FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**NS/LON/00AG/HNB/2021/0007 & NS/LON/00AG/HNA/2021/0027**
HMCTS code (paper, video, audio)	**:**	**V - Video**
Property	**:**	**(x2) 18A Chalk Farm Road, NW1 8AG & (x2) Flat 1st and 2nd Floor, 18 Chalk Farm Road, London, NW1 8AG**
Appellants	**:**	**(1) Mrs. J. Brigg (formerly Ms. J. Kuok)** **(2) Goodlook Ltd.**
Representative	**:**	**(1) Not represented** **(2) Mr. Z. Zaman – company director**
Respondent	**:**	**The London Borough of Camden**
Representative	**:**	**Mr. P. Bernard – in-house solicitor**
Type of Application	**:**	**Appeal against a financial penalty**
Tribunal	**:**	**Tribunal Judge S.J. Walker** **Tribunal Member Mr. M. Cairns**
Date and Venue of Hearing	**:**	**7 December 2021 - video hearing**
Date of Decision	**:**	**1 February 2022**

DECISIONS

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(1) The appeal against a financial penalty imposed by the London Borough of Camden on Mrs. Joy Brigg in respect of an offence under section 72 of the Housing Act 2004 (control of an HMO while no additional licence is in place) in connection

with the property at 18A, Chalk Farm Road, London NW1 8AG is allowed in part. The penalty notice dated 19 May 2021 is varied. A penalty of £3,000 is substituted for the penalty of £3,500.

(2) The appeal against a financial penalty imposed by the London Borough of Camden on Goodlook Ltd. in respect of an offence under section 72(1) of the Housing Act 2004 (control of an HMO while no additional licence is in place) in connection with the property at 18A, Chalk Farm Road, London NW1 8AG is dismissed. The penalty notice dated 19 May 2021 is confirmed. The penalty of £3,000 is upheld.

(3) The appeal against a financial penalty imposed by the London Borough of Camden on Mrs. Joy Brigg in respect of an offence under section 234(3) of the Housing Act 2004 – failure to comply with the duty imposed by regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (duty of manager to take safety measures) - in connection with the property at 18A, Chalk Farm Road, London NW1 8AG is allowed in part. The penalty notice dated 19 May 2021 is varied. A penalty of £2,500 is substituted for the penalty of £3,500.

(4) The appeal against a financial penalty imposed by the London Borough of Camden on Goodlook Ltd. in respect of an offence under section 234(3) of the Housing Act 2004 – failure to comply with the duty imposed by regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (duty of manager to take safety measures) in connection with the property at 18A, Chalk Farm Road, London NW1 8AG is allowed in part. The penalty notice dated 19 May 2021 is varied. A penalty of £2,500 is substituted for the penalty of £3,000.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. 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 that the Tribunal was referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

Reasons

Procedural History

1. The Appellants appealed against the imposition of two financial penalties under section 249A of the Housing Act 2004 ("the Act") against each of them in respect of the property known as 18A, Chalk Farm Road, London NW1 8AG on 19 May 2021. The penalties imposed

on each appellant were for (a) an offence under section 72(1) of the Act in respect of a failure to licence an HMO which was required to be licensed under an additional licensing scheme, and (b) for an offence under section 234(3) of the Act for failure to comply with a management regulation. The relevant management regulation in this case was regulation 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Regulations") which imposes a duty to take safety measures in an HMO.

2. Letters of alleged offences were sent to the First Appellant on 17 December 2020 (pages 85 to 90) and to the Second Appellant on 5 January 2021 (pages 97 to 106) and again on 15 February 2021 (pages 123 to 135). These letters enclosed requests made under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 requesting information from the Appellants.

3. The First Appellant responded to the information request on 23 December 2020 (pages 91 to 96) and the Second Appellant did so on 1 March 2021 (pages 135 to 148).

4. Notices of intention to impose financial penalties on the Appellants were sent to them on 13 April 2021 (pages 205 to 220). The proposed penalties were £6,000 for each offence against each of the Appellants.

5. Representations were received by the Respondent from the First Appellant on 11 May 2021 (pages 221 to 222) and from the Second Appellant on 14 May 2021 (pages 225 to 226).

6. Having considered those representations, the Respondent issued final notices to the Appellants on 19 May 2021 (pages 227 to 254). The amounts of the penalties were reduced in the case of the First Appellant to £3,500 for each offence and in the case of the Second Appellant to £3,000 for each offence.

7. The First Appellant appealed to this Tribunal against these penalties within the time allowed though she did not sign her appeal form until 15 June 2021. No point was taken on this. The Second Appellant appealed against the penalties on 2 June 2021.

8. Directions were issued on 28 July 2021. Among other things these required the production of bundles by the parties. These directions were complied with, and the Tribunal had before it a bundle comprising 254 numbered pages from the Respondent, a bundle of 22 pages from the First Appellant and a bundle of 2 pages from the Second Appellant. References to page numbers throughout this decision are to the Respondent's bundle unless otherwise stated. The Tribunal also had before it, and took into account, the Appellants' application forms and also a letter dated 17 November 2021 from the Respondent's witness Mrs. S. Pledger which corrected certain aspects of her witness statement which was included in the Respondent's bundle.

The Law

9. Section 249A of the Act permits a local housing authority to impose a financial penalty for a number of housing offences, amongst which are the offences of failing to licence under section 72 of the Act and the offence contained in section 234(3) of the Act of failing to comply with management regulations made under section 234 of the Act. Each offence carries a maximum penalty of £30,000.

10. Schedule 13A of the Act provides that the local housing authority must first give a notice of intent before the end of six months beginning on the first day on which the authority had sufficient evidence of the conduct to which the financial penalty relates. This must set out the amount of the proposed penalty, the reasons for proposing to make it, and information about making representations to the authority. The authority must then give a final notice setting out, among other things, the amount of the penalty and the reasons for giving it.

11. An offence is committed under section 72(1) of the Act if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.

12. Section 55 of the Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description or if it is in an area for the time being designated by a local housing authority under section 56 of the Act as subject to additional licensing, if it falls within any description of HMO specified in that designation. This case is concerned with an alleged failure to obtain an additional licence.

13. In order to require a licence a property must also still be an HMO, which means that it must meet one of the tests set out in section 254 of the Act. These include the standard test under section 254(2).

14. A building meets the standard test if it;

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

the living accommodation is lacking in one or more basic amenities."

15. By virtue of section 258 of the Act persons are to be regarded as not forming a single household unless they are all members of the same family. To be members of the same family they must be related, a couple, or related to the other member of a couple.

16. It is a defence to a charge of an offence under section 72(1) of the Act that a person had a reasonable excuse for committing it.

17. The offence under section 72(1) of the Act can be committed by a person who is either a person having control of the HMO or the person managing it. The meaning of these terms is set out in section 263 of the Act as follows;

"(1) *In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it."

18. By section 234(3) of the Act it is an offence to fail to comply with regulations made under that section, which includes the Regulations identified above. These Regulations impose a number of duties on the person managing the HMO. Regulation 4 imposes, among others, the following duties;

"(1) The manager must ensure that all means of escape from fire in the HMO are
(a) kept free from obstruction; and
(b) maintained in good order and repair
(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order
(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury having regard to
(a) the design of the HMO;
(b) the structural conditions in the HMO; and
(c) the number of occupiers in the HMO"

19. An appeal to the Tribunal by the person subject to the penalty is to be by way of a rehearing and may be determined with regard to matters of which the authority was unaware.

20. It is for the local housing authority to prove beyond reasonable doubt that the offences relied on have been committed. Any defence of reasonable excuse must be established by the appellant on the balance of probabilities. This is made clear in the case of IR Management Service Ltd. -v- Salford City Council [2020] UKUT 81 (LC), which also provides that Tribunals should consider explanations given by persons managing an HMO in order to ascertain whether or not a reasonable excuse has been established even if such a defence is not expressly raised by them.

21. As is made clear by the decisions of the Upper Tribunal in the cases of London Borough of Waltham Forest -v- Marshall and Ustek [2020] UKUT 35 (LC) and Sutton -v- Norwich City Council [2020] UKUT 90 the Tribunal's starting point when considering an appeal of this kind is the local housing authority's policy. Proper consideration must be given to arguments that there should be a departure from the policy, but the burden is on the appellant to show that such a departure should be made. The Tribunal must look at the objectives of the policy and consider whether those objectives would be met if the policy were not followed. The Tribunal must also give considerable weight to the local housing authority's decision but may vary it if it disagrees with it. In addition, regard must be given to the guidance issued by the Secretary of State in 2016 and re-issued in 2018 entitled "Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities" ("the Guidance").

22. As is made clear in the Guidance, when determining the level of a financial penalty regard must be had to the following;
(a) the offender's means

(b) the severity of the offence;
(c) the culpability and track record of the offender;
(d) the harm or potential harm (if any) caused to a tenant;
(e) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or
(f) the need to remove any financial benefit the offender may have obtained as a result of committing the offence

The Hearing

23. Both Appellants attended the hearing. The Second Appellant is a body corporate and was represented by Mr. Zaman, a director of the company. Neither of the Appellants had any legal representation. The Respondent was represented by Mr. Bernard.

24. The Tribunal had before it the documents referred to in paragraph 8 above.

Have the Alleged Offences Been Committed?

25. There were very few factual disputes in this case and the evidence of the Respondent's witness Mrs. Pledger as set out in her witness statement (pages 13 to 22) was largely accepted by the Appellants. Based on this largely unchallenged evidence and the exhibits provided by Mrs. Pledger the Tribunal found the following facts.

26. The property is a self-contained flat occupying the first and second floors of a mid-terraced property. It is situated within the London Borough of Camden. It comprises an open plan living room/kitchen together with a bathroom on the first floor and 3 bedrooms on the second floor. The First Appellant has a leasehold interest in it. There is a hot food take-away restaurant in the basement and on the ground floor of the building.

27. On 8 December 2015 the Respondent adopted an additional licensing scheme for HMOs which applied throughout the borough. This was renewed on 8 December 2020 for a period of 5 years. The HMOs to which this additional scheme applied were those occupied by 3 or more people comprising 2 or more households (see pages 25 to 42).

28. In December 2018 the Respondent received a copy of an enforcement notice from the London Fire Brigade (pages 43 to 52) which had been served in respect of the whole of 18, Chalk Farm Road. Among the matters complained of in that notice was inadequate fire protection for the access to and from the upper floors from the restaurant premises on the ground floor. The steps set out in this notice which were required to be taken included providing a suitable protected route for occupants on the upper floors (see page 49). As a result of receiving this notice the Respondent decided to carry out an inspection. This took place on 25 January 2019 and revealed that the property was occupied as an HMO.

29. It seems that, despite this, no enforcement action was taken. However, on 5 February 2019 the First Appellant applied for a temporary exemption notice under section 62 of the Act, and this was granted on 14 February 2019 for a period of 3 months. This was applied for on the basis that her own lease was due to expire in 2 months and she did not intend to renew it (see page 53).

30. On 17 May 2019 the Respondent sought an update on the property from the First Appellant and they were informed that the tenants who had been in occupation had now left.

31. On 29 October 2020 the Respondent conducted a check of Council Tax records which suggested that the property was occupied, and they decided to conduct a further inspection.

32. The property was inspected by Mrs. Pledger and Ms. Kendall, another council officer, on 8 December 2020. The evidence they obtained, including witness statements from two of the occupiers (pages 67 to 70) and a tenancy agreement creating an assured shorthold tenancy in favour of three named tenants from 15 July 2020 for a term of 12 months at a rent of £2,100 per calendar month (pages 71 to 77), showed that the property was occupied by 3 people who were not related to each other and who shared use of the kitchen and bathroom. Mrs. Pledger also confirmed that there were no pending licence applications.

33. The tenancy agreement was drawn up by the Second Applicant as agent for the landlord, it was signed on behalf of the landlord by Mr. Zaman, and the rent was paid to the Second Appellant.

34. In her statement Mrs. Pledger stated that during the inspection she observed that there did not appear to be a compliant 30-minute fire door between the commercial activity on the ground floor and the property, that the door into the property was not self-closing, was not fitted with intumescent strips or cold smoke seals and was perforated by a key operated lock. She observed that within the property there was an inadequate fire alarm system. It was inadequate, she said, firstly because there was no alarm in the communal hallway and secondly because the alarms were all battery operated rather than being powered by the mains and being interlinked. Whilst the First Appellant took issue with Mrs. Pledger's assertion that the entrance door was not a 30-minute fire door, she accepted that there was no fire alarm in the communal hallway and that the fire alarms were only battery operated.

35. Both Appellants were served with notices by the Respondent asking for further information. The First Appellant's response stated that she had a leasehold interest in the property, that rent was paid to the Second Appellant but was passed on to her, confirmed the names of the three occupiers, and stated that the Second Appellant was responsible for arranging the letting and was responsible for the day-to-day management of the property (pages 91 to 95). She said that after her temporary exemption had come to an end, she had hoped to agree a

commercial let of the property but this fell through. She then sought to find her own tenants and let the property through the Second Appellant. She said she had completely forgotten that she needed a licence. The Second Appellant's response stated that it was the managing agent and was responsible for day to day management (pages 142 to 147).

36. On 15 January 2021 the First Appellant made an application for a licence, which was issued on 5 May 2021.

37. On the basis of these findings the Tribunal was satisfied that the alleged offences had been committed by both Appellants. It was satisfied that at the relevant time an additional licensing scheme was in force which applied to HMOs with 3 or more occupants, that the property was occupied by 3 unrelated people who shared kitchen and bathroom facilities and so it was an HMO, and that there was no licence in force. It was satisfied that both Appellants were guilty of the offence under section 72(1) as the rent was paid to the Second Appellant and then passed by them to the First Appellant, who also owned the property. It follows that both of them were persons managing the property as defined in section 263(3) of the Act. They both, therefore, were managing an HMO which was required to be licensed but which was not.

38. The Tribunal was also satisfied that there was no fire alarm in the communal hallway of the property and that the fire alarms which were provided elsewhere were only battery operated and not interlinked. It was satisfied that this amounted to a failure to take all reasonable measures to protect the occupiers of the HMO from injury and so was a failure to comply with the duty imposed by regulation 4(4) of the Regulations. This duty is imposed on the manager and, as explained above, the Tribunal was satisfied that both Appellants were managers of the HMO. It follows that both had failed to comply with a duty contained in regulations made under section 234 of the Act and, therefore, committed an offence under section 234(3).

39. In considering the latter offence, the Tribunal bore in mind that in the course of the hearing Mrs. Pledger made it clear that in her opinion the most concerning failure was the failure to provide adequate fire alarms. Given this and the factual dispute between the First Appellant and the Respondent about whether or not the entrance door to the property was a 30-minute compliant fire door, the Tribunal decided that it would confine itself to considering the inadequate fire alarm system alone when assessing the seriousness of this offence.

40. When reaching its conclusions that the alleged offences had been committed the Tribunal bore in mind its duty to consider whether or not any defence of reasonable excuse had been made out by either party even if not expressly raised by them, but there was insufficient evidence to show that that was the case. Although the question of knowledge of a need to licence may be relevant to the question of reasonable excuse,

and although the Second Appellant asserted that it did not know of such a need, the Tribunal was not satisfied that this amounted to an excuse in this case. The Second Appellant is a professional managing agent and should be aware of the legislation relating to its business operations. The First Appellant's case was that she was aware of the need to licence but had forgotten about this. This, too, is not a reasonable excuse. There was insufficient evidence to suggest that there was a reasonable excuse for providing inadequate fire alarms. With regard to the Second Appellant the Tribunal bore in mind that it had accepted that it had day to day management of the property.

The Appropriate Penalty

41. It follows from the Tribunal's conclusion above that the alleged offences had been committed by both Appellants, that the Respondent had power to issue financial penalties to both of them under section 249A of the Act.

42. The Tribunal was satisfied that the necessary procedural requirements prior to the imposition of a financial penalty had been complied with as set out in the procedural history above, and there was no suggestion to the contrary by either appelant.

43. Therefore, the only remaining issue for the Tribunal was to consider what the appropriate financial penalty was in each case.

44. Mrs. Pledger's evidence was that, having applied the Respondent's policy, she concluded that the appropriate penalty was £12,000 for each offence. However, it was decided that as there were two parties who had committed each offence, this should be split equally between both, making a penalty of £6,000 each for each offence. The Tribunal found this approach somewhat surprising, but was assured that it was consistent with the Respondent's policy and it decided that it would not interfere with that approach.

45. In assessing the level of penalty to impose, the Respondent bore in mind that these were the first offences for both appellants and that no actual harm had been sustained by the tenants. It considered that the offence of failing to obtain an HMO licence was a moderate band 2 offence for which the starting point would be between £5,001 and £10,000 but that there were aggravating features in respect of both Appellants. In the case of the First Appellant these were the fact that she was clearly aware of the need to obtain a licence, as she had obtained a temporary exemption notice in the past, the presence of fire hazards at the property and the fact that the property had previously been subject to enforcement action by the London Fire Brigade.

46. The Respondent considered that the aggravating feature in respect of the Second Appellant was the fact that the company is a professional letting agent which should be expected to make itself aware of the licensing requirements.

47. These aggravating features led to a conclusion that the appropriate penalty was £12,000 to be shared between the parties equally.

48. With regard to the other offences, the Respondent considered that the offence was a band 3 serious offence (£10,001 to £15,000). In reaching this conclusion reliance was placed on what was said to be incomplete compliance with the enforcement notice from the London Fire Brigade. Again, the penalty was set at £12,000 shared equally between the parties.

49. Representations were received from the Appellants. The First Appellant stated that the fire safety works required by the enforcement notice had been done, she explained how she had had problems with letting the property and she explained in detail how the Covid pandemic had impacted on her business. The response of the Second Appellant stated that it was believed that compliance with the Regulations was the responsibility of the First Appellant. It also set out the financial difficulties that had occurred because of the Covid situation. No explanation was given for the failure to obtain a licence.

50. In the light of these representations the Respondent decided to reduce the financial penalties to £3,500 each for the First Appellant and £3,000 each for the Second Appellant.

51. The Tribunal's considerations were as follows;

(a) The Licensing Offences

52. The Tribunal observed that under the Respondent's policy a failure to licence under the mandatory HMO licensing regime where only one or two properties are concerned and where there are no aggravating features would fall in band 2 (£5,001 to £10,000). The policy expressly provides that evidence that the landlord was familiar with the need to licence is an aggravating feature, as is the absence of proper fire safety precautions. It also noted the following statement;

> "*Where a landlord or agent is controlling/owning a significant property portfolio and/or has demonstrated experience in the letting/management of property, the failure* [to] sic *licence a mandatory HMO would be viewed as being a severe matter attracting a civil penalty of £20,000 or above*" (page 178).

With regard to additional licensing – such as in this case – the policy states that it is necessary for penalties to mirror the civil penalties for mandatory HMOs (page 179).

53. In this case the Tribunal considered that the starting point was correct and also was satisfied that there were aggravating features present which increased the amount of the appropriate penalty. The most significant of these, in its opinion, was the knowledge of the First Appellant and the letting experience of the Second Appellant.

54. There was no doubt that the First Appellant was aware of the need for an HMO licence as she had been found previously to be operating an HMO and had applied for a temporary exemption notice. Whilst the Tribunal bore in mind her case that her financial difficulties had caused her to forget about the need for a licence that, in the view of the Tribunal, does not prevent this from being an aggravating feature. One would not expect a responsible landlord once they were aware of the need to obtain a licence to forget that duty, especially when, as here, she was even sent a letter on the expiry of her temporary exemption reminding her of her duties – see page 55.

55. The Tribunal was satisfied that the position of the Second Appellant was no better. Mr. Zaman's evidence to the Tribunal was that the Second Appellant had been in business in the real estate market and as a letting agent for 7 years and at the time of the hearing was letting 8 properties in Croydon and Lambeth and that the company had now moved to central London in order to try to expand. This had clearly happened before the tenancies in this case were created as the agreements give the Second Respondent's address as being in Shelton Street WC2 (see page 73). The Tribunal noted that in its bundle the Second Appellant stated that it had understood that a property with 3 people in it did not need an HMO licence. It was surprised that a company that had been in business for 7 years, which holds itself out as a professional letting agency and which was, at the time of the offences, seeking to expand into central London was, on the face of it, completely unaware of the existence of additional licensing regimes. Other aspects of Mr. Zaman's evidence also caused the Tribunal concern. His attitude appeared to be that the responsibility was on the landlord, not his company, to know what the licensing requirements were – he suggested that compliance with the Regulations was the First Appellant's responsibility (page 225) and he sought to minimise the seriousness of the offence. This is exemplified by this passage in his bundle;

> "*I would like to ask the question why such a heavy-handed approach against me? How many dwellings in London have three people sharing in 3-bedroom flats? It's not like there are ten people living in one house where you could argue there has been a huge failing of health and safety. These are 3 students studying together at university who decided to live together. OK I put my hands up and admit I was unaware that three people in the Camden borough in a 3-bedroom flat signifies a house of multiple occupation. How many percentage of flats in London do you think have this occupation currently? Does then every landlord/agent deserve a £6,000 fine?*

Elsewhere he also states

> *"What more could I have done different?"*

56. The Tribunal found his approach to what were the proper functions of a letting agent fell well below what one would expect of a responsible professional organisation.

57. It was clear that the Respondent attached significant weight to the financial difficulties of both appellants, such that in the case of the Second Appellant it was decided to reduce the penalty on these grounds by 50%, and in the case of the First Appellant to reduce the penalty from £6,000 to £3,500.

58. It was not clear to the Tribunal why the reduction in the case of the Second Appellant was larger, though it would seem to be because the Respondent had concluded that the First Appellant was receiving an annual rental of £23,928 from the property compared to the Second Appellant's fee of £2,112 per year. On the other hand, the Tribunal noted that the First Appellant had provided quite detailed evidence of her financial difficulties in her own bundle. Her case was that she also operated the restaurant on the ground floor and during the pandemic she was not able to pay her own rent. The tenancy agreement she had expected to enter into for the property had fallen through, by the time of the hearing she owed her landlord over £100,000 in rent and also had arrears of over £200,000 in rent for another property, and the restaurant was still operating at a loss (see pages 16 and 17 in her bundle). She provided evidence of these sums in the form of rent statements.

59. On the other hand, there was no evidence of the Second Appellant's finances at all. Assertions are made about Mr. Zaman personally being in debt but there is nothing about the company's finances at all. No company accounts had been provided to the Tribunal.

60. The Tribunal agreed that a significant reduction in the amount of the penalties was appropriate to reflect the financial circumstances of the Appellants. However, this ground was insufficiently strong to merit any further reduction in the penalty on the Second Appellant as there was insufficient evidence of the extent of the alleged financial difficulties of the company. In any event, the Tribunal considered that a reduction of anything more than 50% in respect of financial circumstances was not warranted.

61. On the other hand, the Tribunal concluded that there was no basis for treating the First Appellant more harshly than the Second when, if anything, the culpability of the Second Appellant was at least as great as hers and there was much better evidence of her own financial problems. Whilst still being of the view that a discount of more than 50% was not justified, it decided that the appropriate penalty for the First Appellant for this offence was £3,000, the same as that imposed on the Second Appellant.

(b) The Offences Under the Regulations

62. In her witness statement Mrs. Pledger explained that she considered that these offences fell in band 3 (£10,001 to £15,000) and that when assessing the seriousness, she took into account what she described as the incomplete compliance with the London Fire Brigade enforcement notice.

63. However, prior to the hearing she provided an additional letter dated 17 November 2021 which changed her position somewhat. In this and in her evidence to the Tribunal she explained that she had previously taken account of what she considered to be a failure to construct a partition between the restaurant and the rest of the property. The First Appellant in her representations had argued that this had, in fact been done. She had since re-inspected and she now accepted that that partition had in fact been built. She had not seen it during her inspection on 8 December 2020 as the security shutters were in place at that time.

64. When asked about this at the hearing Mrs. Pledger stated that had she been aware that the partition had been built at the time she set the proposed financial penalty she would have set it at £10,000 rather than £12,000. This she would, as with the other offences, have split between the parties, making the sum £5,000 each.

65. The Council's policy deals specifically with offences under the Regulations which consist of failures to maintain fire alarms. The starting point in the absence of aggravating features is at band 3 (£10,001 to £15,000). The Tribunal agreed with this approach and considered that, given Mrs. Pledger's change of position, the penalty should be set at £10,000 to be shared between the parties subject to reduction for mitigating factors.

66. The approach taken by the Respondent to the mitigation put forward by the Appellants was, as with the other offences, to reduce the penalty on the Second Appellant by 50% and that on the First Appellant to £3,500.

67. The basis of this mitigation has been considered in relation to the licensing offences above. The Tribunal considered that, as with those offences, the appropriate reduction should be 50% in respect of both the Appellants. Given the reduction of the unmitigated penalty from £12,000 to £10,000, the Tribunal concluded that the appropriate penalty for both Appellants was £2,500.

Conclusions

68. It follows from what is set out above that the Tribunal concluded that the appeals by the First Appellant should both be allowed in part and that the financial penalties to be paid by her should be reduced to £3,000 for the licensing offence and £2,500 for the offence against the Regulations. In the case of the Second Appellant, it concluded that the appeal against the financial penalty in respect of the licensing offence should be dismissed and the penalty of £3,000 upheld but the appeal against the financial penalty in respect of the offence against the Regulations should be allowed in part and the penalty reduced to £2,500.

69. In reaching this conclusion the Tribunal had regard to the need to deter others from committing offences of this kind. It bore in mind also that,

once one considered the Respondent's own decision to split the penalty between the two appellants, each of them was only being asked to pay one quarter of what the penalty would have been if there had been no financial mitigation and had only one of them committed the offence rather than two.

70. In addition, the Tribunal concluded that it was not satisfied that there were any reasons for departing from the Respondent's policy in respect of the setting of financial penalties and it was not satisfied that the purposes of that policy would be met if there were a departure from that policy.

Name: Tribunal Judge S.J. Walker **Date:** 1 February 2022

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.