



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/12UD/HNA/2021/0016**

HMCTS : **CVP**

Property : **Lower Creek Fen House, Creek Road,
March, Cambridgeshire PE15 0BU**

Applicant : **Davinder Kundi**

Respondent : **Fenland District Council**

Type of Application : **Appeal against a Financial Penalty –
Section 249A & Schedule 13A to the
Housing Act 2004**

Tribunal : **Judge JR Morris
Mr N Miller BSc**

Date of Application : **12th April 2021**

Date of Directions : **26th August 2021**

Date of Hearing : **30th November 2021**

Date of Decision : **10th January 2022**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings;

it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal confirms the Final Notice of the Financial Penalty of £17,000.00.

Reasons

Application

2. The application relates to Lower Creek Fen House, Creek Road, March, Cambridgeshire PE15 0BU (the Property) and is in respect of a Financial Penalty of £17,000.00 issued on 19th March 2021 to the Applicant by the Respondent under section 249A of the Housing Act 2004 the Applicant being a person having control of or managing a House in Multiple Occupation (an HMO) which is required to be licensed under Part 2 (see section 61(1)) of the Housing Act 2004 (the “2004 Act”) breach of section 234 of the 2004 Act which is an offence. In addition, it is alleged that the Applicant is in contravention of regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the 2006 Regulations”). The legislation refers to the penalty as a “financial penalty” and therefore this is the terminology used in this Decision and Reasons. However, the term “civil penalty” is commonly used and the term used by the Respondent. The Tribunal is of the opinion that the terms are, in the context of these proceedings, interchangeable and the use by the Respondent of the term “civil penalty” on its notices etc does not in any way affect their validity.
3. The Application was originally made on 12th April 2021 but was automatically struck out on 21st July 2021 because the Applicant failed to file a copy of the Financial Penalty Notice he wished to appeal against, despite reminders. The Applicant explained that he had not received the reminders and had had problems with his computer and so asked for the Application to be re-instated. The Respondent raised no objections and therefore the Application was reinstated on 26th August 2021.

Description of Property

4. No inspection of the Property took place due to measures introduced to combat the spread of the Coronavirus (COVID-19) and to protect the parties and the public, particularly those at risk. From the Statements of Case and the Internet the Tribunal found as follows:

5. The Property is a three-storey detached house of brick under a pitched tile roof. There are upvc framed double glazed windows. The doors are upvc as are the rainwater goods.
6. Internally the Property comprises a hallway from which rise stairs to the first floor. On the ground floor, off the hallway is a kitchen/diner, a dining room, a lounge and a w.c.. From the lounge and kitchen/diner there is access to a conservatory. On the first floor there is a landing from which rise stairs to the second floor. Off the landing on the first floor are four bedrooms and a bathroom. On the second floor there is a landing off which are two bedrooms and a shower room and an airing cupboard.
7. The Property has no main gas supply, the gas hob is supplied by liquid propane gas (LPG) cannisters. Space and water heating is provided by an oil-fired central heating system. Drainage is by septic tank.
8. Externally the land around the Property is laid to grass. There is a large workshop. The Property is surrounded by rural open fields.
9. Photographs were provided.

Hearing

10. A hearing was held which was attended by Mr Davinder Kundi, the Appellant. The Respondent was represented by Mr Charles Snelling of Counsel, in addition Ms Michele Page, Private Sector Housing Enforcement Officer, and Mr Dan Horn, Head of Housing and Community Support, appeared as witnesses for the Respondent. Ms Jo Evans, Private Sector Housing Officer of the Respondent was an observer. The Respondent provided a Bundle which included copies of the correspondence between the parties and the Notices. To assist the parties in reading these reasons the tribunal has made reference to the page numbers of the Bundle in round brackets where these copies may be found.

The Law

11. The relevant law is found in the Housing Act 2004 (“2004 Act”) and the Management of Houses in Multiple Occupation (England) Regulations 2006 (“2006 Regulations”) Respondent provided a Statement of Case in which it referred to the relevant law as set out in Annex 2.

Respondent’s Statement of Case

12. Respondent’s Counsel stated in a written skeleton argument confirmed at the hearing as follows.
13. The Applicant appeals against the decision of the Respondent to impose a financial penalty under section 249A & Schedule 13A to the Housing Act

2004 in relation to a property known as Lower Creek Fen House (“the property”).

14. He went on to state that it is for the Respondent to satisfy the Tribunal that the Applicant is guilty, beyond reasonable doubt, of the alleged offences. The Respondent submits that the Applicant:
 - a) Is the person managing the Property;
 - b) It is a House in Multiple Occupation (HMO); and
 - c) The management of the Property has failed to meet the standards required by the 2006 Regulations.
15. He added that it is for the Applicant to satisfy the Tribunal that he has a reasonable excuse for failing to meet the necessary management standards.
16. Firstly, Counsel said that for the Property to be an HMO it is necessary for there to be 3 people from more than 2 households and in this case, there were 5 people from 3 households.
17. In the event it does not appear to be disputed by the Applicant that the Property was an HMO. He states that he was aware that there were three households living at the property and the property has been licensed as an HMO since 2007.
18. By way of confirmation the Respondent referred to:
 - a) Occupancy questionnaire dated 7th October 2020;
 - b) The various applications for HMO licences (in which the property is agreed to be an HMO requiring a mandatory licence);
 - c) The three visits by the Respondent’s Officer to the Property.
19. Secondly, Counsel stated that the Applicant was the person managing the Property as an HMO as he fell within the definition of a ‘person managing’ in section 263(3) of the 2004 Act in that it is agreed that he is the owner and receives the rental income. The Applicant said that at one point he received the income via an agent, however this does not matter so long as he received the rent and in any event since 2018 the Applicant no longer engaged an agent.
20. Thirdly, Counsel itemised the 2006 Regulations of which it was alleged that the Applicant was in breach and these are set out in the table below with the reason in brief for the Respondent’s allegation.

Regulation	Nature
4(1)(a) manager to ensure that his name, address and contact number are clearly displayed	Absence of landlord / agent details in the communal area
4(1)(a) manager must ensure that all means of escape from fire in the HMO are kept free from obstruction	Flammable furniture and personal possessions in communal hallway

4(4)(a) manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to the design of the HMO	<ul style="list-style-type: none"> 1) Defective smoke detectors throughout the Property 2) Defective heat detectors in the kitchen 3) Absence of closing mechanism on the FD30s fire doors between kitchen and escape room 4) Absence of thumb turn locks on the internal letting rooms 5) Uncased electric consumer unit situated on the escape route not offering 30 mins fire protection 6) Absence of fire blanket in kitchen
4(4)(b) manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to the structural conditions in the HMO	Absence of sound ceiling construction throughout the property and in a 30 mins protected escape route
6(3)(a) manager must ensure that every fixed electrical installation is inspected every 5 years by a qualified person to undertake such inspection and testing	Requests for Electrical Installation Condition Reports sought between 2007 and 2020 with no documentation provided.
6(3)(c) manager must supply electrical certificate to the LHA within 7 days of receiving a request in writing for it	No certification provided
7(1)(a) manager must ensure that all common parts of the HMO are maintained in good order	Cracked and loose floor tiles on 2nd floor shower room
7(1)(c) manager must ensure that any coverings are safely fixed and in good repair	Fraying carpet on top step of first floor staircase
7(1)(d) manager must ensure that all windows and means of ventilation are kept in good repair	Defective mechanical ventilation in the first-floor shower room
7(2)(a) manager must ensure that all handrails and bannisters are at all times kept in good repair	Unstable stair bannisters and missing balustrade

21. Copies of the HM Land Registry Entry Title Number CB206431 for the Property were provided. The first obtained on 11th November 2020 (page 54) and the second obtained 11th October 2021 (page 184) both of which showed that the Applicant had been the registered proprietor since 17th September 1999.

22. Counsel referred to Ms Page's witness statement submitting that the breaches of the regulations are made out to the criminal standard (page 60).
23. Counsel referred to *IR Management Services Ltd v Salford City Council* [2020] UKUT 81 which he said held that it was for the Applicant to establish to the civil standard (i.e., on the balance of probabilities) that he had a reasonable excuse for failing to manage the property to the required standard.
24. It was noted that the Applicant had argued that prior to 2018 he had an agreement with a Mr. Long to manage the property and after 2018:
 - a) He was not able financially to do so;
 - b) He was in ill health;
 - c) His daughter was getting married taking his attention;
 - d) He was finding it hard to source people to undertake the works;
 - e) Some of the works were not required; and
 - f) The Financial Penalty Notice was defective as it was not received by himself until after the date it was said to be delivered.
25. Counsel referred to the Respondent's published policy (pages 247 to 251). The proper approach to such a policy is set out *London Borough of Waltham Forest v Marshall* [2020] UKUT 35 (LC).
26. The fact that remedial steps are taken after the date of the offence which gave rise to the notice can amount to mitigation but does not impact on the seriousness of the original offending. see *Sheffield City Council v Hussain* [2020] UKUT 0292 (LC)
27. Counsel said that the Applicant argues that there has been a failing in the service of the notice as there was a mix up with the contents of the envelope and that he received copies of the Improvement Notices instead of the Financial Penalty Notice. This is not accepted given the Respondent's administration. However, it was submitted that even if there was a failing to post the Notice it was sent via email and then again by post. No prejudice was caused to the Applicant as he was able to appeal to the Tribunal and did so out of time and without objection from the Respondent, See *London Borough of Waltham Forest v Younis* [2019] UKUT 0362.
28. Respondent's Counsel submitted that:
 - a. The Respondent has established the breaches of the Management Regulations to the criminal standard; and
 - b. That the Applicant does not have a reasonable excuse for failing to comply with them.
29. It is further submitted that:
 - a. The level of fine was imposed in line with the Council's published guidance;
and

- b. That all matters were properly considered by the Council when making its determination.
30. Ms Page gave evidence in support of Counsel's submissions identifying two periods. Firstly, 2007 to 2018 in respect of which the Applicant claimed the Property was run by a Mr Alan Long and, secondly, 2019 to 2020 in respect of which the Applicant said he ran the Property himself. Ms Page said that the Respondent only perceived Mr Alan Long as being a caretaker not "the person managing" the Property as defined in the legislation. The following is a précis and paraphrase of Ms Page's written and oral (at the hearing) statement:

2007 to 2018

31. The Property was originally licensed on 3rd July 2007 (pursuant to the Mandatory Licensing regime) for a period of 5 years. Upon the expiry of the Licence, a period of 7 months elapsed where requests for fire, gas and electrical certificates were made to the Applicant. The Licence was eventually renewed on 25th January 2013, again for a period of 5 years. Throughout 2013 letters were sent to the caretaker, Mr Alan Long and the Applicant requesting documents and identifying HMO defects that needed attention (pages 8 to 30). In 2014, a letter was sent to the Applicant requesting the outstanding documents. A compliance inspection in October 2014 confirmed the defects had been rectified however the Electrical Certificate and a fire alarm test report were still to be produced (pages 31 and 32). In 2015, further requests were sent in writing to both the Applicant and the caretaker, requesting fire and electrical certificates (pages 33 and 34). In 2018, a letter together with the application for the renewal of the Applicant's HMO was received in which the Applicant said he would provide the outstanding fire and electrical certificates (pages 35 to 43). On 3rd August 2018 the HMO Licence was renewed (page 44).

2019 to 2020

Background to the Service of the Financial Penalty Notice

32. On 2nd October 2019, Ms Page said she was informed by a colleague that the Applicant was failing to comply with the HMO licence conditions. On 3rd July 2019, she sent a letter to the Applicant requesting copies of the current electrical certificate and alarm testing certificate. A copy of this letter is not available. The Applicant replied by email on 7th August 2019 advising that he would attempt to get British Gas to provide this by the 22nd September 2019 as he had his daughter's wedding to contend with.
33. On 29th July 2020, an email was sent by the Respondent to the Applicant attaching a letter on the importance of providing the outstanding documentation in relation to the HMO Licence. A response was requested within 14 days. The Applicant replied on 29th July 2020 stating that he was not able to produce the documentation at that time due to a

house burglary, which postponed his daughter's wedding, and by his being in poor health. The Respondent replied to this email on the same day giving the Applicant 14 days to produce the fire and electrical safety certificates (pages 45 and 48).

34. On 7th October 2020, due to the lack of documentation from the Applicant an HMO compliance inspection and Housing Health and Safety Rating System (HHSRS) Survey was carried out by Ms Page. It was established that the dwelling continued to be used as an HMO with five occupants all of whom she said were present at the time of her visit. An occupation questionnaire was completed (page 49).
35. During the inspection it was identified that the fire safety facilities were not adequate along with other minor category 2 hazards as follows:

Fire Safety

- Defective smoke detection system with absent units throughout the property including absent heat detector in the kitchen;
- Removed closing mechanism on the FD30s fire door between the kitchen (risk room) and escape route;
- Absence of thumb turn locks on the internal letting rooms;
- Unprotected electric consumer unit situated on the escape route;
- Absence of a fire blanket in the kitchen;
- Personal belongings and furniture in the communal hallway;
- Absence of sound ceiling constructions throughout the property and in the 30-minute protected escape route.

Electrical

- Failure to provide an Electrical Installation Condition Report also referred to as an EICR;
- Falls on Stairs;
- Unstable bannisters leading to first and second floor with missing balustrade on first floor;
- Worn and torn carpet on top tread of first floor staircase.

Personal Hygiene, Sanitation and Drainage

- Inoperative mechanical extractor in first floor shower room;
- Damaged and loose floor tiles in first floor shower room.

(Photos on pages 185 – 198 and HHSRS scoring sheets on pages 50 to 53)

36. On 11th November 2020 Ms Page sent a letter to the Applicant requesting compliance with Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and that he contact her within 7 days to discuss his intentions and stating that he had 28 days to address the defective smoke detectors throughout the property (pages 53 to 56).

37. Due to the Applicant's history of failing to provide documentation and long-standing defects the Respondent decided that a Financial Penalty Notice for failure to comply with the 2006 Regulations would be served.
38. On 24th November 2020, Ms Page telephoned the Applicant due to a lack of response to her letter of 11th November 2020. The Applicant informed her that he was very ill with cancer since January 2020 and was currently shielding due to the coronavirus pandemic and so had not opened any emails. He said he had asked a friend to provide an Electrical Installation Condition Report that the door closer and smoke detectors had been fitted a while ago but he would get them checked again. Ms Page was sympathetic about the Applicant's illness and doubted the Applicant's ability to manage Property, suggesting that he consider having a local management agency assist him.
39. On 1st December 2020, Ms Page received a telephone call from the Applicant who said that he did have an Electrical Installation Condition Report for the property and the smoke detectors had been checked and were working. At the hearing the Applicant refuted that he said he had a Report and that what he had actually said was that he was in the process of booking a Report. The Applicant was requested to provide the Electrical Installation Condition Reports as soon as possible and the appropriate certification to confirm the smoke alarm system had been checked and was working. Later that day, a Mr Kevin Long telephoned Ms Page to say that his father, Mr Alan Long, used to help the Applicant with little jobs such as changing lightbulbs and that he had been asked by the landlord to get the smoke detectors operative. A Mr Jon Smith, a tenant, was present during the call and took notes on the defects within the property. Ms Page advised that an Electrical Installation Condition Reports and a Landlord's Gas Safety Certificate was required, together with a history of the fire safety check dates.
40. The Applicant telephoned to say that because he was shielding, he would instruct an engineer over the phone or request that Mr. Kevin Long look for somebody. He said that he would be instructing British Gas to attend. Ms Page sent a confirmatory email to the Applicant recording the conversation including a list of the defects (page 57).
41. On 10th December 2020, Ms Page carried out an unannounced visit to the Property where it was established that a fire blanket and heat detector had been placed in the kitchen together with a fire extinguisher. The Electrical Installation Condition Reports and the fire certification were not available and other defects remained outstanding (photographs provided on pages 199– 215).

Service of the Notice of Intent to Serve a Financial Penalty Notice

42. On 17th December 2020 a Notice of Intent to serve a Financial Penalty Notice for failure to comply with the 2006 Regulations was served on the Applicant. In addition, a Section 11 Improvement Notice and a Section 12

Improvement Notice and a Section 8 Statement of Reasons (copies of the Financial Penalty Notice and Certificate of Service were provided on pages 58 - 84). The Applicant acknowledged receipt by telephone on 4th January 2021.

43. At the hearing, in response to the Tribunal's questions, Ms Page agreed that it would probably have been better to serve an Improvement Notice immediately following the inspection on 7th October 2020 to have the defects identified remedied earlier. However, Ms Page made it clear that the decision to serve a Financial Penalty Notice was made in respect of the Applicant's failure to comply with the 2006 Regulations and was not related to the Improvement Notice. The Applicant had a long history of failing to provide documentation to the Respondent's requests for information in order to evidence that he met the 2006 Regulations. The inspections on 7th October 2020 and 17th December 2020 showed that he had not complied with those Regulations. The service of the Improvement Notice was to remedy the defects which contributed to the non-compliance with the 2006 Regulations. The compliance or otherwise with the Improvement Notice was a separate matter.
44. In response to the Tribunal's questions regarding the time it had taken to enforce the 2006 regulations, Ms Page and Mr Horn said that in monitoring the HMOs the emphasis is on compliance rather than enforcement. Most HMO licensees seek to comply with the legislation and apply the guidance given. Therefore, the letters from the Respondent's officers identify matters that need to be addressed (pages 12-15 and 29-34). They said that staffing levels did not enable HHSRS surveys to be carried out in respect of each HMO Licence Application. The HHSRS survey in this instance was prompted by the continued failure by the Applicant to provide a five yearly Electrical Installation Condition Reports in spite of requests. The survey showed amongst other things that fire safety precautions were defective and it was likely that the electrical installation was not up to standard. The subsequent Electrical Installation Condition Report stated that this was in fact the case.

Action following the Service of the Notice of Intent

45. On 22nd December 2020 the Respondent received a telephone call from the Applicant stating that he had received the letter dated 11th November 2020 regarding the defective smoke and carbon monoxide detectors but said he could not send a contractor due to covid restrictions in London. Ms Page advised the Applicant to get a local contractor. He said he would get Mr Kevin Long and Mr Jon Smith to arrange it. On 4th January 2021, Ms Page received a telephone call from the Applicant confirming that he had received the Notice of Intent and Improvement Notices and on 15th January 2021, the Respondent received an email from the Applicant stating his representations in respect the Notice of Intent to serve a Financial Penalty Notice dated 17 December 2020 (pages 85-88).

46. On 22nd January 2020, Ms Page telephoned Mr. Smith and Mr. Kevin Long to gain access to the property as the Applicant had previously advised they were managing the Property. She said that Mr. Kevin Long clearly informed her that he was not the manager and Mr. Jon Smith was not his assistant. Mr. Kevin Long was distressed at the prospect of being held to account for the Property. Mr Long said he just changed a lightbulb occasionally but was not prepared to make a statement for the proceedings.
47. On 7th January 2021 an “unsatisfactory” Electrical Installation Condition Report was made following an inspection by GJ Electrical, a copy of which was sent to Ms Page (pages 93-101). Ms Page detailed the communications between the Respondent and the Applicant as to who would carry out the electrical work to remedy the defects and when it would be completed. In the event a “satisfactory” Electrical Installation Condition Report was not carried out until 1st November 2021.
48. On 17 March 2021, Mr. Horn, Head of Housing and Community Support, carried out a review of the Notice of Intent to Service a Financial Penalty Notice. He considered the mitigation submitted by the Applicant and answered in detail but confirmed the amount of the Penalty notice (pages 239-246). A summary of the review with the Applicant’s representations and the Respondent’s reply are set out below.

Service of the Final Financial Penalty Notice

49. On 18th March 2021, the Respondent posted the Final Financial Penalty Notice, invoice and covering letter dated 19th March 2021 to the Applicant by first class post and email and a completed delivery notice was received (pages 119-135).
50. Following the service of the Final Financial Penalty Notice there was correspondence between Ms Page and the Applicant regarding the receipt of the Final Financial Penalty Notice and the Improvement Notice. On 30th March 2021, Ms Page said she received a telephone call and an email from the Applicant advising that he had received the Improvement Notices which had been posted on 17th December 2020 but had only received them on 29th March 2021 (page 136). He claimed he had not received the Final Financial Penalty Notice. On 1st April 2021, the Applicant emailed stating in the title of the email that he had just received the Final Notice saying that he could not accept the notice since it was sent without proof, 14 days had passed since he had first sight of it and he could not afford to pay it due to him not being able to work and the tenants being in arrears (page 145). The Applicant was advised to make an appeal within the 28 days of 18th March 2021 when the Notice was issued (page 146). The Applicant appealed on 12th April 2021.

Financial Penalty Policy

51. The Respondent provided a copy of its Financial Penalty Policy which is summarised as follows:
52. The principles to be applied are:
- Each case will be considered on its own merits
 - There must be sufficient reliable evidence to justify the action taken
 - The action taken must be in the public interest
 - Any mitigating circumstances will be considered
 - Decisions should always be fair and consistent
53. The principles for determining the penalty are in accordance with the statutory guidance:
- Severity of the offence
 - Culpability and track record of the offender
 - Harm caused to the tenant
54. The Penalties structure is:

Step 1

Seriousness of the Offence and Culpability

Serious breach of legislation	Very High
History of failing to comply	High
An act or omission that a reasonable person would not commit	Medium
Effort was made to comply but was insufficient	Medium
Minor failings due to isolated incident	Low

Harm

Serious adverse effect on individual or high risk of adverse effect.	Category 1
Adverse effects, lesser than above. Medium risk or adverse effect, or low risk but of serious effect, Tenant seriously misled.	Category 2
Low risk of an adverse effect.	Category 3

Step 2

Standard scale of Criminal Justice Act 1982 used as reference to provide a point scale

1. £1 - £500
2. £501 - £1,000
3. £1,001 - £2,500
4. £2,501 - £7,000
5. £7,001 - £17,000
6. £17,001 - £30,000

Table indicating level of fine related to culpability and harm

Culpability	Harm Cat. 1	Harm Cat. 2	Harm Cat. 3
Very High	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

Aggravating factors are:

- Seriousness
- Statutory factors
- Previous convictions

Mitigating factors are:

- No previous convictions
- Steps voluntarily taken to remedy
- High level of co-operation
- Good record maintenance of property
- Self-reporting
- Good character

55. The Financial Penalty was imposed at the highest end of harm category 5 because of the Applicant's continued failure to provide documentation and his failure to ensure safety and conditions standards to meet the minimum requirements of the HMO Regulations.

56. The category as calculated as follows:

	+1	-1	Score
1	Serious incident	Minor incident	+1
2	Deliberate act	Not deliberate act	+1
3	History of non-compliance	First offence	-1
4	Procedure followed	Procedures not followed	+1
5	Reliable witness	No or unreliable witnesses	+1
6	Landlord obtained advice	No knowledge of Landlord's experience	+1
7	Action will help raise awareness	Action will not help raise awareness	+1
8	Similar housing issues in area	No similar housing issues in area	-1
9	Action will help raise standards	Action will not help raise standards	+1
10	Offence detrimental to tenants & occupiers	Offence not detrimental to tenants & occupiers	+1
		Total	6

57. The Reasons for calculating the penalty level were:

- The Applicant had been contacted previously regarding documentation, the Property has been licensed since 2007 and

licensing conditions are provided at the time of issue of the licence.

- Requests of electrical certification was requested and fire test certificates. As no reply received an inspection was held on 29th July 2021 in which a Category 1 fire safety hazard was identified.
- The inspections showed that the failure to provide documentation was evidence that the Applicant was blatantly flouting the 2006 Regulations and placing 5 tenants at an increased risk of death.
- Culpability was high due to history of non-compliance namely the failure to provide gas, electrical and fire safety certification since 2007.
- Harm was category 1 due to the high risk of a serious adverse effect namely potentially dire harm outcomes with increased likelihood of fire spreading throughout the Property quickly and undetected.

58. In summary:

- The risk is high
- The landlord has shown disregard for 2006 Regulations
- Deterrent to repeat offending
- To serve as a punishment

Applicant's Case

59. The following is a précis and paraphrase of the Applicant's written and oral (at the hearing) case:

60. The Applicant said that the period within which he could appeal was confusing as the notice was dated 17th December 2021 but he was told he had 21 days to appeal and then 28 days. He also said that he only had 13 working days before the 17th November 2021 to consider the Respondent's case, which was 260 pages, and provide his response.

61. The Applicant said that the Property was managed from 2007 to 2017 by Mr Alan Long. Following Mr Alan Long's death, the Property was managed by his son Mr Kevin Long from 2017 to 2018. The Applicant said that he did not take over the management officially until 3rd August 2020. He said notwithstanding his poor health he had made every effort to manage the Property with the help of his son Amar.

62. The Applicant said that he was living and working in London and so appointed Mr Alan Long as the manager of the HMO from 2006. Mr Long was therefore responsible for complying with the statutory requirements. The Respondent's officers contacted Mr Alan Long (reference made to three letters addressed to Mr Alan Long by the Respondent's Officers one from 2013 and two dated 1st and 10th October 2014).

63. The Applicant said that Mr Alan Long collected the rent which he gave to the Applicant who then paid the bills. He said that Mr Alan Long did not like the Applicant coming to the Property and when the Applicant questioned the arrears and type of tenant that the Property was being let to, he said Mr Alan Long replied that it was under his control. The Applicant said that he believed Mr Alan Long had been taking rent and not declaring it to him. He said that he did not think that Mr Alan Long managed the Property properly.
64. The Applicant said that since 2007 the boiler (which is oil fired) and the electrical installation were all covered by a British Gas policy which Mr Alan Long cancelled in early 2018. However, British Gas said that they would not renew the cover following the cancellation until an Electrical Installation Condition Report was obtained. He said that he could not answer the Respondent's claim that it had not received an Electrical Installation Condition Reports every 5 years between 2007 and 2020 as he was not the manager. The Applicant went on to say that he obtained an Electrical Installation Condition Report by GJ Electrical on 7th January 2021 which was "unsatisfactory". He then sought to engage GJ Electrical to carry out the works identified in this Electrical Installation Condition Report but GJ Electrical said it would take 60 days. At the time one of the tenants was in isolation having caught covid. He said he tried other electricians but eventually employed an electrical contractor from Peterborough who carried out the work and provided an Electrical Installation Condition Report on 1st November 2021.
65. The Applicant said that Mr Alan Long had arranged for the smoke and heat alarms to be installed. They were all hardwired by an electrician Mr Alan Long knew. He said it was for Mr Long to ensure the system was tested. The Applicant said that he did not know that the alarms were not working until 3rd July 2019. The Property was inspected on 28th June 2018 (copy of letter booking appointment was provided) but no mention was made that the alarms were not operating correctly.
66. In response to the Tribunal's questions, it was said that although the alarms were hardwired and appeared to be interlinked there was a defect. When one alarm sounds, if they are interlinked, all should sound, however this did not occur. This defect was not corrected until after the Respondent's inspection on 10th December 2020.
67. The Applicant said that the bases of the smoke detectors had been removed. When these were replaced and new batteries fitted, they worked. The carbon monoxide alarms had been completely removed and the Applicant said that he had to get new ones. He considered this to be the fault of the tenants and Mr Alan Long. The tenants had caused electrical problems, removed the fire protection equipment and caused blockages to the drains. Mr Long had failed to ensure that this did not happen. The Applicant said he had been too ill to deal with matters earlier after he had taken control.

68. The Applicant also said that his contact details had been displayed on the notice board in the conservatory. Ms Page said that she could not recall whether she had seen the notice board in the conservatory. The Applicant also said that the spindle to the balustrade was not missing but only required a nail to put it correctly in place. It had just become displaced from the block holding it in place under the hand rail (a photograph was provided).
69. The Applicant said that he had been given no guidance or information from the Respondent as to how an HMO should be managed. He only took over in 2018 and had not received any of the documentation which should have been kept by Mr Alan Long. He said he ran the Property as an HMO to the best of his knowledge.
70. The Applicant said that it was for the Respondent to ensure that the Property was run properly as an HMO. He did not understand why it had taken 13 years for the matter to come to a head. If there was something wrong then his Licence should not have been renewed or should have been revoked.
71. Mr Alan Long, the Respondent and the tenants were responsible for the poor running of the Property as an HMO and the defects that had now been found. He had done his best and where there had been failings these were due to his health and the coronavirus. In addition, he had had other problems including a burglary, the demolition of a brick wall at his home in London by a person trying to climb over it and arranging his daughter's wedding.

Applicant's Representations to the Final Penalty Notice & Respondent's Reply

72. The Applicant's Representations to the Notice and the Respondent's reply are set out in summary as follows:

Applicant's Mitigation	Respondent's Reply
The manager had told the Applicant that some of the alleged offences had now been dealt with	Mr Kevin Long has stated he is not the manager and Mr Jon Smith has said he is not Mr Long's assistant.
There were 5 tenants, which to the Applicant's knowledge should have been only three	5 tenants were residing on 7 th October 2020 at the time of the compliance inspection. Even if there are only 3 the Property is still an HMO and therefore the 2006 Regulations apply
Fire safety measures have been dealt with, which include all smoke detectors working, kitchen heat detector working, closer on fire door ordered between kitchen and escape route. The letting rooms have keys in	The inspection on 1 st March 2021 identified that only the fire blanket in the kitchen had been replaced and the personal belongings in the communal areas removed. The smoke detectors were not interlinked as required by the

<p>the doors which was accepted in the past by the council. Therefore, there is no need for thumb turn locks. There is a fire blanket in the kitchen. All surplus personal belongings and furniture in the communal hallway have been removed. The electrical consumer unit protection will be dealt with when work required to be carried out by the Electrical Installation Condition Report is completed.</p>	<p>licence conditions.</p>
<p>The Electrical Installation Condition Report produced by GJ Electrical, arrived on 14th January 2021, requiring work stipulated to be completed within 60 days. There is no mains gas on site but cannister gas for the hob which is gauge monitored 24/7. Fire and Gas checks were made from 2007 to 2018 by the last manager, who unfortunately has passed away. The replacement manager is now Kevin Long with assistant John Smith. They will be carrying fire and gas checks regularly once work has been completed.</p>	<p>The Electrical Installation Condition Report dated 7th January 2021 identified a number of C2 and C3 defects. The Electrical Safety Standards in the Private Sector (England) Regulations 2020 require remedial work to be carried out within 28 days. The defects identified in the Report of 7th January 2020 were still in existence at the inspection on 1st March 2021.</p>
<p>Re HMO Regulations 2006 3(b) and 4(1(a)) now dealt with.</p>	<p>Re HMO Regulations 2006 The contact details are now on display and the personal belongings have been cleared from the communal hallway</p>
<p>4(4(a)) smoke and heat detectors are working, closing mechanism will be dealt with this weekend, thumb turn locks are questionable at this stage, consumer unit fire protection will be dealt with later with Electrical Installation Condition Report work to be completed. Fire blanket is in kitchen now.</p>	<p>The Applicant was given until 19th January 2021 to remedy the defects. (33 days for fire detection and 10 weeks for falls on stairs and ventilation work). On 1st March 2020 inspection following works not undertaken:</p> <ul style="list-style-type: none"> • Interlinked smoke detectors • Absence of closing mechanisms and turn locks • Un-encased consumer unit • Unsound ceiling constructions and absence of 30-minute fire protection • Cracked and loose tiles in shower room floor • Fraying carpet on top step of first floor stair
<p>4(4(b)) regarding ceiling constructions throughout and 30-minute escape route the Applicant said he would undertake the work himself as he had built the property and had extensive knowledge about building regulations gained with experience of being a builder for the last 40 years.</p>	

<p>6(3(a)) has been dealt with inspections taking place every 4 years and Electrical Installation Condition Report is available now with work completed on the 8 January 2021. He said he received the report from GJ Electrical on 14th January 2021. The work required by the council, and work set out in the improvement notice under the Housing Act 2004 Section 12 (Category 1 & 2 Hazard) cannot be met by the deadlines set by the council. Will need more time which we must come back to later.</p>	<ul style="list-style-type: none"> • Defective ventilation in shower room • Unstable stair bannisters & missing balustrade <p>It was noted that there was a reported case of covid at the Property but the isolation period ended on Monday 25th January 2021 and so not relevant to the required works.</p> <p>Requests for a current Electrical Installation Condition Report have been requested since 2013. No documentation was provided until 2021. The Report dated 7th January 2021 was “unsatisfactory” and a “satisfactory” report was not produced until 1st November 2021.</p>
<p>6(3(c)) noted, the certificates were not supplied to us and so we could not toward them. The Electrical Installation Condition Report is ready now and a copy will be posted to the council.</p>	
<p>7(1(c)) The stair coverings will be removed on top of the first-floor staircase.</p>	
<p>7(1(d)) defective mechanical ventilation in first floor has been fixed</p>	
<p>7(2(a)) unstable stair bannisters and missing balustrade will be dealt with in conjunction with work 4(4(b))</p>	

73. The Applicant said he did not own any other properties which are rented out at present. This was meant to be his family home with his parents and two children, and the use of one of the barns as a business unit. The circumstances turned such that both the Applicant’s parents became seriously ill and could not come to reside there. The Applicant said that he was sandwiched between March and London, leading a very unstable family life. Eventually he said he had to instruct a manager. He said he kept the Property going even though it was only breaking even. The tenants were always in arrears and the Property made a loss in recent years. He said he eventually decided to sell the property but no offers were received and after two years of the property being on the market, it was taken off.

74. The Respondent replied that notwithstanding the Applicant’s change in circumstances the occupants’ safety cannot be compromised and alternative options should be pursued.

75. The Applicant said that his health became poor with major organ treatments in hospital over the last two years and regular close monitoring of blood tests and reviews by his consultants which has all been documented. At present he said he was in fairly good health. In 2019 he had to be involved in his daughter's wedding. Indian weddings are a major event and take at least a year to make all the necessary arrangements. He also said he was not aware that he was in breach of the 2006 Regulations for HMO's and risking the life of 5 tenants.
76. The Respondent replied that it is the Applicant's responsibility to understand and comply with the legislation governing HMOs. There was a long history of recorded requests for information.
77. The Applicant said that he could not recollect knowledge about some of the things mentioned above especially relating to the time period July 2020 mentioned and other things required. In any case his health and family needs took priority over other things, considering he was given 50% chance of survival by his consultants. Not to mention that depression had also set in, especially after dealing with major losses in business. He said he felt his personal circumstances were important evidence to take into account when finalising the pending decision to be comprehensively assessed in view of the above mentioned and therefore I believe that it is an unfair action to take.
78. He said that if the decision is to go ahead, then financially he has no income and had to raise a mortgage on the house to pay for survival. He cannot pay out any of the penalties being demanded which leaves him with no other choice but to auction the property and give the tenants notice. He said if he was given more time, then he could try and raise money from the tenants who are in arrears and then complete the works required. For this to happen it needed the government to lift the COVID restrictions and then a further 60 days to complete the works. Doing it himself on piecemeal basis will cost about £3,000. I cannot afford to pay any one else at the moment. The Applicant provided a Financial Statement.
79. In answer to the Tribunal's questions regarding the Applicant's financial circumstances the Applicant said that he had been incurring a loss for a number of years because the tenants had not been paying the rent and were substantially in arrears and he had had a lot of expenditure on the Property. He agreed that he had operated the Property as an HMO since 2007 at a profit. He also said that he was a builder and had built the Property and conceded that he was an experienced businessman.
80. The Applicant did not provide details of his income from the Property but it appeared from the evidence adduced concerning the arrears of one of the tenants that the rent from each tenant was in the region of £5,000 per annum. The Licence is for 8 persons between six bedrooms. If a charge of £5,000 was made for each bedroom (possibly more for the two

double bedrooms) the gross income from the Property is at least £30,000.

Decision

81. The Tribunal considered all the evidence adduced.

Validity of the Financial Penalty

82. Firstly, the Tribunal questioned whether a Financial Penalty should be imposed, which in this case required the Tribunal to determine whether it was satisfied beyond a reasonable doubt that the Applicant had committed the alleged offences. In doing so it considered the following:

1. whether the Property a House in Multiple Occupation;
2. whether the Applicant a “person having control” and a “person managing” the Property as defined in section 263 of the 2004 Act;
3. whether the Applicant, beyond a reasonable doubt, has committed an offence under section 234 of the 2004 Act by being in breach of the 2006 Regulations and for which a Local Housing Authority to impose a financial penalty under section 249A (1) of the Housing Act 2004;
4. whether the Applicant has on the balance of probabilities reasonable excuse for being in breach.

83. The Tribunal determined whether it was satisfied beyond a reasonable doubt that the Applicant had committed the alleged offences.

1. Is the Property a House in Multiple Occupation

84. The Tribunal found that it was common ground between the parties that the Property was a House in Multiple Occupation and had been since 3rd July 2007.

2. Is the Applicant a “person having control” and a “person managing” the Property as defined in section 263 of the 2004 Act

85. The Tribunal found that the Applicant was and is a “person having control” and a “person managing” the Property as defined in section 263 of the Housing Act 2004.

86. The reasons for its findings are as follows:

- a) The Applicant is the registered proprietor at HM Land Registry Entry Title Number CB206431 since 17th September 1999.
- b) The Applicant is the person named as the licensee on the Licences for a House in Multiple Occupation granted in 2007, 2013 and 2018, copies of which were provided.

- c) The Applicant claims that the Property was managed by a Mr Alan Long between 2007 and 2017 when Mr Long passed away. The Applicant claims that Mr Kevin Long, Mr Alan Long's son, managed the Property between 2017 and 3rd August 2020. However, the Applicant states that he has managed the Property since 3rd August 2020. Notwithstanding Mr Alan and Mr Kevin Long's involvement with the Property the Applicant stated that he, the Applicant, as Landlord, received the rents from which he paid the charges for utilities etc.
- d) No evidence was adduced by the Applicant to show that Mr Alan and Mr Kevin Long's role was more than being caretakers and 'odd job men' for the Applicant. No contract or other documentation was produced to show how they were employed. The Applicant stated that the role of Mr Long was to collect the rent which he was to pass to the Applicant who paid the bills. The Applicant claimed that Mr Alan Long also arranged for the gas and electrical certificates and for the fire equipment to be tested. There is no evidence that he was contracted to carry out this role or that he did so in fact. As the "person having control" and being the "person managing" the Property and the licensee the responsibility to ensure that these matters are dealt with rests with the Applicant for the whole period from 2007 to the present day.

3. *Has Applicant, beyond a reasonable doubt, has committed an offence under section 234 of the 2004 Act by being in breach of the 2006 Regulations and for which a Local housing Authority to impose a financial penalty under section 249A (1) of the Housing Act 2004?*

- 87. The Tribunal considered whether the Applicant is beyond a reasonable doubt guilty of an offence under section 234 of the Housing Act 2004 by being in breach the Regulations of the Management of Houses in Multiple Occupation (England) Regulations 2006 which enables a Local Housing Authority to impose a financial penalty under section 249A (1) of the Housing Act 2004.
- 88. The Tribunal considered each of the Regulations of which it was alleged the Applicant was in breach and the evidence adduced by the Respondent in support of its allegations.

4(1)(a) The Manager to ensure that his name, address and contact number are clearly displayed

- 89. There was some doubt as to whether or not the name and address and contact number had been displayed. The Applicant said that the details were posted on the notice board which was in the conservatory which was a communal area. Ms Page said that she did not recall having seen the notice board in the conservatory although it was confirmed on a subsequent inspection that the information was available on the notice

board in the conservatory. The Tribunal therefore was not satisfied beyond a reasonable doubt that there had been a breach of this particular regulation.

4(1)(a) The Manager must ensure that all means of escape from fire in the HMO are kept free from obstruction

90. The Tribunal was satisfied beyond a reasonable doubt from viewing the photographs and the HHSRS Report following the inspection on 7th October 2020 that the items were causing an obstruction to the escape route from fire. This provided a case for the Applicant to answer. The Applicant said that the furniture and personal possessions in the communal hallway were only there temporarily while a tenant moved in. No evidence was adduced by the Applicant to show that this was the case and what he considered was temporary. The items were not removed in the course of the inspection. The Tribunal therefore found beyond a reasonable doubt that there had been a breach of this regulation.

4(4)(a) The Manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to the design of the HMO

91. The HHSRS Report identified defective smoke and heat detectors, the missing closing mechanism on the fire door, missing thumb turn locks and missing fire blanket and the lack of a 30-minute fire protection around the electric consumer unit. This was not contradicted by the Applicant who in the course of his evidence stated that these had subsequently been remedied although it appeared that the interlinking between the smoke and heat detectors was not completed until the “satisfactory” Electrical Installation Condition Report was carried out on 1st November 2021.

92. The Applicant by way of defence submitted that the failures were due to Mr Alan or Mr Kevin Long for not having kept closer eye on the Property and to the tenants who removed the covers on the detectors (probably so that they could smoke without setting them off). Alternatively, the Applicant said that the Respondent’s officers were at fault in issuing a licence to him or should have revoked it when they found the defects. The Tribunal was of the opinion that the alleged failure of the Messrs Long, the tenants or the Respondent’s officers did not affect the Applicant’s obligations as the “person having control” and “person managing” the Property. It is for the Applicant in this role to ensure the requirements of the 2006 Regulations are complied with. It is for him to regularly check that the fire safety equipment is operating correctly. If he employs and agent or another person, he is still vicariously liable. The Tribunal found beyond a reasonable doubt that there had been a breach of this regulation.

4(4)(b) The Manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to the structural conditions in the HMO

93. The HHSRS Report identified the unsound ceiling over the escape route which did not provide 30-minute protection. The Applicant did not dispute that remedial work was required and said he would undertake the work himself as he had built the property and had extensive knowledge about building regulations gained with experience of being a builder for the last 40 years. The Tribunal was of the opinion that with his background the Applicant should have been aware of the need to remedy the defects well before the inspection of 7th October 2020. The Tribunal found beyond a reasonable doubt that there had been a breach of this regulation.

6(3)(a) The Manager must ensure that every fixed electrical installation is inspected every 5 years by a qualified person to undertake such inspection and testing

94. The Applicant provided no documentary evidence of past Electrical Installation Condition Reports for the years prior to 2020. The Applicant by way of defence submitted that any failure to carry out inspections and testing and to obtain and submit the appropriate documents was due to Mr Alan or Mr Kevin Long who he said were responsible for these tasks. Alternatively, the Respondent's officers should not have issued a licence to him or should have revoked it until the inspections and tests were carried out, and any defects remedied. The Tribunal was of the opinion that the alleged failure of the Messrs Long, or the Respondent's officers did not affect the Applicant's obligations as the "person having control" and "person managing" the Property. It is for the Applicant in this role to ensure the requirements of the 2006 Regulations are complied with. The Tribunal found beyond a reasonable doubt that there had been a breach of this regulation.

6(3)(c) The Manager must supply electrical certificate to the LHA within 7 days of receiving a request in writing for it

95. On 3rd July 2019, the Respondent requested the Applicant provide copies of the current Electrical Installation Condition Report. The Applicant said that he would attempt to obtain a report. On 29th July 2020 the Respondent requested the Applicant provide copies of the current Electrical Installation Condition Report within 14 days. The Applicant said he was not able to produce the documentation at that time due to a house burglary, which postponed his daughter's wedding, and by his being in poor health. The Respondent replied to this email on the same day giving the Applicant 14 days to produce the report.
96. The Tribunal was satisfied that the request of 3rd July 2019 was made and put the Applicant on notice that an Electrical Installation Condition Report was required. The Tribunal found that the Respondent's request

of 29th July 2020 (a copy of the request on 3rd July 2019 not being available) was unambiguous and gave the Applicant sufficient time (7 days longer than required by the legislation) in which to comply. Taking into account the earlier request of 3rd July 2019 and the extended time in which to respond, the Applicant's reasons for not doing so were inadequate. The Report should have been to hand. The Tribunal found beyond a reasonable doubt that there had been a breach of this regulation.

7(1)(a) The Manager must ensure that all common parts of the HMO are maintained in good order

97. The HHSRS Report identified cracked and loose tiles on the second-floor shower room. The Applicant did not dispute that remedial work was required. The Tribunal found beyond a reasonable doubt that there had been a breach of this regulation.

7(1)(c) The Manager must ensure that any coverings are safely fixed and in good repair

98. The HHSRS Report identified Fraying carpet on top step of first floor staircase. The Applicant did not dispute that remedial work was required. The Tribunal found beyond a reasonable doubt that there had been a breach of this regulation.

7(1)(d) The Manager must ensure that all windows and means of ventilation are kept in good repair

99. The HHSRS Report identified Defective mechanical ventilation in the first-floor shower room. The Applicant did not dispute that remedial work was required. The Tribunal found beyond a reasonable doubt that there had been a breach of this regulation.

7(2)(a) The Manager must ensure that all handrails and bannisters are at all times kept in good repair

100. The HHSRS Report identified unstable stair bannisters and missing balustrade. The Applicant did not dispute that remedial work was required but stated that the spindle to the balustrade was not missing it was merely displaced and only required nail to fix. The Tribunal found beyond a reasonable doubt that there had been a breach of this regulation.

4. *Has the Applicant on the balance of probabilities reasonable excuse for being in breach?*

101. Having found that the Applicant was in breach of Regulations 4(1)(a), (b), 6(3)(a), (c) and 7(1) (a), (c), (d), and 7(2)(a), the Tribunal considered whether the points raised by the Applicant formed a defence to the offences.

102. As already stated, the Applicant is responsible for the Property and cannot seek to reduce this liability by blaming others. The Applicant claimed that he had no guidance or information on how to manage an HMO and therefore he should not be penalised for doing his best. The Tribunal takes the view that the onus is on the Applicant as the “person having control” and “person managing” the House in Multiple Occupation to ensure that he is compliant with the legislation which is intended to ensure the welfare of the tenants. The Tribunal noted that the conditions of the HMO Licence are printed on its reverse, also there is information on both the Respondent’s website and government websites to assist licensees with regard to legislative compliance.
103. The Applicant set out in his statement of case that he had been in poor health since 2015 and provided documentary evidence of this which showed the Applicant to have a serious condition. He had received hospital treatment as recently as 2020. Also, he said that he had to arrange for his daughter’s wedding in 2019. In addition, he had financial difficulties, the tenants were in arrears and the Property was making a loss.
104. The Tribunal noted that the Applicant had operated the Property as an HMO since 2007, he also described himself as a builder and said that he had built the Property. He is therefore an experienced businessman. With this background, when his personal circumstances meant that he was not able to manage the Property properly, he should have been aware that an option open to him was to employ an experienced agent. The agent could have ensured compliance with the legislation and maintained the financial viability of the Property.
105. The Applicant stated that the required works had now all been carried out. The Tribunal considered that both the fire and electrical safety matters should have been dealt with as a matter of urgency. However, it took the Applicant from 29th July 2020 to 7th January 2021 to obtain an Electrical Installation Condition Report and from that date until 1st November 2021 to have the defects identified to be remedied.
106. The Tribunal therefore determined that the Applicant had not shown he had on the balance of probabilities reasonable excuse for being in breach of the 2006 Regulations. He was or should have been aware of his responsibilities and obligations under the legislation. Also, taking into account his experience as a licensee and business man, he ought to have properly engaged an experienced agent to manage the Property on his behalf when he found he could not cope due to his personal circumstances.
107. The Applicant submitted that the proceedings were defective because he did not receive the Final Financial Penalty Notice when it was said it was delivered and that he did not receive the Bundle for the hearing in good time.

108. The Tribunal accepted that the Final Financial Penalty Notice had been sent by first class post and by email on 18th March 2021 and so found that the Notice had been served correctly. In any event the Applicant had had sufficient opportunity to make an appeal to the Tribunal and had done so. The Respondent's Bundle was substantial, however from the index it was apparent that 48 pages were photographs. Apart from the witness statements of Ms Page and Mr Horn, the remainder of the Bundle was correspondence between the Applicant and the Respondent or formal notices sent to the Applicant. The Applicant was therefore aware of most of the contents of the Respondent's Bundle. The Applicant also provided a substantial and thorough written reply to the Respondent's case. The Tribunal therefore found that there had been no procedural irregularity or prejudice caused to the Applicant.
109. For the above reasons, the Tribunal was satisfied beyond a reasonable doubt that the Applicant was in breach of Regulations 4(1)(a), (b), 6(3)(a), (c) and 7(1) (a), (c), (d), and 7(2)(a) and has committed an offence under section 234 of the Housing Act 2004. The Tribunal was not satisfied on the balance of probabilities that the Applicant had a reasonable excuse for failing to meet the necessary management standards. Therefore, the Respondent was able to impose a financial penalty under section 249A (1) of the 2004 Act.

Amount of the Financial Penalty

110. Secondly, the Tribunal considered the amount of the Financial Penalty. In doing so it had regard to the decision in *London Borough of Waltham Forest and Allan Marshall & London Borough of Waltham Forest and Huseyin Ustek* [2020] UKUT 0035
111. In this decision, Judge Elizabeth Cooke referred to the Guidance of the Secretary of State issued in 2016 and again in 2018 with regard to Financial Penalties. At paragraphs 1.2 and 6.3 of the Guidance both local authorities and tribunals are to have regard to the guidance. At paragraph 3.5 the guidance says that local authorities should develop and document their own policy on determining the appropriate level of financial penalty in a particular case; it adds that "the actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending". The paragraph goes on to set out the matters that a local authority "should consider" to "help ensure that the financial penalty is set at an appropriate level". These are:
- Severity of the offence,
 - Culpability and track record of the offender,
 - The harm caused to the Tenant,
 - Punishment of the offender,
 - Deter the offender from repeating the offence,
 - Deter others from committing similar offences,

- Remove any financial benefit the offender may have obtained as a result of committing the offence.
112. The learned judge went on to state that given a policy, neither the local authority nor a tribunal must fetter its discretion but “must be willing to listen to anyone with something new to say” (as per Lord Reid in *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610 at page 625) and “must not apply to the policy so rigidly as to reject an applicant without hearing what he has to say” (per Lord Denning MR in *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614 page 626).
 113. In referring to the approach a tribunal should take in applying a policy, Judge Cooke referred to *R (Westminster City Council) v Middlesex Crown Court, Chorion plc and Fred Proud* [2002] EWHC 1104 (Admin) as being particularly apt. In that case a local authority sought a review of the decision of the Crown Court which allowed an appeal by rehearing of the decision of the authority to refuse an entertainment licence in accordance with policy. Scott Baker J said at paragraph 21:

“How should a Crown Court (or a Magistrates Court) [or in this case presumably a tribunal] approach an appeal where the council has a policy? In my judgement it must accept the policy and apply it as if it was standing in the shoes of the council considering the application.”
 114. However, it is added that the cases confirm that accepting the policy does not mean the tribunal may not depart from it provided it gives reasons taking into account the objective of the policy; the onus being on the Applicant to argue such departure.
 115. Judge Cooke then considered what weight should be given to the local authority’s decision under its policy. The justification for giving weight to a local authority’s policy is, as expressed in *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614, because it is an elected body and therefore its decisions deserve respect.
 116. It was submitted that case law supported a view that a tribunal should not depart from the decision of the local authority unless it is “wrong”. Judge Cooke made it clear that this did not mean wrong in law (what might be termed “illegal”). A tribunal is not “reviewing” the local authority’s decision but “rehearing” it. It is entitled to substitute its own reasoned decision, perhaps having information not available to the local authority when it made its decision or in exercise of the tribunal’s own specialist knowledge.
 117. Taking into account the above the Tribunal then considered the Policy with regard to the imposition and amount of the Financial Penalty. It should be noted that the procedure carried out by the Respondent in issuing the Financial Penalty was not challenged by the Applicant and the Tribunal saw no reason to question it or suggest that it had not been

carried out correctly. The Tribunal found the principles upon which the policy was based to be in line with government guidance and had been applied in this case.

118. In considering the culpability of the Applicant the Tribunal had found that he was a builder and therefore, on his own admission, knew the Building Regulations and was a long-standing HMO licensee. Firstly, therefore he knew or should have known the fire safety and electrical requirements and secondly that he needed to ensure his HMO was compliant. Instead of being proactive in this regard he had waited until he was found wanting, putting the occupants of the Property at risk. The Tribunal therefore agreed with the culpability being high.
119. In considering the level of harm the Tribunal found there to be a high risk of adverse effect in that the escape from fire was seriously compromised by the inoperative or defective fire alarm and 30-minute protection. The Tribunal therefore agreed with the harm as being category 1.
120. Although the breaches of regulation 7 were relatively minor they were symptomatic of a lack of effective management.
121. The Tribunal considered the reasons the Applicant put forward at the review which he reiterated at the hearing. The Tribunal had found these reasons did not form a defence. It now considered to what extent they were mitigation. Whereas the Tribunal appreciated the difficulties the Applicant had suffered in recent years nevertheless if he could not cope, he should have employed an agent. The Applicant was an experienced licensee and businessman and the property was potentially providing a significant income. In addition, the Tribunal noted the calculation made by the Respondent had scored the relationship between culpability and harm as 6 however the score actually adds up to 8 which would take the financial penalty into the upper £17,001 to £30,000 band. In the event the Respondent had settled upon a score of 5 with the penalty at the upper end. The Tribunal considered this to be appropriate in the circumstances and took into account any mitigating circumstances.

Conclusion

122. The Tribunal confirms the Final Notice of the Financial Penalty of £17,000.00.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 – THE RELEVANT LAW

1. Under section 234 of the 2004 Act a “relevant housing offence” is committed if a person is in breach of a regulation under the Regulations of the Management of Houses in Multiple Occupation (England) Regulations 2006. The section states:
 - (1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—
 - (a) there are in place satisfactory management arrangements; and
 - (b) satisfactory standards of management are observed.
 - (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.
2. Under section 249A (1) of 2004 Act:
 - “(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.”
 3. Under section 254 (2) of the 2004 Act a “house in multiple occupation” is a building or a part of a building if it meets the standard test in that: —
 - (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single household;
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons’ occupation of the living accommodation; and
 - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.
 4. In section 254 “basic amenities” means—
 - (a) a toilet,
 - (b) personal washing facilities, or
 - (c) cooking facilities;
 5. Section 258 states that persons are to be regarded as not forming a single household for the purposes of section 254 unless—
 - (a) they are all members of the same family, or
 - (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.
 - (3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if—
 - (a) those persons are married to, or civil partners of, each other or live together as if they were a married couple or civil partners;
 - (b) one of them is a relative of the other; or

- (c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.
- (4) For those purposes—
 - (a) a “couple” means two persons who fall within subsection (3)(a);
 - (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
 - (c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
 - (d) the stepchild of a person shall be treated as his child.
- 6. Section 61 of the 2004 Act provides that every HMO, which falls within the statutory definition, must be licensed, and by section 55 that the local housing authority be responsible for licensing.
- 7. The ‘person managing’ a House in Multiple Occupation is defined in section 263(3) of the 2004 Act, which states:
 - (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.
- 8. The relevant Regulations of the Management of Houses in Multiple Occupation (England) Regulations 2006 are:
- 9. Regulation 4 - Duty of manager to take safety measures
 - (1) The manager must ensure that all means of escape from fire in the HMO are—
 - (a) kept free from obstruction; and
 - (b) maintained in good order and repair.
 - (2) The manager must ensure that any firefighting equipment and fire alarms are maintained in good working order.
 - (3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed

- in positions within the HMO that enable them to be clearly visible to the occupiers.
- (4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—
 - (a) the design of the HMO;
 - (b) the structural conditions in the HMO; and
 - (c) the number of occupiers in the HMO.
 - (5) In performing the duty imposed by paragraph (4) the manager must in particular—
 - (a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and
 - (b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.
 - (6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.
10. Regulation 6 - Duty of manager to supply and maintain gas and electricity
- (1) The manager must supply to the local housing authority within 7 days of receiving a request in writing from that authority the latest gas appliance test certificate it has received in relation to the testing of any gas appliance at the HMO by a recognised engineer.
 - (2) In paragraph (1), “recognised engineer” means an engineer recognised by the Council of Registered Gas Installers as being competent to undertake such testing.
 - (3) The manager must—
 - (a) ensure that every fixed electrical installation is inspected and tested at intervals not exceeding five years by a person qualified to undertake such inspection and testing;
 - (b) obtain a certificate from the person conducting that test, specifying the results of the test; and
 - (c) supply that certificate to the local housing authority within 7 days of receiving a request in writing for it from that authority.
 - (4) The manager must not unreasonably cause the gas or electricity supply that is used by any occupier within the HMO to be interrupted
11. Regulation 7 - Duty of manager to maintain common parts, fixtures, fittings and appliances
- (1) The manager must ensure that all common parts of the HMO are—
 - (a) maintained in good and clean decorative repair;

- (b) maintained in a safe and working condition; and
 - (c) kept reasonably clear from obstruction.
- (2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—
- (a) all handrails and bannisters are at all times kept in good repair;
 - (b) such additional handrails or bannisters as are necessary for the safety of the occupiers of the HMO are provided;
 - (c) any stair coverings are safely fixed and kept in good repair;
 - (d) all windows and other means of ventilation within the common parts are kept in good repair;
 - (e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and
 - (f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.
- (3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.
- (4) The manager must ensure that—
- (a) outbuildings, yards and forecourts which are used in common by two or more households living within the HMO are maintained in repair, clean condition and good order;
 - (b) any garden belonging to the HMO is kept in a safe and tidy condition; and
 - (c) boundary walls, fences and railings (including any basement area railings), in so far as they belong to the HMO, are kept and maintained in good and safe repair so as not to constitute a danger to occupiers.
- (5) If any part of the HMO is not in use the manager shall ensure that such part, including any passage and staircase directly giving access to it, is kept reasonably clean and free from refuse and litter.
- (6) In this regulation—
- (a) “common parts” means—
 - (i) the entrance door to the HMO and the entrance doors leading to each unit of living accommodation within the HMO;
 - (ii) all such parts of the HMO as comprise staircases, passageways, corridors, halls, lobbies, entrances, balconies, porches and steps that are used by the occupiers of the units of living accommodation within the HMO to gain access to the entrance doors of their respective unit of living accommodation; and
 - (iii) any other part of an HMO the use of which is shared by two or more households living in the HMO, with the knowledge of the landlord.

12. Schedule 13A of the Housing Act 2004 sets out the provisions relating to appeals against Financial Penalties 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.
 - (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.
 - (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.