FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/00HB/HNA/2022/0004**
Property	**:**	**29 Aubrey Road, Bedminster, Bristol**
Applicant	**:**	**Naomi Rachel Knapp**
Representative	**:**	**Mr Soar (Counsel instructed by Berry Redmond Gordon & Penny LLP)**
Respondent	**:**	**Bristol City Council**
Representative	**:**	**Ms Burnham-Davies (in house)**
Type of Application	**:**	**Housing Act 2004, Appeal against Financial Penalty under s.249A (Sched 13A)**
Tribunal Members	**:**	**Judge D Dovar** **Mr W H Gater FRICS**
Date and venue of Hearing	**:**	**2nd and 3rd August 2022, Havant Justice Centre Parties remotely**
Date of Decision	**:**	**24th August 2022**

DECISION

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1. This an appeal, dated 25th March 2022, against a financial penalty of £15,633.40 made under s.249A of the Housing Act 2004 ('the 2004 Act') against Ms Knapp by the Respondent City Council in respect of her failure to abide by the management regulations applicable to the Property, being an HMO. Those management regulations are found in the Management of HMOs (England) Regulations 2006 (2006/372) ('the Regulations').

2. Ms Knapp is the owner of the Property, which is licensed and let as an HMO. The Council have levied the financial penalty because of the condition that they found it in on an inspection on 8th July 2021. They considered that that condition breached regulations 4 (safety measures), 7 (maintaining common parts) and 8 (maintain living accommodation) of the Regulations and they were satisfied beyond reasonable doubt that she had committed an offence under s.234 of the 2004 Act.

3. At the outset of the hearing, the following issues were identified for determination:

    a. Whether the Notice of Intent to impose a Financial Penalty, dated 6th January 2022 ('the Notice') was effective, given:

        i. The address at which it was served;

        ii. The time in which it was served; and

        iii. The particulars of the offence given;

    b. If the Notice was valid, then:

i. Were the breaches of the Regulations alleged made out;

ii. If so, was there a defence of reasonable excuse (s.234(4)); and

iii. Had the Council failed to apply their own policies with the result that the financial penalty should be set aside;

c. If a financial penalty was warranted, was the one made by the Council too high?

4. These were slightly different from the grounds for appealing the fine, which in Ms Knapp's Notice of Appeal were:

a. A failure to serve the Notice in time;

b. A failure to serve it at all;

c. A failure to take properly, or at all, the representations made by Ms Knapp, in that when the Notice was served, the Council had said they were already going to issue the penalty. This ground was not pursued at the hearing;

d. It was denied that there was sufficient evidence so that the Council could be satisfied beyond reasonable doubt that the offences had been committed;

e. Alternatively, the amount of penalty was too high.

5. Whilst the Tribunal was present in the Havant Justice Centre, the parties and their representatives appeared remotely. Mr Soar, counsel

represented Ms Knapp, and Ms Burnham Davis, the Council. We heard evidence over two days from: on behalf of the Council, Mr Riddell (the Council's Senior Environmental Officer), Ms Ambrose (the Council's Private Housing Team Leader) and Mr Mallinson (the Council's Private Housing Manager), and on her own behalf, Ms Knapp. We were also provided with an electronic bundle of 1741 pages, with two supplemental bundles, particulars of Moor View Farm and a photographic inventory of the Property taken on 1st July 2021.

Background

History between the parties

6. Ms Knapp is unfortunately well known to the Respondent for the wrong reasons. She owns an estimated 32 properties in the City, which she lets out, 20 of which are HMOs and she has a history of non-compliance with obligations imposed on her under the 2004 Act. This has led to frequent interventions by the Council in her management of those properties, including:

    a. In September 2016, there was a meeting with the Council due to their concerns about the management of her properties and to consider whether she was a fit and proper person to hold an HMO licence;

    b. In March 2020, a financial penalty was imposed of £6,649 under s.249A for breaches of the Regulations as well as a failure to licence an HMO;

c. In 2021, a criminal convictions were secured with fines, costs and a victim surcharge, totalling of £29,597.59 in respect of breaches of the Regulations; and

d. more recently in June of this year, a Banning Order was made under s.15(1) of the Housing and Planning Act 2016.

7. Prior to applying for the Banning Order, and in the course of considering whether or not she was a fit and proper person to be granted licences to manage HMOs under s.66 of the 2004 Act, the Council had made arrangements with Ms Knapp for management of her properties to be taken out of her hands and placed into those of professional managing agents.

Instruction of Managing Agents

8. As a result of that, in around March 2021, Ms Knapp approached Bristol Property Partnership Ltd ('BPP') to manage her properties and to apply for the necessary HMO licences in their name.

9. On 22nd March 2021, she signed a 'HMO Fully Managed Agency Agreement' with them to that effect; which included amongst the properties to manage, the Property. We note in passing at this stage that the correspondence address she gave was that of 81 East Street, Bedminster, Bristol, BS3 4EX.

10. As part of that agreement BPP were to:

a. Provide an initial consultation on any items required to get her properties into a lettable condition;

b. Advertise and market the properties and arrange viewings and select tenants; and

c. Prepare and sign as agent for the owner a suitable tenancy agreement.

11. HYBR was a letting agency that Ms Knapp used for her lettings. She had, in about March 2021, told both HYBR and BPP that the Property was free for letting from 1st July 2021 and HYBR taking their cue from that information, appears to have arranged for the new tenants.

12. On 8th April 2021, BPP applied to be the HMO licence holder for the Property.

13. In June 2021, new tenants were signed up for the Property, with a moving in date of 1st July and a total annual rental of £29,280. In the bundle was a record of the signatures of the tenants to the new tenancy. It was issued by HYBR and generated on 8th June 2021. It showed that Ms Knapp was a signatory to the agreement, there did not appear to be any reference to BPP. This was consistent with the copy of the tenancy agreement in which Ms Knapp had signed as landlord, albeit she gave a care of address being that of BPP.

14. Prior to the letting on 1st July 2021, BPP had not carried out any of the parts of the management agreement listed above. They had not provided any initial consultation, nor does it appear had they advertised it or marketed it. Finally they had not signed the tenancy agreement. Ms

Knapp with her other agents HYBR had undertaken the advertising and letting.

15. The Property was let on 1st July 2021. On that day, Ms Knapp was at the Property organising the change over to the new tenants. She spoke to them about various items that would be repaired or replaced, including the kitchen floor, sofas and a table. Whilst there was an employee of BPP with her initially, that employee had taken some photographs but then left as she had other properties to attend to.

The subject property

16. In the course of giving evidence, Mr Riddell was asked about part of the annex to the Final Notice served under Schedule 13A of the Act, which refers to 'Targeted Action'. The implication being Ms Knapp had been targeted and that is why the Property had been inspected. He said that it had not been targeted, and indeed the form has the 'No' box ticked confirming that. He went onto state that as far as they were aware she had handed over her properties to BPP and they were not pursuing anything against her, other than considering the Banning Order.

17. Indeed, the Property came out of the blue. It was a complaint by email on 6th July 2021, by one of the tenants, Mr Moon, about the condition that prompted the inspection. This was five days after they had moved in. Mr Riddell and Ms Ambrose carried out an inspection on 8th July 2021. They identified a number of issues with the Property which are dealt with below and which they considered to be breaches of the Regulations.

18. There then ensued some confusion as to who was responsible for managing the Property. BPP had applied for the new licence. They confirmed that they were managing, but had only taken over from 1st July; i.e. the start of the new tenancy. Mr Moon provided the Council with excerpts from the tenants WhatsApp group discussions with Ms Knapp, BPP were not included on this group.

19. On 27th July 2021, the Council notified BPP that they considered they may have committed offences under s.234 as the entity managing the Property and were invited to attend an interview under caution.

20. On 30th July 2021, the Council inspected the Property again with Ms Gardener of BPP and from that inspection it appears that the majority of the issues had been dealt with.

21. On 23rd August, the Council wrote to Ms Knapp about her involvement with the Property.

22. On 31st August, BPP set out written representations as to why they had not committed any offence. They stated that they had agreed a phased management approach to all of Ms Knapp's properties and that they had experienced difficulties in obtaining information and keys from her. They stated that the first day they took over was 1st July and on that day, when the new tenants came in, Ms Knapp had tradespeople working at the Property. Had they had proper control then they would not have let the property until all necessary works had been completed.

23. Ms Knapp provided her written response on 6th September, in which she stated in response to the question asking when the terms of the management agreement with BPP took effect

> *"Long before 1st July for the portfolio of my properties but with my student properties the practical day to day management occurred at different dates since the old students already had contracts and were due to move out – I asked BPP to do the check outs and check-ins 2 weeks prior to the new students moving in but it seems they got too busy however they viewed the majority of student properties long before the new students moved including 29 Aubrey rd –"*

24. In response to the question when BPP took over management of the Property, she responded

> *"They were due to take it over mid June but effectively took it over from 1st July when they visited and took fotos etc. but I believe liaised with the tenants weeks before this regarding rent and deposit payments etc and also there was a change of 2 tenants as 2 of the original group dropped out – BPP liaised with HYBR agency on the contracts etc.'*

25. In describing her process for preparing a property for new tenants, she stated:

> *"The property was visited 2 weeks prior to the exit to the vacation of the old tenants to check any necessary work such as*

> *painting or fixing - Previous tenants were asked to highlight any issues with property regularly over the course of their stay and to book it handyman or trading as needed. Due to COVID visits to the house were limited. Workers spent over 2 days cutting back and clearing up the garden prior to the new tenants moving in and some painting and minor fixes were done. The previous tenants had confirmed there was very little to repair. The property was visited by the agent and myself and the agent took fotos for an inventory - cleaners were sent in to clean the property however some of the previous tenants were late moving out and the new tenants were waiting to come in so the kitchen seemed to have not been thoroughly cleaned. As it was the weekend - the agent was unable to stay to let the tenants in but had inspected the property prior to the new tenants arriving and did her foto inventory etc. and visited the new tenants later and liaised with them etc.*

26. On that same day BPP provided the management agreement (dated 22nd March 2021) between themselves and Ms Knapp in respect of the Property, as well as other properties owned by her. Further management agreements were provided on 13th September.

27. As a result of that information, the Council say that they decided that no action would be taken against BPP, but they would proceed against Ms Knapp.

The Notice

28. On 6th January 2022, the Council hand delivered to 81 East Street, Bedminster, Bristol, BS3 4EX the Notice. That was addressed to Ms Knapp and contained:

   a. the covering notice of intention to impose a financial penalty in the sum of £16,608.40;

   b. a Statement of Reasons, which set out:

      i. the four regulations that were said to have been breached due to the condition of the Property found on 8th July 2021: being regulations 4(4), 7(1), 7(4) and 8(2) of the Regulations;

      ii. That an investigation had confirmed that the property was owned and managed by Ms Knapp;

      iii. Following completion of the checks and balance form (which was exhibited), a decision was made to impose the penalty;

      iv. The level of penalty had been set following the completion of a determination form (which was exhibited).

   c. The checks and balances form set out the reasons for the decision to impose a financial penalty on Ms Knapp. It made reference to the investigation as to BPP's role and that on both their and Ms Knapp's case, notwithstanding the agreement in March 2021, BPP did not actually take over management of the Property until 1st July 2021, the day the new tenants moved in.

It was noted that they gave different reasons for the late change over. It also made reference to Ms Knapp's request to BPP to inspect the Property two weeks prior to the change over, but that they had not done so as they were too busy.

d. The checklist for determining the amount of the financial penalty set out under 'brief summary of offence' the particulars of the 19 offences under regulation 7 (1) on pages 2 to 3 of that exhibit. The top of that section states '*If multiple offences pick one of the offences at this point.'* On page 14 of the exhibit, under the heading 'Totality principle' the particulars of the breaches under the other three regulations were set out. The total penalty for the regulation 7(1) offences was £13,683.40, and then there was an additional £975 for each of the three further regulations that had been breached.

29. In her response, through her solicitors, on 3rd February 2022, Ms Knapp only addressed the particulars in relation to the breach of regulation 7 (1). They also commented that '*July is a particularly busy change over month form one set of tenants to another for those letting properties to students because it is the end of the academic year. On this occasion the prior Tenants were late moving out.'*

30. On 2nd March 2022, the Council served a Final Notice Imposing a Financial Penalty under the Act in the sum of £15,633.40. It is against that notice that Ms Knapp has appealed to the Tribunal. A reduction of

£975 was made from the initial proposed level, which had been included to add an additional deterrent effect.

Notice of Intention

31. Paragraph 2(1) of schedule 13A of the 2004 Act provides that:

    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.

32. Ms Knapp says it was not given and certainly not given in time and even if it was, it didn't contain the correct information.

Given

33. Ms Knapp says the Notice was delivered to the wrong address. In a letter from her solicitors dated 3rd February 2022 it was said that 81 East Street was not the proper address, but that her residence is the proper address.

34. She admitted that she owned 81 East Street and that she had her office there, but she contended it should have been delivered to 50 Wingfield Road, being the address given for Ms Knapp on the Proprietorship Register for the Property. Alternatively, it was suggested that it should have been delivered to 102 Portway, being a property owned by her, and in which she keeps a room. To that end she provided a number of documents addressed to her at that address.

35. Section 246 (9) applies s.233 of the Local Government Act 1972 to the service of documents under the 2004 Act. Section 233 applies to any document required to be given or served and provides for it to be given by '*delivering it to him, or by leaving it at his proper address…*' (s.233(2)) which is '*his last known address.*' (s.233(4)).

36. Unlike part 6.9 of the Civil Procedure Rules, there is no requirement that service on an individual is at their usual or last known *residential* address. The word residential is omitted from s.233, instead it is their *proper* address. We do not therefore consider that a local authority is restricted to only serving an individual at their residential address under this section.

37. We are reinforced in our view of that by the following: s.329 of the Town and Country Planning Act 1990 provides for local authorities to serve by '*leaving it at the usual or last known place of abode…*' In *R v Hounslow LBC, ex parte Dooley* (2000) 80 P& CR 405, George Bartlett Q.C. sitting as a Deputy High Court Judge, followed Lord Goddard C.J. in *Borough of Morecombe and Heysham v. Warwick* [1958] 9 P & CR 307, in considering

> "*when it comes to the point of service of notices, and service is required to be at the last place of abode, service at the last place of business is good service.*"

38. Further, we do not consider that there is only one good address for service, it may well be that there is more than one *proper* address. In this case, the evidence from Ms Knapp was that 81 East Street was where

her office was and remains, 102 Portway was a dwelling where she had one room and stayed there when she was 'in town' and a final address, Moor View Farm was where she lived most of the time. In our view, either of those addresses would have been a *proper* address for the purpose of s.233.

39. Mr Soar was critical of the Council for failing to make enquiries of other departments of the Council as to her address. We do not consider there was any such obligation to do so. In any event had they done so, we have no doubt that they would have been provided with a range of addresses, including 81 East Street. Further and ironically Ms Knapp accepted that the address given for her on the Proprietorship Register for the Property was out of date and one she no longer had any connection with. Had it been served on her at that address, it seems she would not have received it.

40. In those circumstances, we fail to see how Ms Knapp can contend that an address which is her office address and from which she has communicated with the Council over the years from and which, at the time the Notice was delivered, was used by her as an address is not a proper address.

41. Accordingly we consider that there was good service of the Notice at the 81 East Street address which was deemed served on 6th January 2022 when it was hand delivered to that address.

Time

42. The next point that was taken was that in any event the notice did not come to Ms Knapp's attention until 11th January 2022 and was therefore outside of the 6 month time limit for service which was said to have run from 8th July 2021 when the Council was aware of the alleged breaches and knew the correct person responsible for them.

43. The Tribunal rejects this challenge for two reasons.

44. Firstly, for the reasons given above, service was effected by hand delivering the Notice to the 81 East Street address, therefore given that it was hand delivered, it was deemed to have been served on that day. We do not agree with Mr Soar's contention that there was no deeming provision and that it was only served when it came to her attention on 11th January 2022. That is to confuse the different situations as to: a.) deemed service and b.) an ineffective method of service but which ultimately results in the Notice landing in the intended recipient's hands. In respect of the former it does not matter when it actually comes to their attention.

45. In *Rushmoor BC v Reynolds* (1991) 23 HLR 495, the local authority delivered a notice through the letter box to a house in multiple occupation, which did not come to the respondent's attention. Watkins LJ agreed with counsel's contention that

> *"whether the method chosen by the appellant was sending the documents through the post or, as was done, by causing a servant or agent to deliver it through the letterbox, the presumption is the same by dint of sections 233 and 7, namely*

that service has been affected and cannot be denied; In other words, it is an irrebuttable presumption and nothing can be said to the contrary."

And he therefore considered that

"Here was a notice which the appellant council was empowered to send and moreover deliver in the manner it was. From that point onwards it did not lie in the mouth of the respondent to deny that he had received it."

46. Secondly, even if service was not presumed to have been effected, the notice actually came to Ms Knapp's attention, on her evidence, on 11th January 2022. We consider that the 6 months only started to run from the end of August 2021 when the Council had finished their investigations into who should be fined, not in July when they inspected. Accordingly, the Council had until the end of February 2022 to serve the Notice. We do not agree that the Council had sufficient evidence of who was responsible on 8th July when they visited. At that time it was unclear whether it was BPP or Ms Knapp. That is more than borne out by the correspondence and investigation that followed as set out above.

47. The Tribunal also considered that time might have been extended by reason of the fact that the breaches continued until after the date of inspection and for some breaches until the end of the year. However, there was not sufficient evidence before us as to when each breach was remedied.

Content

48. The final assault on the Notice (and the Final Notice) was that it did not contain sufficient particulars of the breaches alleged. As set out above, the particulars of the breaches alleged only appeared in the exhibits to the Notices and even then, only under the second exhibit which dealt with the amount of the penalty.

49. Paragraph 3 of Schedule 13A provides for the notice of intent to 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 under paragraph 4".

50. Similar provisions are made in respect of the requirements for the Final Notice at paragraph 8.

51. Ms Knapp does not complain about (a) and (c), it is (b) which is said to be so inadequate so as to render the Notice invalid. Mr Soar relied on *Maharaj v Liverpool City Council* [2022] UKUT 140 (LC). In that case, the appellant landlord complained that notices of intent and final notices under Schedule 13A were deficient, HHJ Hodge QC stated with reference to the reasons required to be set out in the notices

> *"Those reasons must be sufficiently clearly and accurately expressed to enable the recipient landlord to exercise the right conferred by paragraph 4 to 'make written representations to*

the local housing authority about the proposal to impose a financial penalty', thereby enabling it do decide whether to impose a financial penalty the landlord and, if so, the amount of such penalty ...

those reasons must identify clearly, and accurately, the particular respects in which it is said that there has been non-compliance on the landlord's part. The Tribunal does not regard the reasons for imposing a financial penalty, or proposing to do so, merely as giving a factual background to the offence; they should be treated as providing particulars of the offence.

52. In *Maharaj,* HHJ Hodge QC quashed part of the financial penalty because the offence upon which it had been based by the local authority (and by the First tier Tribunal) had not been particularised in the notice of intent or the final notice. In this case, Ms Knapp does not contend that the particulars do not appear anywhere, but that they appear in the wrong place; i.e. in the exhibit relating to the level of penalty, rather than in the statement of reasons, being the part dealing with the reasons for proposing to impose a penalty at all. The issue is therefore whether the notices were in some way misleading rather than whether they are accurate. In that respect it could be said they were not clear enough, but not in the sense considered by HHJ Hodge QC.

53. In *Dacre Son & Hartley Ltd v North Yorkshire Trading Standards* [2004] EWHC 2783 (Admin), the sufficiency of the information laid was

challenged as inadequate under Rule 100 of the Magistrates' Court Rules 1981, in a prosecution under the Property Misdescriptions Act 1991. Those rules provided that the information '*shall be sufficient if it describes the specific offence with which the accused is charged … in ordinary language … and gives such particulars as may be necessary for giving reasonable information of the nature of the charge.*' Fulford J considered, at paragraph 30, that where defects were alleged

> "*the critical issue of a court to determine … is whether the information as framed created real unfairness. Put otherwise, was the appellant misled or otherwise prejudiced by its wording? In deciding that issue, the justices are undoubtedly entitled to look at relevant extraneous material in order to determine whether such unfairness had arisen.*"

54. We consider this authority is more apt to the present case. Whilst it is dealing with the laying of information rather than a notice under the 2004 Act, it is still concerned with criminal proceedings.

55. We do not consider that Ms Knapp has been prejudiced by the fact that the particulars appear in the exhibit. The notices and exhibits by their nature are lengthy documents. The recipient is made aware from initial information that they are important documents with potentially serious consequences. It is therefore expected that they will be read thoroughly. In doing so, despite the particulars of the offence not appearing until the last exhibit, when the recipient arrives at that part, it is clear what they are. Further in this case, at least with respect to the regulation 7 (1) allegations of breach, Ms Knapp responded through her solicitors to each

allegation in the letter of 3rd February 2022. To that extent she was clearly not prejudiced or misled. Certainly, therefore with respect to the majority of the alleged breaches under regulation 7 (1) there was no prejudice or real unfairness. We also consider that there was no prejudice with regard to the other allegations under the other three regulations.

56. It is not clear why her solicitor's letter of 3rd February 2022 did not address those additional breaches, notwithstanding that omission we consider there was no prejudice by reason of their location in the notices. Firstly, the opening of the first section of the second exhibit expressly states that only one breach should be set out at this juncture. Secondly, the other allegations are sufficiently set out later on in the document.

Breaches

Actual Breaches

57. In terms of the alleged breaches, Mr Soar made a valiant effort to persuade the Tribunal that there was nothing to see here and that if there were any breaches, they were so minor as to not warrant any or any substantial penalty. Ms Knapp in her evidence was adamant that there was at best minor cosmetic issues and that photographs always made the situation look much worse than they really were. The allegations of breach were in her view a lot of exaggeration and distortion. In approaching the allegations in this manner, the Tribunal formed the view that either Ms Knapp genuinely did not see the obvious defects (which we set out below) or was not being honest in giving her response

to the condition of the Property. Either way did not reflect well on her and the evidence she gave when it was contrasted to the photographic evidence.

58. She did however accept that the kitchen needed a new floor, the sofas replacing as well as one bed and a computer desk. She had arranged with the new tenants to deal with these items; although it was not clear when it was said they would be attended to.

59. It is at this juncture that we descend into the detail of the specific allegations and we do so by reference to each of the three regulations that are said to have been breached and the order they have been set out in the Notice.

60. This appeal is by way of a re-hearing under Schedule 13A paragraph 10 (3)(a), this is particularly pertinent when dealing with the alleged breaches as we have to consider on the evidence before us whether or not the allegations set out in the notices are made out and made out beyond reasonable doubt. We were assisted by a number of photographs in the hearing bundle which had been taken by Mr Riddell at his inspection on 8th July. As well as the evidence from witnesses, both written and oral.

61. We also bear in mind that by regulation 11 (2) we are to construe the standard of repair required as one that is reasonable in all the circumstances, taking into account the age, character and prospective life of the house and the locality in which it is situated. Mr Soar contended that it was relevant that the Property was being let to students and at a rent that was said to be below market levels and that that therefore the

standard was set at the lower end of the scale. The evidence of market rent was from a point made by BPP in their representations to the Council at the end of August 2021. Whilst the fact that this is intended as student accommodation may have an impact on the level of cleanliness, we did not consider that it reduced the standard to such a low level as that demonstrated by the photographs that we had been provided with. As for the level of rent, not only was there no evidence that this had been let at below market rates, but even if it had been, we did not consider that that warranted any reduction in standards, or certainly did not warrant the conditions reflected in the photographs and Mr Riddell's evidence.

Regulation 7 (1)

62. Regulation 7 (1) places a duty on the manager to ensure that all common parts are "*(a) maintained in good clean and decorative repair; (b) maintained in a safe and working condition; and (c) kept reasonably clear from obstruction*".

63. An understairs cupboard was full of items from the previous tenants. That it was full was clear from the photograph. This was an unreasonable obstruction, as Mr Riddell pointed out the new tenants could not use it as it was full of items that were not theirs. Alternatively it was not clean, it was full of rubbish.

64. There was a link room between the kitchen and what had been an outside lavatory. It had been shoddily constructed, was seriously affected by damp and mould and was in part rotten. Ms Knapp

contended that this was not really a living space, but more a bin store or smoking area. That did not excuse its condition. It was still a common part and it was necessary to pass through to get to the lavatory. It was not in good and clean decorative repair, nor did it appear safe.

65. One of the work tops in the kitchen had a support leg missing. That was apparent from the housing on the ground into which the missing support would have slotted into. It was clear then that this was not in good repair. Mr Soar contended that there was no evidence that it was not adequately supported. It did not take an expert to see that the absence of the support meant that it was not in its original state or repair, and that it posed a risk given that it could collapse. We are entitled to assume that if it was intended for there to be a support, that was for a structural reason, and had not been included simply as a decorative feature.

66. The oven was filthy. Ms Knapp suggested that this could have been created by the new tenants in the 8 days they had been in situ. That seemed unlikely. When on the second day of the hearing, Ms Knapp provided the photographs that had been taken by BPP on 1st July, it was clear then that the oven had not been cleaned prior to the handover. It was not in good and clean decorative repair.

67. The floor and the enclosure around the oven were also filthy, there were burnt patches on the work top which and the floor was in a poor state of repair; both the latter two appeared to have lost any waterproofing qualities. Again it was intimated that this could have been caused by the new tenants. We do not consider that it would have been possible to

have achieved that condition in 8 days. Further, Ms Knapp accepted that the floor had needed replacing. There was also a cupboard door that did not shut properly, drawers that did not work and a base unit that was damaged. None of these items were in good and clean decorative repair.

68. Moving away from the kitchen into the living room, in the void above the ceiling, accessed through a hatch it was apparent that there had been a long term leak from the shower above which had caused the wooden structure to be rotten with mould. The mould was still apparent from the photographs indicating that the leak may have been continuing at the date of inspection. This was not therefore in good and clean decorative repair.

69. Elsewhere in the living room, there were rugs that had been stapled to the floor. Whilst that might have been acceptable, some of the staples had come away, with the result that they had in part lifted, creating an obvious trip hazard. Despite Mr Soar contending that there was nothing wrong with this, it was obviously a trip hazard as anyone catching their foot in the part lifted, would then find resistance from the remainder of the rug that had been stapled down and is likely to then take a fall. The rugs were therefore neither in good and clean decorative repair, nor in a safe and working condition.

70. The decoration of the living room was also below the required standard. There was missing wall paper, peeling wall paper and in some areas there was masking tape holding down the wall paper. This was not in good and clean decorative repair. It was also accepted by Ms Knapp that

the settees in the living room were in need of replacement. Finally, Mr Riddell in an untested part of his evidence, stated that the door from the living room to the hallway did not open and close properly.

71. Upstairs, in the bathroom, the panel on the side of the bath had multiple layers of silicon, which had not managed to stop it detaching itself from the bath itself. Ms Knapp accepted this should have been dealt with before the new tenants moved in. The plastic ceiling cladding had not been installed properly in that there were gaps at the edges. That did not amount to a good and clean decorative repair. Discarded parts of that cladding had been left in the hallway, amounting to an unreasonable obstruction.

Regulation 4 (4)

72. Under regulation 4 (4) the manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, have regard to:

(a) the design of the HMO;

(b) the structural conditions of the HMO; and

(c) the number of occupiers of the HMO.

73. The first alleged breach was the cupboard under the stairs. We do not consider this allegation is made out. There was no risk of injury arising out of any of the three factors set out in regulation 4 (4).

74. The second was the condition of the link room. We do however consider that this was a breach due to the very serious condition of this area. The risk of injury was from the severe damp or even from its collapse due to its very poor structural condition.

75. The third is the legless kitchen worktop. We consider that there is an obvious risk of injury should the worktop collapse whilst someone is preparing food or placing pans on top. Ms Knapp contended there was no evidence of any risk from the loss of the support, for the reasons set out above, we do not agree.

Regulation 7 (4)

76. Under regulation 7 (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;...*

77. There was a dilapidated gas patio heater with gas bottle in the garden to the Property. It was said that there was no evidence to show that it was in a poor state of repair and that it could have been used by the tenants. Ms Knapp said it had been left by the old tenants. From the photograph it looked in a damaged condition. It had not been provided by Ms Knapp, but simply left there from the previous tenants. Therefore, it was at the very least more in the way of detritus and it meant the garden was

not in a clean or tidy condition. It may also have been dangerous, but Ms Knapp had not confirmed either way before leaving it for the new tenants.

78. Mr Riddell reported that there were steps from a raised area of the garden to the rear door of the property which were unsafe as they were unguarded and had no hand rail. He was not challenged on his assessment of the safety of the garden, but nonetheless Mr Soar contended there was insufficient evidence of a breach. We consider that in light of Mr Riddell's unchallenged evidence this was a breach given that it meant that the garden was not in a safe and tidy condition.

79. The final element of the garden in issue was the insecure garden gate that could not be closed or locked shut. Mr Riddell clarified in evidence that the gate had to be lifted up in order to shut it. It was therefore in poor condition and not in good order.

Regulation 8 (2)

80. This regulation requires the manager to ensure that

   a. *the internal structure is in good repair;*

   b. *any fixtures, fittings or appliances within the part are maintained in good repair and in clean working order.*

81. The first item was the wall below the window of the first floor front right bedroom. Mr Riddell in evidence conceded that he could not present evidenced that that part was in poor repair. Accordingly, this breach is not made out.

82. The second item was the cold water tap which did not work properly in that it needed to be lifted up to get a proper flow. Despite Mr Soar contending that it still worked, albeit only to a limited extent, this was in our view a breach in that the tap was not in good repair.

83. Three items, being the broken drawer in the base of a double bed, stains on the carpet and a broken computer table did not fall within those items contemplated by this regulation and so we did not find any breach arising out of those matters.

84. The final item was the plasterboard in one of the bedrooms. It was said that these had not been installed properly as the edges were exposed. It was not clear to us how this fitted in with any of the requirements of this regulation.

Reasonable Excuse

85. Ms Knapp contends that if she was in breach, then she has a reasonable excuse; namely the instruction of agents to manage the Property on her behalf.

86. The evidence provided in this regard was not straightforward. We were not assisted by the failure of either party to call as a witness any of the individuals involved at BPP.

87. However, ultimately, even if the Tribunal were to accept Ms Knapp's evidence in full, we do not consider that it affords her a reasonable excuse.

88. Her evidence as follows. As indicated above, following discussions with the Council about whether she was a fit and proper person to hold a licence she appointed BPP. She appointed them in around March 2021 in respect of a number of her properties, including the Property.

89. At this time the Property was tenanted and those tenants were due to move out on at midday on 30th June. She had instructed both BPP and HYBR that the Property was free to let from 1st July; which didn't leave much time to clean or carry out any repairs. She said HYBR had found new tenants who she had signed up in March.

90. She provided some email correspondence between herself, BPP and HYBR from May and June 2021 which showed that BPP were involved at that time with the Property in that they were making arrangements to pay back the deposits for two students who had pulled out of the tenancy. This contradicted some of BPP's assertions that they had had nothing to do with the Property until 1st July. However, at best this only showed dealing with the deposit payments. There was nothing to suggest that they had notified Ms Knapp that they had carried out a survey of the Property and had cleared it for letting.

91. She had invited BPP to visit the Property on 15th June 2021 but they said they were too busy to do that. She had tried to get access herself but said that was difficult given the Pandemic. She had visited two weeks before but had not been let in and so had sent over a gardener to carry out works to the garden.

92. She met Ms Gardiner of BPP at the Property on 1st July 2021, who took photographs for the inventory, but then had to dash off because she was dealing with another property. She made no mention of the Property not being ready to let, save for recommending that the kitchen floor be replaced. Ms Knapp provided the cleaners for that day as BPP had no one available. HYBR had set up a WhatsApp group between her and the tenants, but she thought that BPP were also supposed to be on it, but they were not.

93. We were not impressed with Ms Knapp's evidence. Even on her own account, she had pushed for the Property to be let with very little time for a change over. She did this against the background of the Council requiring her to hand over management of all her properties, but she was still actively involved in the management of the Property. She had instructed not just BPP but also HYBR to find tenants, which provided some conflict with the terms of the management agreement in that it meant that BPP were not in full control of the management. Whilst we have some doubts as to the extent of BPP's involvement in that it does seem they were involved with taking the deposits, the fact that Ms Knapp signed the tenancy agreement (rather than BPP), attended a few weeks before the new tenants were to arrive to carry out works, but was turned away and attended at the actual hand over with her cleaners, meant that she remained heavily involved with the management of the Property.

94. In light of the fact that the Banning Order proceedings were ongoing against her, her previous convictions and the fact that she had been told to divest herself of management, it is surprising that she was content to

proceed with giving instructions for the letting of this property without first having BPP carry out a proper check of its condition. The impression was that she was clearly still in control.

95. It also seems that Ms Knapp was aware that BPP were pressed to take over all of her properties in one go. They had agreed a staged approach in taking over her properties. She was therefore aware that they could not immediately cope with the volume of properties she had handed over to them. Contrary to their management agreement, they had not, prior to 1st July carried out any audit or inspection of the Property to consider whether it was suitable for letting. Whilst Ms Knapp was equivocal as to whether they had inspected at all, she had certainly not been given any indication prior to 1st July that they had done or that they considered the Property was suitable for letting.

96. Despite there being a management agreement in place, to her knowledge that had not been adhered to with the result that she remained actively involved in its management and therefore cannot avail herself of a reasonable excuse defence.

Failure to apply their own Policies

97. The hearing bundle contained a number of policy and guidance documents, including Bristol City Council, Private Housing Enforcement Policy 2016 (revised 2017); Bristol City Council policy on deciding a financial penalty amount; and Civil Penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities.

98. Although Mr Soar contended the Council had not followed their policies, he did not actually take us to any policies which he contended that the Council had failed to apply. He simply pointed us to the Notice and the Final Notice and the exhibits and the narrative contained in those documents as an indication as to what those policies may be and how they may have been breached.

99. Further, this challenge was not contained in the notice of appeal. Nor was it trailed in Ms Knapp's witness statement. It arrived for the first time in Mr Soar's skeleton argument and amounts to a general criticism of the manner in which the Council decided to levy the penalty and to do so against Ms Knapp rather than BPP.

100. Without proper particularisation of the specific policies which it is said were not followed, we cannot take this challenge any further. In any event, for the reasons set out above we were satisfied that the Council had more than sufficient evidence that Ms Knapp was in control and managing the Property for the decision to levy the penalty to be justified.

Amount of Penalty.

101. The final aspect of the appeal is the level of penalty. In this regard we do consider that the Council fell slightly into error. However, given that this is a re-hearing, and that we have made slightly different findings on the breaches, rather than consider their approach, we set out our own basis for arriving at the sum in accordance with the Council's own policy on determining the amount of the penalty.

102. Firstly, we address the breaches of regulation 7 (1) set out above. We consider that the culpability is very high. We consider that Ms Knapp intentionally breached the regulations in that she aware from at least 1st July when she was in the Property that there were breaches and took no steps to remedy them. We agree with the Council's assessment that a number of the breaches were long term issues which had arisen whilst she was managing the Property. Given the other proceedings against her, she cannot have been ignorant of her responsibilities nor the severity of her actions.

103. Secondly, in terms of harm, there is a medium likelihood of harm. There is a medium risk of an adverse effect, not least from the kitchen worktop, the partly stapled carpet and the rotten link room.

104. With those two factors in mind, the entry point is £6,250 and note at this stage that depending on other factors, that could move between £2,500 and £12,500. We agree with Mr Soar in that the Council fell into error at this stage in before considering other factors, they decided to move the starting figure up to £9,750. We do not consider that is permissible at this stage.

105. We then move onto the aggravating factors. We consider these to be:

    a. Her previous convictions for Housing Act offences;

    b. She was motivated by financial gain. It is obvious that a reason for not meeting the required standards is to save money. Given the level of culpability and the fact that we consider she was well

aware of her responsibilities by 8th July, the breaches are inexplicable other than to maximise her profit;

c. Ms Knapp owns a number of other properties in the City. Her conduct will have a negative impact on her tenants and indeed other landlords in the private rented sector;

d. She has a record of providing substandard accommodation and poor management as demonstrated by the previous fines, offences and the banning order;

e. Whilst Ms Knapp had taken advice from the Council, she did not adhere to it.

106. In terms of mitigation, following the inspection on 8th July, the breaches were remedied. For the reasons set out above, we reject the contention by Ms Knapp that her instruction of BPP were mitigating factors. We also reject reliance on COVID as a reason why the Property was not maintained properly. Given her denials of any breach, it is difficult for her to also contend that but for COVID she would have carried out the necessary works.

107. We therefore add 25% for aggravating factors and deduct 5% for mitigating ones to arrive at a total for the regulation 7 (1) breaches of £7,500. We add to that the cost of the investigation which was £1,008.40 to arrive at £8,508.40. In addition there are the other breaches of the regulations set out above. Given that there is some overlap with the same condition giving rise to more than one regulatory

breach and that there are far fewer breaches under the other regulations, we consider that for the regulation 4(4), there should be an additional £500, for the 7(4), £300 and for 8(2), £150.

108. The total financial penalty is therefore £9,458.40.

Judge Dovar

Appeals

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 .

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.

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.

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.