FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/34UF/HNA/2020/0023**
HMCTS code (audio, video, paper)	**:**	**A:BTMMREMOTE**
Property	**:**	**60 Colwyn Road, Northampton NN1 3PX**
Applicant	**:**	**Zaheer Uddin Babar**
Representative	**:**	**Landlords Defence Limited**
Respondent	**:**	**Northampton Borough Council**
Type of application	**:**	**Appeal against financial penalties** Section 249A & Schedule 13A to the Housing Act 2004
Tribunal members	**:**	**Judge D Wyatt** **M Hardman FRICS IRRV (Hons)**
Date of decision	**:**	**4 January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing. The form of remote hearing was A:BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are in the bundles prepared by the parties of 861 sequentially numbered pages together with the further material described in paragraph 5 below, the contents of which we have noted.

Decisions

The tribunal hereby:

(1) cancels the final notice dated 17 June 2020 which sought to impose a financial penalty for the alleged offence under section 234(3) of the Housing Act 2004 (the "**Act**") of failing to comply with regulation 5 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (the "**Management Regulations**"); and

(2) varies the other final notices dated 17 June 2020 to impose total financial penalties of £50,000, comprised of:

Offence under the Act	**Description**	**Penalty**
s.72(1)	Control of a house in multiple occupation which was required to be licensed but was not so licensed	£5,000
s.30(1)	Failure to comply with improvement notices	£20,000
s.234(3)	Failure to comply with Management Regulation 4	£4,000
s.234(3)	Failure to comply with Management Regulation 7	£16,000
s.234(3)	Failure to comply with Management Regulation 8	£5,000

Reasons

The application

1. On 17 July 2020, the Applicant freehold owner of the Property applied to the tribunal to appeal against financial penalties in the total sum of £83,970, which had been imposed by the Respondent local housing authority under section 249A of the Act by seven final notices dated 17 June 2020.

Procedural history

2. On 5 August 2020, the tribunal gave case management directions, noting that the appeals were received shortly after the 28-day time limit under rule 27 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**"). Pursuant to rule 6, the tribunal extended the time limit and allowed the appeals to proceed.

3. The directions consolidated the seven appeal applications, requiring the Respondent to produce a bundle of the documents they relied upon and the Applicant to produce a bundle of the documents he relied upon in answer. The Respondent was given permission to produce a reply. There was no inspection. The tribunal had indicated in the directions that it considered an inspection was not necessary, neither party requested an inspection and the parties provided photographs in their bundles.

Hearing

4. The Applicant asked for a hearing by telephone. At the hearing on 24 November 2020, he was represented by Desmond Taylor of Landlords Defence Limited. The Applicant had not produced a witness statement, but attended the hearing. The Respondent was represented by James Chadwick, in-house Solicitor, who called three witnesses to give evidence, as explained below.

5. On 20 November 2020, the Respondent produced a further statement from Brendan Healy and a statement from Samantha Ling. On the morning of the hearing, Mr Taylor produced a supplemental electronic bundle with those statements together with photographs and copy correspondence from the Applicant's representatives. The parties consented to these being admitted. Further, during the hearing, Mr Taylor produced documents described as witness statements from Shaun Moss and Philip Turtle, his colleagues. The Respondent did not object to admission of these documents and we have taken them into account, particularly because Mr Taylor offered to make Mr Moss and Mr Turtle available at the hearing and the Respondent had no questions for them. However, as we explained at the hearing, their evidence (in their statements and the report/submissions they had already produced in the main bundles) is treated mainly as evidence in relation to disputed facts; the opinions they express have less weight because no permission was sought for expert evidence and their documents were not in the format required by Rule 19. Mr Taylor sent further e-mails on 25 November 2020, the day after the hearing, attaching documents indicating that the application for an HMO licence had just been made in the name of the Applicant's daughter and that she had arranged to attend training for landlords. Again, we have taken these into account because they merely confirm what Mr Taylor told us at the hearing.

Property

6. The Applicant is the registered proprietor of the freehold title to the Property, having apparently acquired it in 2004. We were told that it was originally his family home. There is no mortgage, but there are notices in respect of bankruptcy petitions in 2010 and 2011.

7. The Property is a Victorian (the Respondent says c. 1870s) mid-terrace building. It extends over four storeys, with a basement, ground and

first floors and a converted attic. It has seven bedrooms, a kitchen, a living room, a dining room and two rooms on the first floor with toilets and personal washing facilities, described as a bathroom and a shower room. The front basement bedroom has its own cooking facilities and the rear basement bedroom has its own toilet and personal washing facilities.

Witness evidence

8. The Respondent produced witness statements with exhibits from Barry Agnew, Brendan Healy and Arthur Chikonde (housing enforcement officers), Samantha Ling (housing enforcement manager), Emma Ryder and Rekha Patel (described as intelligence officers) and Linda Martin (a tenancy relations officer). They were all offered for cross-examination. Mr Taylor agreed that he had no questions for Ms Ryder, Ms Patel or Ms Martin, because their evidence focussed on the question of whether the Property was an HMO which was required to be licensed, which was not disputed.

9. The Respondent had also produced witness statements from five of the tenants of the Property. Usefully, these each attach copies of their tenancy agreements with the Applicant. Otherwise, we put limited weight on the contents of these witness statements because none of these witnesses attended the hearing and (as Mr Taylor pointed out) the wording of these statements is strikingly similar, with some identical parts. Generally, we cannot assess which parts have been given unprompted by each witness. However, we accept as more likely than not to be true their undisputed basic evidence about residence and rent payment:

    a. Ahmed Youssuf was the tenant of the rear room on the first floor since January 2015 and his rent (£60 pw) was paid by "*housing benefit*" directly to the Applicant;

    b. Danielle London had been the tenant of front room on the ground floor since 2015. She paid her rent (£75 pw) directly to the Applicant's bank account by bank transfer;

    c. Garad Ali Ahmed had been the tenant of the middle room on the first floor since 2012 (although he said he had been unlawfully evicted and then let back into occupation after action was taken against the Applicant). He paid his rent in cash (£65-75 pw); and

    d. John Walton and Kathleen London were tenants of the basement "*flat*". Mr Walton had been there since 2008 and Kathleen London had been there since 2015. His rent was £90 pw and her rent was £68.31, both paid by "*housing benefit*".

Background

10. Mr Agnew provided database records of complaints over several years from tenants to the Respondent's private sector housing team. These alleged damp and mould (2010), illegal eviction (2014), partial collapse of a ceiling caused by a water leak (2015), a defective boiler (2017) and a water leak from a shower causing damage to a ceiling (10 May 2019). The Respondent's documents indicated that the Applicant complied with an enforcement notice requiring him to replace the defective boiler in 2017 and appeared to have complied with a notice from Northamptonshire Fire & Rescue Service prohibiting use of the attic of the Property for "*habitable purposes*".

11. On 17 March 2015, the Respondent wrote to the Applicant to warn that they had received information indicating that the Property needed to be licensed. This letter outlined conditions for mandatory and additional HMO licensing (indicating that a licence would be required if the Property was an HMO with three or more occupiers forming two or more households), asked the Applicant to apply for an HMO licence and warned that it was a criminal offence to "operate" a licensable HMO without a licence, carrying a fine of up to £20,000 and the risk of rent repayment order(s).

12. When this letter was not answered, the Respondent followed it up and met the Applicant on 5 January 2016. They then provided copies of the HMO licence application form and a list of remedial works which they said were needed, including repairing a leak from the first-floor bathroom, replacing rotten areas around the kitchen sink and several other matters. The Respondent wrote again on 25 February 2016 to confirm that the Property required a licence and make a "final" request for submission of a valid HMO licence application. On 4 September 2017 they wrote again, requiring an HMO licence application and saying that they were investigating to determine whether an offence had been committed.

13. There was no evidence of any further substantive activity until mid-2019, the time of the further complaint mentioned above. The Respondent was given a warrant by the Magistrates Court to enter the Property without notice. In his witness statement, Mr Agnew explains what he saw when he used the warrant to inspect the Property from 9:45am on 20 June 2019. He attended with the other housing enforcement officers mentioned above, including Brendan Healy, police officer(s) and a locksmith. On the day of the inspection, Mr Agnew wrote to the Applicant, saying that he must submit his HMO licence application by 30 June 2019. On 25 June 2019, Mr Agnew sent a notice to produce specified documents, including an electrical installation condition report and fire risk assessment. Mr Agnew explained that the Applicant called him on 28 June 2019, asking for more time to make the application and produce the documents. Mr Agnew agreed to extend these deadlines to 15 July 2019, but received nothing from the Applicant.

Improvement notices

14. On 30 July 2019, the Respondent delivered two improvement notices (and other documents) to the Applicant's home address. One was served under section 11, and one under section 12, of the Act. Both gave the prescribed information about rights of appeal. They required the Applicant to carry out the works specified in Schedule 2 to the notices, to begin them by 27 August 2019 and to complete them by 10 September 2019.

15. On 1 October 2019, Mr Agnew inspected the Property again, with Mr Healy, having notified the Applicant in advance. Mr Agnew took photographs, referred to as exhibits BA1 to BA70. These indicate that none of the works had been carried out and, if anything, the Property was in worse condition than it had been in June. Mr Taylor submitted that the presence of a ladder and other items indicated that repairs were being carried out when the photographs were taken. However, there is no real evidence of substantive repairs being carried out at that time, other than possible unrelated works to the attic.

Interview

16. On 5 November 2019, the Applicant was interviewed under caution by officers of the Respondent. A transcript was produced in the bundle. This records the Applicant accepting that the Property was a house in multiple occupation and that based on the people living there it "*needs licensing*". It records him saying that seven people were living in the Property at that time, including "*the girlfriend and boyfriend*" in the basement "*flat*", the "*girlfriend's daughter*" living in the room upstairs, and three other occupants, plus another who was "*not there all the time, he probably lives in Afghanistan for seven or eight months, he comes here for a couple of months, he comes back again*". Elsewhere in the interview, he says that this individual lived at the Property for about six months of the year.

17. The transcript records the Applicant explaining that there is a mortgage over his home address and he works as a taxi driver for Sky Cabs in Northampton, which had been his business. He said he had kidney "problems", so worked only a few hours on Fridays and Saturdays and had to avoid stress. He had given the Sky Cabs business to his son and he said that he did not receive anything from the business. He appeared to indicate that he also had other properties, which he rented out and were not HMOs. He estimated that the Property was worth £180,000 or £190,000.

18. Mr Taylor said that the Applicant does not speak English perfectly and normally has help from his daughter. He said that it should have been clear from the interview that he needed help, not threats. He said that Mr Walton (the basement tenant) had originally maintained the house, but the relationship had deteriorated and/or he was then unable to do so. Mr Taylor asked why it had taken the Respondent a long time to

provide him with a copy of the recording of the interview and then a transcript. He said he had been forced to make a complaint to obtain these, but could not recall at the hearing how long these things had taken. Mr Healy said he did not know any reasons for any such delay in relation to the recording, but explained that the transcript took time because the Respondent does not incur the costs of arranging transcription unless it is requested or needed to prepare for proceedings. Mr Taylor did not dispute the accuracy of the transcript, but we have kept his comments in mind when considering anything in the transcript which might be equivocal or led by those questioning him.

Penalties

19. In about February 2020, Mr Healy took over because Mr Agnew had left the employment of the Respondent to work for a different authority. Mr Healy referred to the relevant policy adopted by the Respondent from 2017 and the assessments (produced at pages 420 to 444 of the bundle) of culpability and harm and proposed financial penalties totalling £114,000. Ms Ling is Mr Healy's line manager and the Respondent's normal procedure is for her to review proposed financial penalties before they are issued. She reviewed the proposed penalties and reduced them to the total sum of £84,470 for the reasons described at pages 490-491 in the bundle.

20. On 28 February 2020, the Respondent delivered to the Applicant's home address eight notices of intent to impose financial penalties, proposing the total penalties of £84,470. The Respondent extended the time for representations, which were made by the Applicant on 16 and 21 April, and 6 May, 2020. Ms Ling said she reviewed these representations and decided there was "*insufficient reason*" to further reduce the proposed penalties, since they had already been reduced from £114,000 to £84,470.

21. On 17 June 2020, the Respondent delivered to the Applicant's home address eight final notices in the same terms as the notices of intent. Of these:

    a. one imposed a penalty of £6,000 based on an alleged offence under subsection 72(1) of the Act, of control of an unlicensed HMO;

    b. two imposed penalties of £25,760 (£12,880 each) based on alleged offences under section 30(1) of the Act, of failure to comply with improvement notices; and

    c. five imposed total penalties of £52,710 based on alleged offences, under subsection 234(3) of the Act, of non-compliance with the Management Regulations. The first of these was a penalty of £500 in respect of Management Regulation 3. The others were more substantial.

22. The Applicant did not appeal the financial penalty of £500 for failure to comply with Management Regulation 3. The relevant final notice alleged failure to ensure that the name, address and any telephone contact number of the Applicant were clearly displayed in a prominent position in the Property (Management Regulation 3(b)). Mr Taylor said that the costs of challenging this seemed disproportionate, but asked us to take the £500 penalty into account when assessing the other penalties. We have done so. We were told that the Applicant paid this penalty on 17 July 2020.

23. These proceedings are the Applicant's appeals, under paragraph 10 of Schedule 13A to the Act, against the other seven penalties. As explained in the case management directions, the appeals are to be a re-hearing of the Respondent's decision to impose the penalties and/or the amount of the penalties, but may be determined having regard to matters of which the Respondent was unaware.

The law - financial penalties

24. By subsection 249A(1) of the Act:

> "*The local housing authority may impose a financial penalty on any person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England*."

25. By subsection 249A(2), each of the offences alleged by the Respondent in the final notices is a "*relevant housing offence*". For the reasons explained below, we are satisfied beyond reasonable doubt that the Applicant's conduct amounts to most, but not all, of the alleged relevant housing offences in respect of the Property.

26. By subsection 249A(3), only one financial penalty may be imposed on a person in respect of the same conduct.

27. When considering imposition of financial penalties, the Respondent was required by paragraph 12 of Schedule 13A to the Act to have regard to the MCHLG guidance entitled: *Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities*. The main points from this guidance are incorporated in the policy adopted by the Respondent for civil penalties, noted below to avoid repetition.

28. The Respondent referred us to London Borough of Waltham Forest v Marshall and Another [2020] UKUT 0035 (LC), which gives guidance on the respect that the tribunal should afford the local authority's policy when hearing an appeal from a financial penalty imposed by the authority. Further, in Sutton and Another v Norwich City Council [2020] UKUT 0090 (LC), the Upper Tribunal confirmed (at para. 245) that:

> "*If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the*

> *offence under the terms of the policy. If the authority has applied its own policy, the tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision.*"

29. The Applicant made submissions about the potential for duplication in the penalties for failure to comply with improvement notices and failure to comply with the Management Regulations in relation to the same alleged hazards. In Sutton (where the separate but comparable management regulations from 2007, for different types of HMO, applied), the Upper Tribunal observed (at para. 240) that:

> "*Circumstances which amount to a breach of the 2007 Regulations, and which justify a civil penalty, may justify the imposition of a separate penalty if they are the subject of an improvement notice which is not complied with. The fact that a penalty has already been imposed because of the hazardous condition of a building will have to be taken into account when considering the appropriate penalty for a failure to take the steps required by an improvement notice to rectify that hazard, but the offending behaviour in each case is different, and there is no doubt it can be separately penalised.*"

The Respondent's policy

30. The Respondent said that it followed its "*Private Sector Housing Civil Penalties Policy*" which had been in effect from 1 August 2017, because its current policy (which was not produced) was adopted in April 2020, after the notices of intent had been given.

31. The Respondent's policy sets out at paragraph 7 the factors to be taken into account when deciding the level of any financial penalty. It refers to the contents of the MCHLG guidance, including the requirement to take into account the following factors:

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

32. Further, the policy states that the Respondent will take into account the cost of investigating offence(s) and preparing the case for formal action. It sets out two matrices:

    a. one sets out three bands (low, medium and high) for the cost of investigation of different offences (for example, for failure to comply with an improvement notice, a low-cost investigation is £200 and a high-cost investigation is £400); and

    b. one sets "punitive charges" based on assessments of culpability and harm, to be used "*as a starting point*" for determining, on a case by case basis, the level of civil penalty that should be imposed.

33. The policy states (at paragraph 7.11) that if an investigation leads to more than one civil penalty being imposed, the fixed investigation cost from the matrix will be divided equally and added to each civil penalty, so that only one set of investigation charges is applied for each investigation/operation.

34. The policy states that the Respondent will consider the findings from its investigation against the seven MCHLG factors (as listed above), that aggravating factors will increase the "*initial amount*" and that any mitigating factors will reduce it.

35. The policy states (7.19) that the Respondent will "*conclude*" that the offender is able to pay any financial penalty imposed unless they have supplied sufficient financial information to the contrary, that it is for the offender to disclose such information and that where the Respondent is not satisfied that it has been given sufficient reliable information it will be entitled to draw reasonable inferences as to the offender's financial means. It also specifically refers to offenders who have a low income but are likely to have assets, or equity in a property, which they could sell or borrow against (paragraph 7.22).

36. The policy also purports (at paragraph 7.15 onwards) to provide for each penalty to be increased by "*at least £2,000*" if it is unsuccessfully appealed to the tribunal. This is said to be intended to recover legal costs, but we proceed on the assumption that these provisions will have no effect. The Respondent did not ask us to make any such increases and, under the scheme in Schedule 13A to the Act, if we confirm or vary a final notice imposing a penalty, our decision will fix the penalty.

Alleged offence of failure to licence

37. The first penalty was based on an alleged offence under subsection 72(1) in Part 2 of the Act, by which (subject to a reasonable excuse defence in subsection 72(5)):

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

38. As the freehold owner receiving the rent, the Respondent was clearly the person having control of and managing the Property as defined in section 263 of the 2004 Act.

39. By section 77 of the Act, "HMO" means "*a house in multiple occupation as defined by sections 254 to 259*". By subsection 254(2):

> "*A building or part of a building meets the standard test if—*
>
> *(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;*
>
> *(b) the living accommodation is occupied by persons who do not form a single household (see section 258);*
>
> *(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);*
>
> *(d) their occupation of the living accommodation constitutes the only use of that accommodation;*
>
> *(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and*
>
> (f) *two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.*"

40. By subsection 254(8), "basic amenities" means a toilet, personal washing facilities or cooking facilities.

41. By section 262, "occupier", in relation to premises, means a person who occupies the premises as a residence (and, subject to the context, so occupies them whether as a tenant or other person having an estate or interest in the premises or as a licensee), and related expressions are to be construed accordingly. The word "residence" is not defined in the Act. The authorities on the meaning (in different contexts) of expressions such as "*a private residence*" were reviewed in Nemcova v Fairfield Rents Limited [2016] UKUT 303 (LC). Some of those authorities suggest that such expressions involve the use of the property, at least in some way, as a home, pointing to the significant difference between holiday lets for a week or two and a tenancy for several months, but the Upper Tribunal observed (at para. 48 in Nemcova) that:

> "*A person may have more than one residence at any one time – a permanent residence that he or she calls home, as well as other temporary residences which are used while he or she is away from home on business or on holiday … it is necessary, in my judgment, that there is a*

connection between the occupier and the residence such that the occupier would think of it as his or her residence albeit not without limit of time."

42. In these proceedings, the Applicant does not dispute that the Property was an HMO which was required to be licensed but was not. He says instead that the Respondent was out of time to impose a penalty, that he had been unable to afford the fee for an HMO licence application and that the penalty was too high. We examine his contentions below, but in view of the uncertainty in relation to the basement we consider the status of the Property first.

43. On the evidence produced, we are satisfied that the Property was an HMO on 5 November 2019. The basement may be self-contained, although it appears the occupiers of the basement can use the shared facilities upstairs if they wish. Even if the basement is self-contained and we are looking only at the ground and first floors, by reference to each component of the standard test under section 254(2): (a) the living accommodation is not divided into self-contained flats; (b) the Applicant admitted that it was occupied by individuals who did not form a single household; (c) several of the separate households occupied as their sole or main residence; (d) their occupation of the Property constituted the only use of it; (e) a rent was payable; and (f) they shared the cooking facilities in the ground floor kitchen and the personal washing facilities and toilets in the first floor shower room and bathroom.

44. By section 61 of the 2004 Act, every HMO to which Part 2 applies must be licensed unless a temporary exemption notice is in force in relation to it. By section 55, Part 2 applies to any HMO which:

a. falls within a "*prescribed description*" (*mandatory licensing*); or

b. is within an area designated by the local authority under section 56 as subject to *additional licensing* and falls within any description of HMO specified in the designation.

45. The Property probably did fall within an additional licensing designation, as indicated in the correspondence from 2015, at the relevant times. However, the Respondent failed to produce any evidence of any such designation in force on 5 November 2019.

46. The mandatory licensing *prescribed description* from 1 October 2018 is in the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. It describes an HMO which: (1) is occupied by five or more persons; (2) is occupied by persons living in two or more separate households; and (3) meets the standard test under section 254(2), or one of the other tests specified in the Order.

As noted above, the Applicant does not dispute that the HMO fell within this description. Even if the basement is disregarded, he has admitted that five persons were in residence of the ground and first floors on 5 November 2019. Whether the fifth individual lived there for four or six months a year, he was living there on that date and, following the guidance in Nemcova, with the pattern of occupation described by the Applicant he was occupying the Property as a residence.

47. Accordingly, on the evidence produced and the absence of any dispute about this from the represented Applicant, we are satisfied beyond reasonable doubt that the Property (or the ground and first floors of it) was on 5 November 2019 an HMO which was required to be licensed under Part 2 of the Act but was not so licensed.

48. It appears that, on about 24 November 2020, an application was submitted by Mr Taylor's colleagues on behalf of the Applicant's daughter for an HMO licence for the Property. Mr Taylor did not argue that the Applicant had a reasonable excuse for the failure to apply for an HMO licence sooner. The Applicant had previously said that he could not afford the application fee, but (as noted below) produced no evidence of his financial circumstances. As mentioned above, he said at the interview that he suffered from kidney "problems" and had to avoid stress, but he produced no medical evidence in these proceedings. He had failed to apply for a licence for at least five years, despite the correspondence from the Respondent from 2015, the meeting with them in 2016 and their enforcement action in 2019. After the penalty notices were sent this year, he (and/or his son and daughter) could procure substantial works to the Property (as explained below) and then make the HMO licence application. In the circumstances, we are not satisfied that the Applicant had a reasonable excuse.

Time

49. The Applicant's argument that the Respondent is out of time was based on an internal advice note disclosed by the Respondent. It appears to have been prepared by a paralegal looking at evidence of occupation collected from the inspection in June 2019. This note may have prompted the Respondent to carry out the interview under caution on 5 November 2019 and produce their further witness statements.

50. The relevant time limit is in paragraph 2 of Schedule 13A to the Act. This provides that the notice of intent to impose a financial penalty must be given before the end of the period of six months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates. However, by paragraph 2(2), if the conduct is continuing, the notice of intent may be given at any time when the conduct is continuing or within the period of six months beginning with the last day on which the conduct occurs.

51. The time limit does not assist the Applicant. At the interview on 5 November 2019, the Applicant admitted the relevant facts, including who was still residing at the Property. The notice of intent served on 28 February 2020 was within the period of six months beginning on 5 November 2019 even if the conduct did not continue after that date.

Penalty

52. The Respondent assessed culpability as "*very high*" (since the Applicant was aware of the need to apply for an HMO licence, and in view of the failure to apply for a long period of time despite the correspondence from the Respondent's officers) and harm as "*low*" (saying that most failures to licence HMOs will cause only low harm). The Respondent imposed a penalty of £6,000, comprised of the £5,000 indicated by the punitive charge matrix based on these assessments and the full £1,000 indicated by the investigative cost matrix for this offence as if it were the only offence for which a penalty was being imposed.

53. The Applicant assessed culpability as "*medium*" and agreed that harm was "*low*". They said this would indicate a penalty of £4,000. They argued this should be discounted to £3,000 in line with the offer in the final notice of a discount for prompt payment.

54. We adopt the parties' assessment of harm. However, the Respondent's standard guidance forms (which are not part of the policy itself but were plainly intended to be used with it, giving examples to guide assessment of culpability and harm) indicate that culpability was "*high*", not "*very high*". As the Respondent pointed out, the examples given for each category in these forms are not exhaustive, and the very long delay despite the correspondence and meetings is significant. However, all the examples for delay with knowledge of the offender's obligations, or other negligence, are in the "*high*" or lower categories. The examples for "*very high*" culpability all indicate substantially more than this, such as manufacturing evidence or influencing others not to assist officers during the investigation. Nothing of the sort was alleged.

55. In the circumstances, we assess culpability as high and harm as low. Under the matrices in the policy, this assessment indicates a starting point of £4,000 for the punitive element plus a proportion of £1,000 for the costs of investigation. Because we find below that there will be six penalties in total, we consider it appropriate to spread this (highest) investigation cost across the penalties (pursuant to paragraph 7.11 of the policy, as explained above), adding about £166 to each.

56. Next, we need to consider all the other factors specified by the MCHLG guidance, including the severity of the offence (where the Applicant does not deny being in control of this unlicensed HMO for many years), the punishment of the offender, deterrence of the offender from repeating the offence, deterrence of others and removing any financial benefit as a result of committing the offence. It seems likely that the

Applicant received approximately £20,000 per year in rent from the residents of the Property. This would be more if the seventh bedroom was occupied more than the Applicant suggested, or less if the basement is to be left out of account, but the HMO was clearly generating a relatively substantial income. We have no evidence of any sums spent by the Applicant on repair or cleaning of the Property, but it seems likely that he profited more from the rent than he would if he had complied with his obligations, spending very little in 2019 and previous years.

57. We need to consider the Applicant's ability to pay the total penalties. As mentioned above, there is no mortgage over the Property. Mr Taylor said that another property in the same street was being marketed with an asking price of £265,000, but argued that the final selling price would be in the region of £210,000 or £220,000. He said again that the Applicant was working part time as a taxi driver, with limited earning capacity. The Applicant owns his own home but this is subject to a mortgage. Mr Taylor said that 56A Wellingborough Road, the property from which Sky Cars operates, is held on a long-term lease. The Applicant seemed to have indicated in the interview under caution that he had other properties which he let out, but he said at the hearing that this was wrong and he had no such other properties. He had said at the interview under caution that he had substantial outgoings each month and was in effect losing money. However, again, the Applicant produced no financial or medical evidence. The Applicant has been represented throughout these proceedings and could readily have produced information about his own financial circumstances, but he has chosen not to do so. Accordingly, it is appropriate to proceed on the assumption that he is a person of means.

58. Mr Taylor told us that the Applicant was remorseful, had now put things right with the Property (as explained in more detail below) and repeated that his daughter was on the day of the hearing applying for the HMO licence.

59. In all the circumstances, taking into account the £500 penalty already paid and the further penalties imposed below, we consider that it is appropriate to slightly increase the penalty for this offence from the starting point, to £5,000.

Alleged offence of failure to comply with the improvement notices

60. The second and third financial penalties were based on an alleged offence under subsection 30(1) of the Act, by which (subject to a reasonable excuse defence in subsection 30(4)):

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

61. The improvement notices served in July 2019 gave detailed and specific descriptions of the issues identified and the works the Respondent said were required to remedy them:

    a. the notice served under section 11 of the 2004 Act dealt with disrepair in the kitchen, dining room (including a partial collapse of the ceiling caused by a water leak in the shower room above, and exposed lighting and other wiring suspended from the ceiling, near the damp areas), first floor shower room and bathroom, first floor rear bedroom, first floor front bedroom, a large crack in the brickwork above the back door extending from the door frame up to the first floor rear bedroom, loose bricks in the wall remaining from a demolished outhouse and a cracked electrical socket plate on the wall separating the first floor middle bedroom; and

    b. the notice served under section 12 dealt with a damaged front door frame and broken panel, spindles missing from the staircase balustrade and the first-floor landing, the lack of a handrail for the basement fire escape steps, missing bulbs in the ceiling fittings in the first-floor landing, and a high step from the shower tray to the floor in the first-floor shower room.

62. The Applicant does not dispute that these improvement notices were valid and not complied with. He contends that the financial penalties for failure to comply with these improvement notices were excessive. He also said that an aggressive occupier of the Property had hindered access for works and harassed tradespeople and the Applicant. It was suggested that he was "*in fear*" of this occupier. At the hearing, we were told that this was Danielle London, because of allegations she had made. Mr Taylor produced correspondence suggesting that his colleagues had experienced difficulties in obtaining access to the rooms occupied by Danielle London and Kathleen London. However, Mr Taylor also told us that his colleagues had since been able to speak to the tenants to explain how the works were being arranged and as a result they had become co-operative. Photographs were produced by Mr Taylor showing the main relevant areas of the Property in good condition, with a refitted kitchen, reinstated dining room ceiling, new front door and frame, and so on. We were told that the remedial/improvement works were carried out between May and November 2020, with some having been finished only in the days before the hearing. Mr Taylor explained that the main reason these works had taken six months in total was the Covid-19 restrictions, not the tenants.

63. The Applicant did not contend, and we are not satisfied, that he had a reasonable excuse for failing to comply with the improvement notices. At the interview under caution on 5 November 2019, the Applicant was taken through the photographs showing the problems with the Property. He talked about experiencing problems with Danielle London, but the practical problems he described were based on her demanding that she be given 24 hours' notice of works rather than

having tradespeople turn up without notice. That was not generally unreasonable and should have been accommodated. At the interview, the Applicant assured the Respondent's officers that having failed to comply with the improvement notices from July by September 2019 he would ensure that the works were carried out and completed by Christmas 2019 and would invite them back to see that this had been done. He failed to do so, but after the notices of intent to impose financial penalties were served at the end of February 2020 he or his family were then able to have the works required by the improvement notices (and perhaps more) carried out over the following months, despite the additional difficulties of the Covid-19 restrictions from March 2020. Mr Taylor said that the Applicant had never refused to do the works, and the family had pulled the money together to get them done, but he had failed to carry them out within the specified time.

64. Mr Taylor explained to us again that the Applicant was remorseful. Mr Taylor and his colleagues had spent time training him and his daughter so that they would be able to comply with their obligations in future.

Penalty

65. The Respondent assessed culpability as "*very high*" (since the Applicant was aware of the issues but failed to address them, and the Respondent's officers had been writing to him about various problems with the Property for a long period of time, as noted above) and harm as "*high*" (because the Respondent assessed the relevant hazards, which continued because the notices were not complied with, as category 1 hazards).

66. Based on these assessments, the policy matrices suggest a starting point of £18,000 for the punitive charge in respect of each improvement notice, plus a proportion of the investigatory costs of £400 for this offence. Mr Healy calculated the total as £36,800, again as if each was the only offence for which a penalty was being imposed.

67. Ms Ling reviewed and adjusted this starting point, saying that while there was "*significant harm and risk associated with the non-compliance*", having "*looked at the totality principle*" she had applied a reduction of 30%. Accordingly, the Respondent imposed penalties of £12,880 for failure to comply with each of the two improvement notices, a total of £25,760.

68. The Applicant assessed both culpability and harm as "*medium*", which they said would indicate a total penalty of £12,800 (£6,400 per offence). They argued that should be discounted to £10,880 in line with the offer in the final notices of a discount for prompt payment.

69. For the same reasons summarised above, based on the policy and the Respondent's guidance for these assessments the Applicant's culpability was "*high*", not "*very high*".

70. Mr Taylor submitted that the harm to which people were exposed by the failure to comply was "*medium*" because his colleagues had assessed the relevant hazards as falling in category 2, not category 1, giving individual bandings suggesting by reference to the Respondent's guidance documents that these hazards represented medium harm. They produced their own detailed assessment document and statements, which we have considered. We also heard from Mr Agnew, who had not produced Housing Health and Safety Rating System ("**HHRS**") scoring sheets. He had relied on a computer system to produce initial scores (which were not produced to us) before making his own assessment of the level of harm taking these into account, comparing the relevant issues at the Property with the ideals and standards indicated in the operational guidance for the HHSRS. He had produced extracts from those ideals and standards, describing them as his justification documents. Ms Ling referred to the effects on the tenants of continuing to live in the Property from September 2019 and the potential harm to their health/mental health.

71. Based on all the evidence produced to us, we are satisfied that the level of harm was "*high*". The problems with the Property had obviously continued for a long period of time. The Applicant suggested that repairs had been carried out in the past but there were new leaks from the first floor washing facilities and the tenants did not look after the Property. However, the photographs indicate long-term neglect and it was not said that the Applicant had made any real arrangements for cleaning or maintenance of communal parts. The risks of illness caused by the mould, damp and rotten/dirty communal areas, particularly the missing and defective seals around the kitchen sink, are likely to be significant, but we bear in mind that as Mr Taylor said it is not clear from the photographs that the mould/damp was as extensive as had been suggested. It is likely that the risks of fire or injury in relation to the collapsed ceiling and water near electrical wiring, and of injury or worse from falling through the missing balustrade spindles, particularly on the first-floor landing outside the bathroom/shower room, were high. Further, we note that Mr Taylor's colleagues assessed the level of harm in relation to the failure to comply with Management Regulation 7 (as examined below), which involved much of the same subject matter as the improvement notices, as "*high*".

72. Under the matrices in the policy, these assessments indicate a starting point of £12,000 for the punitive element plus a proportion of £400 for the costs of investigation, for each offence. Our average of the highest investigation cost is about £166 (as explained above), which gives a starting point of about £24,332 in total for both offences.

73. We asked the Respondent about the separate notices, given that all these matters could have been included in one improvement notice. The Respondent said that the aim was to seek to ensure that at least some of the works would be carried out without delay if an appeal was made against anything in one of the notices.

74. Taking into account the content of the two notices, all the other factors summarised earlier in this decision and the penalties explained below in respect of the failures to comply with the Management Regulations, we consider that it is appropriate to decrease the penalty for this offence from the starting point to £20,000. If all the remedial works had been dealt with in one improvement notice, we would have increased it to this level. It would have been significantly higher if we were not imposing substantial separate penalties for failure to comply with the Management Regulations.

Alleged offences of failure to comply with the management regulations

75. The penalties in the other five notices were based on alleged offences under subsection 234(3) of the Act. Section 234 gives the appropriate authority power to make regulations for satisfactory management of HMOs of a description specified in those regulations. By subsection 234(3), subject again to a reasonable excuse defence in subsection (4), a person commits an offence "*if he fails to comply with*" such a regulation. The Respondent relied on the Management of Houses in Multiple Occupation (England) Regulations 2006 (the "**Management Regulations**"), which apply to the HMO.

76. The relevant duties under the Management Regulations are owed by the Applicant, as the person managing the HMO (explained above). The Applicant contended that: (a) the alleged breaches of Management Regulations 4 and 5 are not identified or clear from the evidence provided (referring again to the advice note disclosed by the Respondent); and (b) the alleged breaches of Management Regulations 7 and 8 are covered or duplicated in respect of the improvement notices, so the relevant penalties should be reduced.

Regulation 4

77. The relevant final notice alleged failure to comply with Management Regulation 4 by failing to *ensure* that: "*All means of escape from fire in the HMO were kept free from obstruction; and maintained in good order and repair*" (regulation 4(1)) and "*Any firefighting equipment and fire alarms were maintained in good working order*" (regulation 4(2)).

78. The disclosure documents explained that this notice was in relation to: (a) a missing smoke detector in the dining room; and (b) a defective combined cold smoke seal/intumescent strip on a fire door between the dining room and the hallway.

79. At the hearing, Mr Agnew also referred to other matters, such as a lack of self-closers on doors, a door propped open with a brick and another smoke alarm which he said he had tested but did not work. Mr Healy also referred to a missing self-closer on the dining room door. We do not take these matters into account, because they were not properly explained in the witness statements or clear as alleged breaches of

regulation 4 from the documents or photographs provided in relation to the notices, or from the interview under caution.

80. Mr Healy confirmed to us that the photographs of the collapsed dining room ceiling with electrical wires showed the base unit for the requisite interlinked smoke alarm, separate from the light fitting and wiring nearby. We can see that the smoke alarm unit was missing, even if a unit could be expected to work safely or at all in this damp/wet area of missing ceiling. He also explained the photograph of the fire door between the dining room and the hallway, pointing out what he said were the parts of the seal which were missing in a section above the door latch. We can see that these allegations were explained to the Applicant at the interview under caution on 5 November 2019, long before the notices of intent were issued.

81. In relation to these allegations, following London Borough of Waltham Forest v Younis [2019] UKUT 0362 (LC), we are satisfied that the Respondent had sufficiently complied with the requirement (under paragraph 3 of Schedule 13A to the Act) that the notice of intent set out the reasons for proposing to impose the financial penalty. Even if it failed to do so (by not stating these allegations specifically in the notice of intent or documents served with it), this did not cause the notice to be invalid, particularly because the allegations had already been explained at the interview under caution with copies of the relevant photographs. That said, this was not good practice; as noted in Younis, it is preferable for local authorities to provide in the notice of intent a concise statement of the facts said to amount to the failure to comply or other offence.

82. We are satisfied beyond reasonable doubt that the missing fire alarm, exposed to damp/water for a significant period, was a breach of regulation 4(2) of the Management Regulations. We are not so satisfied in relation to the alleged breach of Management Regulation 4(1), because the photographic evidence was not of good quality and the Respondent could not explain satisfactorily why the apparently missing or damaged section of seal on the dining room door would have represented failure to comply with the duty under regulation 4(1) to keep *means of escape from fire* free of obstruction and in good order/repair. We can speculate about what arguments might be made about this, but none were. This might have represented failure to comply with other parts of the Management Regulations, but the Respondent made no such allegation.

83. The Applicant did not contend, and for the reasons summarised above we are not satisfied, that he had a reasonable excuse for the failure to comply with Management Regulation 4(2).

Penalty

84. The Respondent assessed culpability as "*very high*" (since the Applicant was aware of the regulations and did not address the failure

during the investigation, despite the correspondence from the Respondent's officers over a long period of time) and harm as "*medium*" (because it said there were serious breaches to means of escape and other fire precautions, but not a complete system failure).

85. Based on these assessments, the policy matrices suggest a starting point of £10,000 for the punitive charge, plus a proportion of the investigatory costs of £600 for this offence. The Respondent decided to impose a financial penalty of £10,000, apparently electing not to add anything for investigatory costs for this offence.

86. The Applicant assessed culpability as "*medium*" and harm as "*low*", which they said would indicate a penalty of £3,300. They argued that this should be discounted to £2,640 in line with the offer in the final notices of a discount for prompt payment.

Conclusion

87. For the same reasons as those summarised above in relation to the other penalties, the Applicant's culpability was "*high*", not "*very high*". In relation to harm, we take into account the submissions from Mr Taylor that this was the dining room, not the kitchen, and that there was another detector unit in the ceiling outside the dining room. However, the Applicant produced no real evidence of the detection installations and overall system in the Property. Looking at the photographs provided and giving weight to the Respondent's assessment, we are satisfied that the level of harm was "*medium*".

88. Under the matrices in the policy, these assessments indicate a starting point of £8,000 for the punitive element plus a proportion of £600 for the costs of investigation. With our average of the highest investigation cost (as explained above), this gives a starting point of about £8,166.

89. It is not clear whether the need to replace the fire alarm was included in the works required by the relevant improvement notice. This set out the main works required to reinstate the dining room ceiling and refers to the lighting wiring but not specifically to the smoke alarm. Further, there is some overlap between this penalty and the separate penalty for breach of Management Regulation 7, as explained below, which includes the collapsed ceiling and related issues. Allowing for these matters and taking into account all the factors summarised above, it is appropriate to reduce the starting point to a penalty of £4,000 for the breach of Management Regulation 4(2).

Regulation 5

90. The relevant final notice alleged failure to comply with Management Regulation 5 by failing to ensure that: "*…the water supply and drainage system serving the HMO was maintained in good, clean and working condition…"* (regulation 5(1)) *"…and in particular … You unreasonably caused or permitted the water or drainage supply that*

was used by any occupier at the HMO to be interrupted…" (regulation 5(2)).

91. This allegation was not clear from the notices or the other documentation. The notes in the disclosure documents indicated that it was based on what was said to be an overgrown and blocked gully in the rear garden outside the kitchen, resulting in water flowing out of the gully onto the adjacent path. Mr Healy took us through the photographs, which show the seriously overgrown garden and the drainage pipes coming down from the kitchen sink and other areas into the gully, but show no blockage and no water flowing out. The Respondent said the Applicant had accepted at the interview that he needed to rectify this, but he seems only to have said that he accepted he needed to clear the garden. There is no reference to any such blockage from the inspection in June 2019 or the improvement notice served in July 2019. Ms Ling said there was potential for contamination to come into the kitchen from people walking out in into the garden and coming back inside, but there was no real evidence of this. We put weight on the oral evidence from Mr Healy about what he saw, but we have nothing to indicate how much the gully was blocked or what it was obstructed by. There is insufficient evidence to satisfy us beyond reasonable doubt that there was a blockage of the gully which constituted failure to comply with Management Regulation 5(1) or (2) as alleged.

92. Accordingly, we cancel the final notice alleging breach of Management Regulation 5.

Regulation 7

93. The relevant final notice alleged failure to comply with Management Regulation 7 by failing to ensure that: "*…all common parts of the HMO were … maintained in good and clean decorative repair; maintained in a safe and working condition…*" (regulation 7(1)) and in particular failing to ensure that: "*…all handrails and banisters were at all times kept in good repair … all windows and other means of ventilation within the common parts were kept in good repair*" (regulation 7(2)) and failing to ensure that: "*…any garden belonging to the HMO was kept in a safe and tidy condition…*" (regulation 7(4)).

94. The notes in the disclosure documents indicated that these allegations were based on:

    a. the leak from the first-floor shower room damaging the ceiling and flooring in the dining room (which is clear from the photographs);

    b. disrepair to the kitchen work tops (which is apparent from the photographs, showing general dirt but also gaps around the corner strips and hob);

    c. disrepair to the walls and floor in the kitchen (disrepair is not clear from the photographs, but they do show dirt and grime);

d. disrepair to the first-floor shower room and first floor bathroom (where the photographs show areas of mould from leaks and/or condensation);

e. a defective handle to the first-floor shower room and/or bathroom (a photograph shows this twisted around to the top);

f. missing bulbs from the first-floor landing light pendants (as shown in the photographs; the Applicant suggested that the tenants had removed them to save electricity);

g. the overgrown rear garden (clear from the photographs); and

h. missing spindles to the stairs leading to the first floor and the first-floor landing balustrade (which again are clear from the photographs).

95. The improvement notices referred to most of these issues. In addition, they identified the damaged front door frame, an excessive step from the shower tray to the floor in the first-floor shower room and the absence of any handrail on steps which lead from the basement to the rear garden, providing an alternative escape route. These matters are clear from the photographs and most of them were discussed by reference to the photographs with the Applicant at the interview under caution. However, we do not take the lack of a handrail for the basement steps into account because we are not satisfied beyond reasonable doubt that the potentially self-contained basement was part of the HMO, or itself an HMO.

96. At the hearing, Mr Healy referred to other matters, such as a missing handle on the back door, missing architrave and so on. While we could see from the photographs what he meant, none of these seemed to have been identified previously or explained at the interview under caution, so we do not take them into account.

97. Mr Taylor did not challenge the specific allegations of disrepair and lack of cleaning summarised above. In relation to the general dirt and grime shown in the photographs, Mr Taylor argued that the tenants bore some responsibility for basic cleanliness, or not making matters worse, and made the general submissions summarised above. The tenancy agreements include a simple obligation on the tenants to keep the interior of the Property in good repair and condition (or in the condition it was at the beginning of their tenancy), but this form of tenancy agreement seems to be intended for basic lettings without shared facilities, not houses in multiple occupation, with no specific provisions for cleaning of communal areas. The Respondent submitted that this was the overarching responsibility of the Applicant as landlord. Mr Taylor told us that the Applicant or his daughter had now arranged for weekly and fortnightly cleaners to maintain the common parts.

98. We are satisfied beyond reasonable doubt that the relevant matters summarised in paragraphs 94 and 95 above (other than the alleged disrepair to the kitchen walls and floor, and the lack of a basement stairway handrail) were breaches of paragraphs (1), (2) and (4) of Management Regulation 7. The Applicant did not contend, and for the reasons summarised above we are not satisfied, that he had a reasonable excuse.

Penalty

99. The Respondent assessed culpability as "*very high*" (for the same reasons as the other offences) and harm as "*very high*" (because the missing handrail/balustrade spindles were likely to cause serious risk of injury to occupants and visitors, and there was a lack of adequate lighting in the common areas - i.e. the landing).

100. Based on these assessments, the policy matrices suggest a starting point of £27,000 for the punitive charge, plus a proportion of the investigatory costs of £600 for this offence. Ms Ling had adjusted this starting point, saying: "*whilst the landlord has placed occupants at risk I have applied a 30% reduction in line with totality principle.*" Accordingly, the Respondent imposed a penalty of £19,110.

101. The Applicant assessed culpability as "*medium*" and harm as "*high*", which they said would indicate a penalty of £8,300. They argued that this should be discounted to £7,470 in line with the offer in the final notices of a discount for prompt payment. We bear in mind that they might contend that, because we have assessed a substantially higher penalty than they proposed in relation to the improvement notices, they would have proposed a lower penalty for this offence.

Conclusion

102. For the same reasons summarised above in relation to the other penalties, the Applicant's culpability was "*high*", not "*very high*". For the same reasons as those summarised above in relation to the improvement notices, we agree with the Applicant that the level of harm was "*high*". The Respondent did not identify any factor comparable to the example given in their guidance documents for "*very high*" harm. Further, it had partly relied on the basement handrail, but (as noted above) we are not satisfied beyond reasonable doubt that the basement was part of the HMO.

103. Under the matrices in the policy, these assessments indicate a starting point of £12,000 for the punitive element plus a proportion of £600 for the costs of investigation. With our average of the highest investigation cost (as explained above), this gives a starting point of about £12,166.

104. We take into account the separate penalties for failure to comply with the improvement notices, and the other penalties. As noted above, it appears that the Applicant has now remedied all the problems, and perhaps more. However, it is appropriate for the penalty for this

offence to be significant. It relates to several relatively severe failures to comply with the regulation and it is likely that this conduct continued for at least six months after the end of the period for complying with the improvement notice. Allowing for these matters and taking into account all the factors summarised above, the penalty for the breaches of Management Regulation 7 is increased from the starting point to £16,000. This penalty would have been substantially higher if the separate penalties of £20,000 were not being imposed for the failure to comply with the improvement notices.

Regulation 8

105. The relevant final notice alleged failure to comply with Management Regulation 8(2) by failing to ensure: "*… in relation to each part of the HMO that is used as living accommodation, that … the internal structure is maintained in good repair; and … every window and other means of ventilation are kept in good repair*." By Management Regulation 8(3), the duties imposed by 8(2) do not require the manager to carry out any repair the need for which arises in consequence of use by the occupier of their living accommodation otherwise than in a tenant-like manner, but no such use was alleged in relation to the relevant areas.

106. The notes in the disclosure documents indicate that this allegation was based on damp staining/mould growth on the ceiling and adjacent walls in the left-hand corner, and a blown double-glazing unit in the bottom opening window, of the first-floor middle bedroom. The photographs show mould and peeling paint in the top corner of this bedroom and extensive streaks which appear to be condensation inside the double-glazed window. Mr Healy confirmed these were the "only" matters relied upon. It is obvious that both matters have continued or deteriorated for a long period of time. These matters were included in the improvement notices, referring to the water staining and mould growth and the need to replace the seals in the window in this bedroom. Again, these allegations had been explained at the interview under caution and were not disputed by Mr Taylor.

107. We are satisfied beyond reasonable doubt that these matters were breaches of Management Regulation 8(2). The Applicant did not contend, and for the reasons summarised above we are not satisfied, that he had a reasonable excuse.

Penalty

108. The Respondent assessed culpability as "*very high*" (for the same reasons as those in relation to the other offences) and harm as "*medium*" (since it said there was evidence of regular and repeated minor breaches not attended to in a reasonable timeframe, accumulations of minor breaches such that this increased the risk of harm, and the windows were in such disrepair as not to be weather proof and keep out the cold, and referred to other matters).

109. Based on these assessments, the policy matrices suggest a starting point of £10,000 for the punitive charge, plus a proportion of the investigatory costs of £600 for this offence. The Respondent imposed a financial penalty of £10,300.

110. The Applicant assessed culpability as "*medium*" and harm as "*medium*", which they said would indicate a penalty of £6,300. They argued that this should be discounted to £5,040 in line with the offer in the final notices of a discount for prompt payment. Again, we bear in mind that they might contend that, because we have assessed a substantially higher penalty than they proposed in relation to the improvement notices, they would have proposed a lower penalty for this offence.

Conclusion

111. For the same reasons summarised above in relation to the other penalties, the Applicant's culpability was "*high*", not "*very high*". We agree with the parties that the level of harm was "*medium*". Under the matrices in the policy, these assessments indicate a starting point of £8,000 for the punitive element plus a proportion of £600 for the costs of investigation. With our average of the highest investigation cost (as explained above), this gives a starting point of about £8,166.

112. Taking into account the same matters as above (particularly the overlap with the improvement notices) and bearing in mind the more limited nature of the allegations which have been identified and proven here, the penalty for breach of Management Regulation 8 is reduced from the starting point to £5,000.

Name: Judge D Wyatt **Date:** 4 January 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).