annotated Charging Structure, as revised following the Respondent's submissions.

86. In his closing submissions, the Applicant contended that he was an inexperienced lay person who had relied on a management company for 20 years. He said that the penalty should be reduced to £1,000: he had not received a financial benefit, and that, as the property was no longer an HMO, there was no longer a need to deter him from re-offending. A score of 10 should be given in respect of 'Removal of Financial Benefit' and a score of nil should be applied in respect of 'Deter and Prevent'. Overall, he said, a score of 50, and a financial penalty of £1,000 would be appropriate. He also noted that the current penalty, of £5,000, represented some 3 months' salary, and was too much.

87. The Tribunal reminds itself: (a) that the Applicant's appeal is by way of re-hearing of the Respondent's decision and that it may consider matters of which the Respondent was not aware; (b) of the guidance set out in *Marshall* and *Kazi* (at paragraphs 43 and 44, above); and (c) that the Respondent is required to have regard to the Guidance when exercising its functions under section 249A of the 2004 Act and to develop its own policy.

88. The Tribunal notes that while the Guidance identifies 7 separate factors (see paragraph 37, above), the Charging Structure adopted by the Respondent requires a score to be given for each of 5 factors (see paragraph 81, above): whereas deterrence of the offender and of others are identified separately by the Guidance, the Charging Structure does not distinguish between the two, identifying a single factor of 'Deter and Prevent'; and the Charging Structure does not identify punishment of the offender as a factor. In addition, the Tribunal notes that the Charging

Structure's 'Severity of Offence' includes consideration of whether the offence was committed deliberately or not, whereas the Guidance places deliberateness within its 'Culpability and track record of the offender' factor. The Charging Structure's 'Previous History' factor deals only with previous offending and/or co-operation. Nevertheless, the Tribunal notes that it has not been invited to depart from the way in which the factors have been identified in the Respondent's Charging Structure to more closely reflect the factors set out in the Guidance.

89. The Applicant has invited the Tribunal to depart from the scoring system set out in the Charging Structure. In particular, he has invited the Tribunal to give a nil score to the 'Deter and Prevent' category, on the basis that his decision to stop operating the Property as an HMO, and return it to a family home, has removed any need for deterrence. The Tribunal notes, however, that a financial penalty may have a deterrent or prevention effect either by encouraging compliance with HMO regulations, or by persuading a landlord to cease to operate his property as an HMO. Indeed, it seems that the Financial Penalty has achieved the latter effect in this case.

90. The Tribunal does, however, consider that it should, bearing in mind the case-law referred to in paragraphs 43 and 44, above, depart from the scoring system set out in the Charging Structure in one respect. Each factor has a minimum score of 10. If the minimum is scored in each category, a total score of 50 will be given, and a financial penalty of £1,000 imposed. Each additional score of 10 will increase the financial penalty until the maximum sum of £30,000 is reached with a total score of 110 points. As such, an offender who has no history of offending or non-compliance, will nevertheless find his or her financial penalty has increased because of the absence of that aggravating feature. And while each of the other factors identified in the Charging Structure might be said to have always been met to some extent (and thus a score for a 'low' or 'minor' incidence of that factor would be merited), it is difficult to see that can apply to the narrower category of 'Previous History' set out in the Charging Structure; an absence of any offending or non-compliance history should not be given a 'low' score. Accordingly, the Tribunal determines that it should depart from the Respondent's 249A Policy as set out in the Charging Structure: where there is no history of offending or non-compliance, a score of nil should be applied for that factor.

91. In reaching that decision, the Tribunal has considered whether the objectives of the Respondent' General and 249A Policies will still be met. The effect of the above departure is that the fact that an offender has no previous offending or non-compliance history will not increase the financial penalty imposed. For the reasons set out above, the Tribunal does not consider that the objectives of the Respondent's policies are undermined as a result – those objectives are still met if the financial penalty is not increased because there is no relevant offending history; the penalty imposed will be determined by the other material factors that are present.

92. The Tribunal also notes that the above issue was considered, but not determined, by the Upper Tribunal in *Park Green Investments Limited v Tenbridge District Council* [2023] UKUT 292 (LC). In that case, the local authority's policy also provided for the absence of any offending history to increase the financial penalty imposed. The Upper Tribunal determined that, as the requirement was part of the local authority's policy and not (as the Tribunal had believed) part of the non-statutory guidance, the Tribunal would have been able to depart from that policy; but, as the appeal was allowed on a separate point, the Upper Tribunal did not consider the local authority's arguments as to why the Tribunal should not so depart.

93. The Tribunal determines that the scores to be given for each of the other 4 factors identified in the Charging Structure should be those given by the Respondent following representation made to it by the Applicant. In particular, it considers that scores of 20 should be given for both 'Harm to Tenants' as defined in the Charging Structure, and for 'Removal of Financial Benefit'. The Tribunal is satisfied on the evidence that the condition of the Property and the lack of proper management gave rise to a moderate risk of harm to the tenants. In addition, the Tribunal rejects the Applicant's contention that he gained no financial benefit from his offending. Indeed, the sums he has spent in addressing the breaches identified by the Respondent may, broadly, be considered a measure of the benefit that he had – until his offending was discovered – obtained for himself because of his offending. The fact that a benefit is lost because of the cost of belated compliance does not mean that no financial benefit was gained by the offending. In addition, the Tribunal applies a score of 10 for each of 'Severity of Offence' and 'Deter and Prevent'.

94. However, for the reasons set out at paragraph 90, above, it does not consider that it should add any score in the category of 'Previous History': the Applicant has none; and the absence of such history should not increase the financial penalty that might otherwise apply. For those reasons, the Applicant's score is 60.

95. Accordingly, the Tribunal determines that the appropriate financial penalty is £1,000 rather than the £5,000 imposed by the Final Notice.

Decision

96. The Tribunal determines that it should uphold the Respondent's decision to impose a financial penalty against the Applicant, but that the sum of that penalty should be varied to £1,000.

Fees

97. The Tribunal further considers that, as the Applicant has succeeded in reducing the quantum of the financial penalty, the Respondent should reimburse the fees paid by the Applicants to the Tribunal, pursuant to rule 13(2) of the Tribunal Rules, also to be paid within 28 days.

98. However, the Tribunal also determines that, as neither party addressed it as to the exercise of this power, it should allow the Respondent 14 days from the date of this decision to apply to set aside this aspect of the Tribunal's decision.

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.