FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/HNA/2021/0053** **V:CVPREMOTE**
Property	**:**	**29 Erebus Drive, London SE28 0GB**
Applicant	**:**	**Mr Andy Adegburin**
Representative	**:**	**In person**
Respondent/Council	**:**	**Royal Borough of Greenwich**
Representative	**:**	**Mr Ali Deweji (Counsel)**
Type of application	**:**	**Appeal against Financial Penalty** section 249A and schedule 13A Housing Act 2004
Tribunal	**:**	**Deputy Regional Judge N Carr** **Mr Andrew Lewicki (Surveyor)**
Date of Hearing	**:**	**23 May 2022**
Date of Decision	**:**	**20 June 2022**

DECISION AND REASONS

DECISION

1. The Tribunal is satisfied beyond reasonable doubt that the Applicant without reasonable excuse committed the offence under section 72(1), of control or management of a House in Multiple Occupation required to be licensed under section 257 of the Housing Act 2004 but it was not so licensed, during the period 23 May 2018 – 30 November 2020;

2. The Tribunal varies the Final Notice dated 28 September 2021 and substitutes a final penalty in the sum of £5,000.

REASONS

(1) This has been a remote video hearing which consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because no-one considered it necessary, as all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in the Applicant's bundle of 19 pages, and the Respondent's bundle of 266 pages. The contents of those documents have been taken into account in this decision. References to the documents appear in bold square brackets **[..]** below. Although I adopt the pagination deployed by the Respondent for references to its bundle, it is not chronologically paginated which was in no way helpful for use as a digital bundle. Parties are once again reminded that simple, sequential page numbering of documents, where the digital page number and the one marked on the page actually match, are to be used.

(2) By his application dated 25 September 2021, the Applicant, Mr Andy Adegburin, landlord of 29 Erebus Drive, London SE28 0GB ('the property') seeks to appeal against the Respondent, the Royal Borough of Greenwich's ('RBG') decision to impose a financial penalty pursuant to section 249A of the Housing Act 2004 ('the Act') in respect of Mr Adegburin's control or management of a House in Multiple Occupation ('HMO') which is required to be licensed but is not so licensed, contrary to section 72(1) of the Act.

(3) The hearing was attended by Mr Adegburin, representing himself, and Mr Dewar of Counsel representing RBG. In attendance as witnesses for RBG were Mr San Nyunt and Mr Carl Woodham.

PRELIMINARY ISSUE

(4) Directions were given on 24 November 2022 by Mr Jagger. RBG was to provide its bundle first, as it has the burden of proving the offence of failure to license in these proceedings beyond reasonable doubt. Mr Adegburin was directed to provide his bundle of documents as follows:

> *9. By **9th March 2022**, the Applicant must also provide a bundle that consists of a single document in Adobe PDF format. The bundle must have an index and must be paginated. The documents must, so far as possible, be in chronological order. The Applicant should email a copy to the Respondent and to the Tribunal at London.Rap@justice.gov.uk. The subject line of the email must read:" "BUNDLE FOR DETERMINATION: [Case reference], [Property address]". If a party is unable to produce a digital bundle it must contact the case officer as soon as possible, explaining why, and alternative directions will be considered.*
>
> *10. The bundle must include:*
>
> - *A copy of the appeal form and accompanying documents;*
> - *An expanded statement of the reasons for the appeal, which should include any additional grounds upon which the Applicant wishes to rely and any response to the Respondent's case;*

- *Confirmation of the meeting for possible settlement, as directed above;*
- *If the Applicant decides to instruct an expert, such as a surveyor, copies of any expert's report to be relied upon;*
- *Any witness statements of fact to be relied upon, with numbered paragraphs and ending with a statement of truth and the signature of the witness; and*
- *Any other documents to be used at the hearing including, where appropriate, copy correspondence, plans and colour photographs.*

(5) The Directions also directed, as do all standard directions in the Tribunal, the following highlighted in bold text: '**Whenever you send a letter or email to the Tribunal you must also send a copy to the other parties and note this on the letter or email**'.

(6) RBG duly complied. Mr Adegburin did not. On 18 March 2022, Judge Hawkes caused a letter to be sent to Mr Adegburin, referring him to the directions and the standard warning included on them that "*[i]f the Applicant fails to comply with these Directions the Tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules")*." She identified that Mr Adegburin had neither returned his listing questionnaire, nor complied with the requirement to provide his bundle. She directed him to file and serve any representations why the application should not be consequently struck out, by 25 March 2022.

(7) On 23 March 2022, Mr Adegburin forward two emails to the case officer. The first at 13:37, not copied to RBG, was a letter dated 21 March 2022 simply stating that there had been a 'recent bereavement' and that he was sorry for not providing the bundle. He made no comment on the listing questionnaire. The second, at 13:50, also not copied to RBG, was an email with 9 attachments, not identified for their contents, indexed or paginated. In an email of 28 March 2022, RBG notified that it had been sent those 9 documents at 13:53, and asked for a compliant bundle.

(8) On 28 March 2022, I notified Mr Adegburin that the Tribunal could not work from multiple, unpaginated and unindexed documents. I directed that he provide a bundle complying with the directions of 24 November 2021 by 9 April 2022, and extended RBG's time for its optional Reply to 29 April 2022. I provided in my letter links to various resources that can be used to create a single .pdf bundle, including adobe's own free software.

(9) Noting was heard from Mr Adegburin, despite the case officer chasing for a bundle. On 10 May 2022, I caused a notice of intention to strike out the application to be sent to Mr Adegburin, stating that I was minded to strike out the application for failure to comply with the Tribunal's directions, and directed as follows:

> ***By no later than 17 May 2022*** *the Applicant* ***must*** *write to the Tribunal by email, copied to the Respondent, to explain:*
> *(1) Why he failed to comply with the Directions given by Judge Hawkes on 18 March 2022 requiring him to explain why his applications should*

not be struck out for failure to comply with the original Directions;
(2) Why he failed to comply with the Directions of 28 March 2022; and
(3) Why his application should not be struck out for the reasons given above, pursuant to rules 9(1) and (3)(a) and (b).

(10) On 11 May 2022 at 12:03 Mr Adegburin emailed a bundle named '1639_001.pdf' to the Tribunal. It was not copied to RBG. That is a bundle of 19 pages, with three indexes. It does not include the appeal form and accompanying documents as specified in the Directions of 24 November 2022. There was no explanation as directed above. It was not copied to RBG. At 15:15, I wrote further to Mr Adegburin that he had failed to comply with the directions as required by my letter of 10 May 2022. He had not copied his email to RBG. Unless he did so by midday on 12 May 2022 his application would be automatically struck out without further order. He had further not made any submissions why his application should not be struck out, and now unless he did so by 4pm on Friday 13 May 2022 his application would be automatically struck out.

(11) At 23:40 on 11 May 2022 Mr Adegburin emailed the Tribunal, again not copying RBG, to state that he did not fully understand the format of the bundles needed, that he had sent bundles to the Tribunal and Respondent in the usual way he had done previously, and he remained saddened by the death in the family. He apologised for the delay and wrong format of the bundle. He did not address the prejudice caused to RBG in delaying provision of his documents so that there was not enough time remaining in the timetable for its optional Reply. He did not in that email confirm he had served the bundle on RBG. I directed the case officer to inform Mr Adegburin that I would not consider his email until he had copied it to the other side, and proved he had done so, as well as proving as directed that he had sent the bundle to RBG.

(12) At 10:43 on 12 May 2022, Mr Adegburin emailed the case officer to state he had sent RBG his indexed and paginated bundle and letter dated 11 May 2022. Again, this email was not copied to RBG.

(13) I therefore asked for RBG's comments by 4pm on 16 May 2022. Those comments were received at 15:59 on 16 May 2022. I directed as follows:

The hearing is due to take place on Monday 23rd May 2022. The Applicant informs the Tribunal that he provided his .pdf bundle to the Respondent last Wednesday. It consists of 19 pages, most of which is material emanating from the Respondent itself. The issues seem to be narrow, and largely a question of statute.

In the circumstances, in order to make best use of the Tribunal's resources, and to endeavour to avoid delay so far as possible, I direct as follows:

(1) The Respondent may, by no later than 3pm on Friday 20 May 2022, provide to the Tribunal and to the Applicant:
(a) any response to the Applicant's bundle, so far as it is able to do

so;

(b) any response to the question of strike out of the application, so far as it considers it necessary to do so; and

(c) any indication of the necessity of seeking an adjournment, if it is unable to comply with paragraph 1(a).

The Tribunal will consider these preliminary issues (including, insofar as it considers it necessary or proportionate, the question of strike out) as preliminary matters at the hearing on 23 May 2022.

(14) RBG, in its emailed submissions of the same date, stated that Mr Adegburin had not provided it with a bundle. In an unusual step, due to the contents of that bundle, I caused the case officer to forward what had been sent to the Tribunal.

(15) At the hearing, Mr Adegburin asserted that he had sent RBG the bundle. He had done so at 23:44 on 12 May 2022. He had sent a document named '29 Erebus Drive'. That, of course, was neither the document provided to the Tribunal, nor in time in accordance with the unless order. I suggested to Mr Adegburin that he had therefore misled the Tribunal when he had stated at 10:43 on 12 May 2022 that he had provided the bundle to RBG. Mr Adegburin asserted that he had provided a hard copy by hand. He stated he had not understood that he needed to provide a digital pdf copy. RBG denied receiving it. He then stated that he had provided it digitally. He asserted that the document '29 Erebus Drive' was the same as '1639_001.pdf'. He could not prove this.

(16) Mr Dewji submitted that there had never been a paginated indexed bundle provided to RBG. Even the document provided at 23:44 on 12 May 2022 was not such. The only way that the Tribunal and RBG were working from the same document is because the Tribunal forwarded the bundle.

(17) In the circumstances, we were satisfied that the unless order had taken effect in respect of the bundle, and that Mr Adegburin had been automatically debarred. I invited Mr Adegburin to make an oral application for relief from sanctions in accordance with *Denton v TH White Ltd* [2014] EWCA Civ 906). I explained that we considered that the default was serious, both in respect of his failures to follow directions and in respect of his failure to ensure that he followed the standing direction that all correspondence must be sent to all other parties, and thus depriving RBG of its optional reponse. We invited Mr Adegburin to make submissions on the second two limbs of the test.

(18) In relation to the reason for the default, Mr Adegburin initially stated that he did not understand that he needed to provide a bundle by email, despite the wording of the directions. He stated he had hand-delivered hard copy bundles. Initially he stated that this was to the Tribunal as well as RBG. When I stated they had not been received, Mr Adegburin back-pedalled and suggested then that he had provided documents to the Tribunal and RBG in the digital format that he always had. Under some questioning, he accepted that neither of his two previous applications to the Tribunal had in fact reached the stage of a hearing (the first having been withdrawn by RBG due to a failure to give the notice in time, and the second having been struck out for his failure to comply

with an unless order) and therefore that he had never previously had occasion to provide a bundle. He could not initially explain the delay between my letter of 28 March 2022 and finally providing the Tribunal with a bundle, as he did not seem to recognize that the letter had been sent. When encouraged by me, Mr Adegburin stated that the death in his family had actually been his father, who had passed away last October (2021). He then stated he was dealing, as the eldest son, with his father's affairs, and that there was a property with two children that needed looking after. He then said that the children were blind. He then said there were more children that were deaf-dumb that he was having to try to look after and the affairs were very complex. I asked him for the evidence of this, as at no point was any of this mentioned in his previous two references to a death in the family. Mr Adegburin stated that he had not been told to provide any.

(19) We found Mr Adegburin's explanations both self-contradictory and implausible. While it might be possible – indeed likely – that as the eldest child, Mr Adegburin would deal with his father's estate, it seems highly unlikely that he would have provided such cursory information in his letter of 23 March 2022 and email of 12 May 2022 if the information he provided today was true. Mr Adegburin appeared to increasingly inflate his obligations as he was making his submissions to us. It appeared to us that Mr Adegburin sought to post-rationalise a simple failure to both read and follow simple instructions.

(20) However, I suggested to Mr Dewji that, despite the frankly implausible and self-contradictory explanations given by Mr Adegburin, in light of the fact that (a) I had caused Mr Adegburin's bundle to be shared with RBG on 16 May 2022, and the documents in it almost entirely emanated from RBG; (b) there appeared to be no submission that the hearing must be adjourned for a reply, and (c) that RBG's witnesses were in attendance, all of the circumstances might point towards relief. With laudable practicality, Mr Dewji agreed.

(21) We therefore considered that it was just to grant to Mr Adegburin relief from sanctions, and allowed his appeal to proceed.

LAW

(22) Section 249A of the Act permits a local housing authority to impose a financial penalty on a person if it is satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(23) The material offence in this application concerns the licensing of HMO's under sections 72 of the Act, which provides that:

> 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.

(24) In any proceedings against a person for the offences of managing or controlling an unlicensed HMO, it is a defence if they can demonstrate on the balance of probabilities that they had a reasonable excuse for committing the offence (section 72(5)).

(25) What constitutes a HMO is defined in sections 254 to 259 of the Act. The standard test in section 254(2) designates a building an HMO if it consists of one or more units of living accommodation not comprising self-contained flats, and which is occupied by persons who do not form a single household, as their only or main residence, only used as living accommodation, by persons who pay rent, and who share basic amenities with at least one other household.

(26) Section 257 makes provision that any building that meets the following description is an HMO:

HMOs: certain converted blocks of flats

(1) For the purposes of this section a "converted block of flats" means a building or part of a building which—

(a) has been converted into, and

(b) consists of,

self-contained flats.

(2) This section applies to a converted block of flats if—

(a) building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and

(b) less than two-thirds of the self-contained flats are owner-occupied.

(3) In subsection (2) "appropriate building standards" means—

(a) in the case of a converted block of flats—

(i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768), and

(ii) which would not have been exempt under those Regulations,

building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by those Regulations as they had effect on 1st June 1992; and

(b) in the case of any other converted block of flats, the requirements imposed at the time in relation to it by regulations under section 1 of the Building Act 1984 (c. 55).

(4) For the purposes of subsection (2) a flat is "owner-occupied" if it is occupied—

(a) by a person who has a lease of the flat which has been granted for a term of more than 21 years,

(b) by a person who has the freehold estate in the converted block of flats, or

(c) by a member of the household of a person within paragraph (a) or (b).

(5) The fact that this section applies to a converted block of flats (with the result that it is a house in multiple occupation under section 254(1)(e)), does not affect the status of any flat in the block as a house in multiple occupation.

(6) In this section "self-contained flat" has the same meaning as in section 254.

(27) Section 254(1)(e) of the Act sets out as follows:

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; **or**

(e) it is a converted block of flats to which section 257 applies.

(28) The definition of a self-contained flat is set out in sections 254(3), as defined by subsection (2):

(3) A part of a building meets the self-contained flat test if—

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(2) A [flat] meets the standard test if—

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the [flat] 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 [flat] 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 [flat]; and

(f) two or more of the households who occupy the [flat] share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(29) A section 257 HMO is within its own definition and does not require to meet any other part of the section 254 tests, save for the definition of a self-contained flat.

(30) Section 61 of the Act requires HMOs to which Part 2 of the Act applies to be licensed. Part 2 provides for licensing in two main situations. Firstly, 'mandatory HMO licensing' applies to HMO's described in sections 254-259 of the Act. This includes HMO's that meet the section 257 test.

(31) The second situation is 'additional HMO licensing', which applies where a local housing authority has designated an area as subject to additional criteria to those applying to mandatory HMO's, using powers conferred by section 56 of the Act. An HMO falling within a description specified in such a designation is required to be licensed, irrespective of whether it is required to be licensed under the mandatory licensing regime.

(32) Only one financial penalty may be imposed under the section on a person in respect of the same conduct, and that penalty is to be determined by the housing authority but must not exceed £30,000 (section 249A(3) – (4)).

(33) Schedule 13A of the Act deals with the procedure for imposing financial penalties and appeals against financial penalties. Paragraph 10 of that Schedule states:

(1) A person to whom a final notice is given may appeal to the First tier Tribunal against—

(a) the decision to impose the penalty, or

(b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

(a) is to be a re-hearing of the local housing authority's decision, but

(b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

APPEAL: LIABILITY

(34) It is not in dispute that on 1 October 2017, an additional licensing scheme came into effect in the Royal Borough of Greenwich, requiring all HMOs occupied by three or more persons living in two or more households to be licensed for the purposes of the Housing Act 2004 ('the 2004 Act') **[B2-3]**.

(35) Following reports from a tenant, in October 2019 RBG were informed that the property had been converted from a four bedroomed house into two self-contained flats, one on the grounds floor, and a maisonette over the first and second floors. Mr Adegburin admits that this was done in around 2016. The property had been the family home, and his son had been growing into adulthood and wished for his own space. Mr Adegburin stated that he had inserted plasterboard 'light partitioning' to separate off the staircase and thus create a ground floor and a first and second floor flat with their own separate entrances. Plans of the property **[B8-10]** demonstrate that each of the ground floor and maisonette has its own kitchen and bathroom facilities, and there is no shared space. It was accepted that the boiler, in place to serve the four bedroomed family home, served both units. In around 2017, when his son had gone to college, and Mr Adegburin himself had gone abroad for some time, both flats had been let out. There was a husband and wife with two children in the maisonette, and a husband and wife with at least one but perhaps two children in the ground floor flat. Witness statements from two tenants, Mr Samson Osemwegie and Mr Biafra N Biafra, appear in the bundle confirming these details **[A21 – A27]**, and Mr Adegburin accepted both before us, and in interview under caution, that the details were correct (save for he disputed that he had not protected the tenancy deposits made by the tenants).

(36) As a result of complaints received, an Environmental Health Officer ('EHO') was caused to inspect, and eventually in around September 2019 issued an Improvement Notice **[19]**. That Improvement Notice was not appealed, and a financial penalty for failure to comply with it was imposed in the sum of £10,000 **[11]**, which was also not appealed. Mr Adegburin states that there is now a charge over his property in the same sum. On 31 October 2019, RBG entered the premises to carry out emergency remedial works at a cost of £4,178.31. The emergency works that had been undertaken to replace what RBG says (but Mr Adegburin continues to dispute) was a faulty boiler and cooker were subject to an Emergency Remedial Action Notice dated 7 November 2019 **[10]**, against which Mr Adegburin appealed. RBG withdrew that notice after a case management before me in 2020, due to it having been served one day out of time, and as a consequence Mr Adegburin has never had to pay for those works.

(37) While this was happening, Ms Rachel Weir, an Intelligence Officer in the Residential Licensing Enforcement Team, was making tandem enquiries regarding the licensing issue. She attended the property on 20 November 2019 with the EHO Mr Giancarlo Quaroni, and created the floorplan showing the layout of the two flats. On 13 January 2020, Ms Weir sent to Mr Adegburin an HMO notification letter **[B12 – B13]**. In that letter she identified that "*the property is being used as a section 257 HMO and is therefore required to be licensed*". She provided details of how to make a license application, in addition to notifying that assistance on completing the application form could be obtained on payment of a fixed fee of £150 (and she

provided an email address). She also provided details that a Temporary Exemption Notice might be available.

(38) On 16 January 2020 Mr Adegburin dropped in at the Woolwich Centre to speak to Ms Weir. He stated that the property was not an HMO. He also stated that he had tried to apply for a licence in October 2019 (when Mr Quaroni was investigating the condition of the property) and had been told by the computer system that the property was not an HMO.

(39) On 5 March 2020 Ms Weir and Mr Quaroni attended at the property for a 'compliance' visit in relation to the Improvement Notice (though again, Mr Adegburin disputes this visit occured). Ms Weir was able to speak with Mr Biafra on the ground floor, but unable to obtain a response from the first floor flat. On 1 July 2020, Ms Weir contacted Mr Biafra to confirm that the property was still occupied by him and his family, and he confirmed that there were still occupants upstairs.

(40) On 27 August 2020, Ms Weir made an unannounced visit to the property and was able to speak with the occupant of the first floor flat, Mr Evi Ekelemu, who confirmed he lived there with his wife and two children. A search of council tax records revealed Mr Ekelemu had been liable for the council tax at the premises since January 2020 **[B53 – B55]**.

(41) In December 2020, further to communications with Building Control, Mr Adegburin returned the property to a single four-bedroomed house. It is not known when or if this was notified to RBG prior to Mr Adegburin's interview under caution.

(42) On 27 May 2021, RBG served on Mr Adegburin a Notice of Intent to issue a financial penalty for the licensing offence pursuant to 72(1) as applied because of section 257 of the Act, during the period 23 May 2018 – 30 November 2020 **[B60 – B65]**. On 28 May 2021, Mr Adegburin was invited to an interview under caution in respect of the alleged offence **[B67 – B68]**. A further letter to the same effect was sent on 6 June 2021 **[B70 – B71]**. Mr Adegburin was interviewed under caution no 18 June 2021 **[B73 – B103]**.

(43) In support of that interview, he provided a statement of case, dated 24 June 2021, in which he asserted he had installed a 'light partition' when making a private mini-flat for his son, and had been told he did not need an HMO licence for that since it was not a rented property. He had made 'several' attempts to apply for a section 257 HMO licence, but was unable to complete the applications on the council's website due to the way the property had been set up. An unidentified officer of the council had tried to assist him on one occasion to no avail. On another occasion an unidentified person in the planning department had told him the property wasn't an HMO. Ms Weir had refused to help him, pointing him towards the paid service. He had subsequently discovered that a section 257 HMO was not listed on RBG's website making the application impossible. He tried again to make the application on 23 June 2021 to no avail **[B105 – 106]**.

(44) On 28 September 2021, Mr Mohammed Islam served a Final Civil Penalty Notice on behalf of Ms Weir, taking into account the representations made **[B136 – B149]**. The penalty imposed was £10,000, based on the matrix at **[B57 – B58]**.

(45) In his written statement of case **[1 – 7]** Mr Adegburin provided no evidence that the property was one to which section 257 did not apply, nor that it met (or did not require to meet) the 2000 Building Regulations (as would be applicable in this case), and no reasoned basis for his assertion that the property was not an HMO as was required of him to demonstrate – see *Hastings Borough Council v Turner* [2021] UKUT 258 (LC)).

(46) As we heard in oral evidence, Mr Adegburin now accepts that the property was one falling within the definition of section 257 of the Act and was thus an HMO. He also accepts now, that he needed building control and planning consent for conversion of a four bedroomed family home into two flats. He accepts that there were two families, each of three or four people, occupying the flats, none of whom was him or his family during the material time. He accepted that was the case throughout the period 23 May 2018 – 3 November 2020, there having been throughout that period tenants and their families living in each of the flats, and no resident landlord. He says that 'if he knew then what he knew now' we would not be at the hearing.

(47) We are satisfied on the evidence provided by RBG, and on the basis of Mr Adegburin's admissions, that the elements of the offence are made out beyond reasonable doubt.

(48) The only issue in respect of liability therefore is whether Mr Adegburin has a reasonable excuse for having control of the HMO without a licence for the property. It is his obligation to prove any reasonable excuse, on the balance of probabilities (*IR Management Services Ltd v Salford City Council* [2020] UKUT 81 (LC)).

Reasonable excuse

(49) Mr Adegburin's evidence was at **[6 – 7]** in his witness statement dated 4 April 2022. He stated he attempted to make the licence application several times but was unable to complete it due to 'what I considered a technical error' which meant that the property was already divided into *three* flats on the website, which made it impossible to apply. No independent evidence (e.g. by way of screengrab or photograph) was provided.

(50) In his oral evidence, initially Mr Adegburin stated he had tried to apply four or five times for a licence, despite large parts of his witness statement suggesting that he was not obliged to have an HMO license. During the course of his evidence, this number increased to seven or eight times, and finally to eight or nine times. Mr Adegburin suggested that he had even endeavoured to make such an application in the day prior to the hearing, despite later confirming in his evidence that he had submitted an HMO application for a licence for the now single house as the property had reverted to a single house, and it therefore being unclear how he would have been able to do so in respect of two now non-existent flats.

(51) Each time he had attempted to make an application (whether that was four or nine times), Mr Adegburin recounted that the information he entered resulted in him being told he did not need an HMO licence. He accused RBG of using '*technical terms to confuse innocent landlords*'. As far as he was concerned, the £150 fixed cost service provided by RBG to help individuals make a licensing application was extortion, and against RBG's stated policy to work *with* landlords. He nevertheless stated that he had tried every option on the

website, including the first option on the webpage as shown on **[B109]**; 'Entirely self-contained flats'. That option had not led him to the page in which he had to identify whether the flats were purpose built or conversion flats. He had just been told that he did not need a licence. He did not recognise the screengrabs provided by RBG at **[B108 – B134]**. None of his applications had taken him on that user journey. Mr Adegburin provided only two screen shots with his application, taken on 25 October 2021, at 18:43 and 18:47. Each screenshot only showed the result: 'Based on the information you've entered, you don't need an HMO licence for this property'. No other proof of what had been completed was provided by photographs or screenshots. The webpage also provided a facility to 'save and continue' in order to receive a copy of the details Mr Adegburin had provided. No such copy was provided by Mr Adegburin.

(52) As well as suggesting that this meant that there was a technical error, Mr Adegburin stated that RBG's website for applications made no reference to section 257 of the Act, and used '*technical terms*' so he did not know what to apply for. He had required help to make the application and, as far as he was concerned, it was for RBG to help him. He felt he had been victimised by RBG, after he had had his boiler replaced even though it hadn't needed it, and the Improvement Notice had been completely complied with but he had received a financial penalty anyway.

(53) In oral evidence Mr San Nyunt, chartered Environmental Health Practitioner referred to the three records held by RBG of applications that Mr Adegburin had made **[B41 – B49]**. He confirmed there was no other record of an application held. His investigations revealed that Mr Adegburin had not, in the records obtained, ever ticked the option for 'entirely self-contained flat' as would be required in respect of a section 257 HMO. That would have taken him on the correct user journey to obtain licensing for the property. Mr Nyunt could not understand Mr Adegburin's assertion over any technical fault. He had made enquiries and there was no record of any complaint about a technical fault on the website in this connection from any user since the inception of the online application in 2017 when the additional scheme had been put in place. If Mr Adegburin had selected the correct option, he was satisfied that Mr Adegburin would have been able to properly complete the application.

(54) Mr Adegburin suggested that RBG must have other records of his applications that they had not disclosed. When we drew to his attention that even on the applications of which we had evidence, he appeared to have put into the form incorrect information about the number of people living in each flat (inserting into the form '1-2' – despite knowing there were families of at least 3 and 4 in each flat respectively), Mr Adegburin tried to explain it away by saying there was only one 'tenant' in each flat. That was clearly not the question asked. Mr Adegburin submitted that he had been a law-abiding landlord and never in violation of RBG's requirements since he had lived in the borough. That was contradicted by the un-appealed improvement notice and subsequent financial penalty.

(55) We are not satisfied on the balance of probabilities that Mr Adegburin has a reasonable excuse for failing to obtain a licence. We found Mr Adegburin to be an unconvincing witness, prone to exaggeration, obfuscation and self-

contradiction, with no independent evidence to back-up his claims nor details of events he might be expected to make note of (for example, being told by an unidentified person in RBG's offices he did not need planning permission to convert a four bedroomed family house into two flats).

(56) There is no independent evidence that he ever selected the correct option 'entirely self-contained flat' on the licensing application form, despite having told us in evidence that he did. The allegation that RBG has withheld evidence is without foundation or support. We believe Mr Nyunt when he gave evidence that there had never been a complaint recorded about any technical fault with the online application. The only proof-positive that Mr Adegburin attempted to make an application before us is that contained in **[B41 – B49]**, in which, for each application, he had quite plainly set out false facts relating to occupancy, which he could not properly explain.

(57) The evidence presented to us supports that Mr Adegburin selected every option *but* that one on the online form that was related to the section 257 requirement, of which he was notified as early as 13 January 2020 and had had plenty of time to research. It is difficult to say whether that was a deliberate ploy or ineptitude. The passage of time and Mr Adegburin's failure to obtain independent advice on the letter's contents if he did not understand, allowing the situation to continue for almost a year, would point towards the former. It was *his* obligation to take independent legal advice if he was unsure what RBG's notice meant, and was unwilling to engage RBG's licensing assistance team. As a professional landlord he is to be expected to ensure that he does what is required to comply with the law. Mr Adegburin's strategy appeared instead to be to put the responsibility for making the application onto the RBG. It was not RBG's obligation to do it for him. Renting domestic property to tenants is, after all, a business, and Mr Adegburin (and no-one else) had a businessman's responsibility to ensure he complied with legal requirements related to that business.

(58) In another case we might have been convinced that the website was not clear enough in its distinction between what was an 'entirely self-contained flat' and what was a 'flat or maisonette within a building'; after all, RBG's own Building Control witness, Mr Carl Woodham, was himself unsure how the two differed. However, that had not been Mr Adegburin's case to us. His case was that there was a flaw with the online application, <u>not</u> that he was confused by technical jargon, and he only jumped on that bandwagon when we expressed our own concerns that the options would be confusing for a lay person. Mr Adegburin had already by that stage given evidence he had indeed made the correct application using the 'entirely self-contained flat' option and blamed the failure of that application on an unidentified technical hitch, so we could hardly give his late submission, that he hadn't selected that option because he didn't understand it, any credence.

<u>Conclusion on Liability</u>

(59) In the circumstances, we are satisfied that the offence of having control or management of a licensable HMO without a licence, pursuant to section 72(1) of the Act has been proved by RBG beyond reasonable doubt for the period between 23 May 2018 – 3 November 2020. Mr Adegburin has not convinced us on the balance of probabilities that pursuant to section 72(5) that he had a

reasonable excuse for carrying out that activity without a license (*Palmview Estates Ltd v Thurrock Council* [2021] EWCA Civ 1871).

QUANTUM OF PENALTY

(60) Mr Adegburin did not challenge the level of the penalty imposed, only its imposition at all. However, our task is to 'rehear' the decision of RGB. We had our own concerns over the way that RGB's policy had been applied, as demonstrated by the matrix provided, that we asked Mr Nyunt to address. Naturally, once we made comment on the penalty matrix, Mr Adegburin adopted our challenges.

(61) As one would expect, RBG's policy **[B160 – B190]** sets out the main headings of its matrix as guided by the Ministry of Housing, Communities and Local Government (as it then was) 'Guidance on Civil Penalties under the Housing and Planning Act 2016 Act' ('the Guidance'), most recently updated in April 2018, namely: severity of the offence; culpability and track record of the offender; harm caused to the tenant; punishment of the offender; deterrence of the offender from committing a repeat offence; deterrence of others from committing a similar offence, and removal of any financial benefit the offender may have obtained as a result of committing the offence. Despite the Housing and Planning Act 2016 being the identified statute in issue in the Guidance's title, that is a misnomer, as para 1.4 specifically makes the Guidance applicable to offences under the Act (see 1.4).

(62) This Tribunal cannot go behind RBG's policy (*London Borough Of Waltham Forest V (1) Marshall (2) Ustek* [2020] UKUT 0035(LC)), but has to come to its own decision on the question of the level of the penalty. As Upper Tribunal Judge Cooke said in that case: "*It goes without saying that if a court or tribunal on appeal finds, for example, that there were mitigating or aggravating circumstances of which the original decision-maker was unaware, or of which it took insufficient account, it can substitute its own decision on that basis*."

(63) We must also examine with care the question of totality. In *Sheffield v Hussain* [2020] UKUT 0292, Deputy President Martin Rodger QC stated: "*In any case involving multiple offences which are the subject of individual penalties the total may quickly mount up to a level which appears excessive…*". In that case the Deputy President was considering the same offence in two parts of a building. He reduced the penalties imposed, considering the totality of offending. In *Sutton v Norwich City Council* [2020] UKUT 0090 he stated as follows: "*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*."

(64) We must also ensure that RBG has applied its policy to this offence: "*the starting point and the primary measure of the penalty must be the harm caused by this offence and not by another one which falls to be punished by a different process or under different provisions*" (*AA Homes & Housing Ltd & Anor v London Borough Of Croydon* [2020] UKUT 181 (LC)).

(65) Taken together, those authorities indicate that the previous offence, in this case those safety issues identified in the Improvement Notice with which Mr Adegburin failed to comply and therefore a section 249A penalty was imposed in the sum of £10,000, may be an aggravating feature for the purposes of the current offence, but the final penalty must remain proportionate for the *particular offence giving rise to this* penalty (i.e. being in management or control of an HMO that requires to be licensed, when there is no such licence in place).

(66) RBG states that its matrix is based on the Guidance **[B180], [B182 - 183]**. It has a nine-stage process, which we will consider stage by stage. At each stage the score will be: 1 for 'not applicable'; 5 for 'minor'; 10 for 'moderate'; 15 for 'serious' or 20 for 'severe'. In two of the stages, that score is weighed double automatically (level of harm; and financial benefit). Culpability of the offender is also double-weighted if a landlord has more than 5 properties in their portfolio **[B186 – B188]**.

(67) Ms Weir, who undertook the assessment, did not attend the hearing to give oral evidence. Mr Nyunt spoke to the assessment as he had been 'involved from the beginning'. He sought to justify the assessment, but of course the decisions made on it were not his. Ms Weir's witness statement did not address the choices she made on the matrix.

(68) The first stage is **culpability of the offender**. RBG's Policy states that the following is to be taken into account:

"*For example, was the offence committed deliberately, the length of time the offence continued, whether the offence was repeated, whether the offence was premeditated.*

In making this assessment the Royal Borough considers that renting is a business activity to make a profit and therefore should be treated as any other business and that ignorance of the law is not an excuse. …it expects landlords… with larger portfolios… to have a higher level knowledge and experience and therefore will be considered more culpable in setting the level of the penalty."

(69) In the matrix, there appear to be additional factors added in that do not appear in the policy. These are whether the individual is a first-time offender or has committed multiple offences, the question of premeditation and non-cooperation.

(70) In her assessment, Ms Weir placed Mr Adegburin into the 'serious' category scoring 15 points. The description of this category is "*Multiple offender. Some premeditation. The offence has been ongoing for a significant period of time. A history of case non-cooperation and relevant prior offending including a repeat of this offence*".

(71) In her written justification, Ms Weir wrote as follows:

"*Mr Adegburin has failed to license his s257 HMO, has been combative in his engagement with his tenants and the council. He is a repeat offender and has committed previous offence as he failed to comply with an Improvement Notice served and disregarded all building and planning regulations. During the course of investigating the premises he changed the locks without informing the occupiers, collects his post and lets himself in the premises as*

and when he chooses and failed to carry out necessary repairs as well as regular gas safety checks. He is known to the Financial Conduct Authority and is prohibited from performing any regulated activity. Instead of reverting the house to a single dwelling he placed new tenants in the premises in 2020 even though he was aware there were maintenance issues that required attention. Tenants do not know where he lives although they believe he lives in close proximity to the subject premises.

(72) We asked Mr Nyung to explain how the reference to the Financial Conduct Authority was material to this offence, dating as it appeared to do to 2006 and in not in relation to any landlord activity. Mr Nyung could not explain this. As we said to him, it did not appear to be relevant to the licensing offence at all (though there was a possibility it might later relate to the question of whether Mr Adegburin was a fit and proper person).

(73) We asked Mr Nyung to justify the comment the assessment that Mr Adegburin was a 'multiple offender', there appearing to us to be only one previous offence, the failure to comply with an improvement notice offence, to be taken into account. Mr Nyung stated that failing to comply with building control regulations was also an offence. There was no evidence before us that any action has been no action taken in connection with the enforcement notice issued in January 2020 **[B20 – B39]**, and that the property has now been returned to a 4-bedroomed family home. We questioned therefore whether Mr Adwegburin could be described as an 'offender' in that regard. There was no evidence that there was any previous licensing offence.

(74) We suggested to Mr Nyung whether the Improvement Notice matrix had already taken into account the failures to comply with it, and that the description in this matrix was double-counting. Mr Nyung was unsure.

(75) There was no evidence in the bundle regarding gas certification, nor searches in respect of deposit protection. Mr Adegburin's evidence on the locks was that they had been changed due to the Improvement Notice, and that then Mr Biafra had complained that his son could leave the property of his own accord in the evenings and wanted the old locks back. There was no evidence to contradict this.

(76) On balance, we are satisfied that the score for culpability should be **10**. The circumstances appear to us to be more in line with the description for that assessment: "*Second or third time offender. No premeditation. The offence has been ongoing for a moderate period of time. A case history of non-cooperation and relevant prior offending which may include a repeat of the current offence.*"

(77) The second stage is **seriousness and level of harm**. Again, Ms Weir placed this as serious – score 15 in the matrix. This category is double weighted, and accordingly the total was 30.

(78) The RBG policy says this about level of harm:

The Royal Borough will consider:

I. The legislative level of punishment that can be imposed. All offences carry an unlimited maximum fine….

II. The number of people affected

III. Whether the impact on the victim(s) (actual or potential) is serious, long-term, life altering or potentially fatal.

IV. Whether the victim(s) were vulnerable, e.g. families with children, a vulnerable adult, discrimination… etc.

V. Whether there was harm (actual or potential) caused to the surrounding area or community.

(79) Ms Weir's assessment was as follows:

"*Hazards were identified following an inspection by the Environmental Health Officer. The gas supply had to be disconnected by an engineer as both flats are connected to the same supply and the boiler serving the ground floor flat was condemned by the energy supplier. The boiler and cooker were subsequently replaced, at the expense of the council as the landlord failed to do the necessary work.*"

(80) The description of 'serious' in the matrix is "*severe level health risk(s)/harm(s) identified. Two to four victim households*". The description of 'moderate', accruing a score of 20 (10x2) is "moderate-level health risk(s)/harm(s) identified. Two to four victim *households. Vulnerable occupants potentially exposed.*" No guidance is given in the policy or the matrix as to what 'moderate' or severe' are by reference to the descriptors.

(81) Mr Nyunt stated that the condition of the premises ought to be taken into account. He asked us also to take into account that the way the property had been divided, using only plasterboard on the stairs and leaving a single boiler to serve both flats, meant that there was a substantial fire risk associated with the premises as there would not be sufficient fire-stopping around services. He relied on the matters identified in the Improvement Notice. He suggested that this was a 'standard' level of penalty in the borough – usually penalties were between £10,000 - £15,000 He could not evidence what had been considered in respect of the improvement notice offence – no copy of that matrix had been provided.

(82) We asked Mr Nyunt to point to the assessment of this particular offence in the matrix. He could not. There appeared to us to be no evidence provided about the seriousness and level of harm associated with the particular offence this penalty was being imposed for – the licensing offence - as in *AA Homes.*

(83) We suggested to Mr Nyunt that all of the hazards had, on the balance of probabilities, been taken into account in the penalty imposed for failure to comply with the improvement notice, as that this was double-counting. This appears to be supported by RBG's policy stage eight. Stage eight provides for consideration of the **totality principle**, as says as follows: "*This applies where there is a possibility of imposing more than one Civil Penalty. Where there are multiple offences resulting from the same incident/conduct the Royal Borough will take account of each offence as set out in the previous stages and add up the penalties and apply the aggregate total as one Civil Penalty to reflect the most serious offences found from the offences/conduct (subject to the maximum £30,000)… Where there are multiple offences arising from separate incidents/conduct the Royal Borough will assess each individually as set out in the previous stages and apply separate civil penalties, where it is proportionate to do so.*

(84) We consider that it was open to RBG either to treat the improvement notice offence and licensing offence together (as they represented a course of conduct in this property over the same period), treating one as aggravating the other, in accordance with their policy, or separately, but if treated separately the particulars of harm already taken into consideration for the improvement notice offence ought to have made the particulars in relation to harm on the licensing offence subject to a proportionality review.

(85) No stage eight assessment appeared on the matrix or in Ms Weir's witness statement, or on the Notice of Intention. Ms Smallcombe's representation response letter on 28 September 2021 also does not demonstrate the exercise having been undertaken **[B136 – B139].** The Final Notice does not even identify that this is a stage of the process **[B141]**.

(86) There appeared to us to be no assessment provided about the seriousness and level of harm associated with the particular offence this penalty was being imposed for – the licensing offence. In the circumstances, we have borne in mind that Mr Adegburin has already been penalised with a penalty of £10,000 for the descriptors in Ms Weir's assessment. While they aggravate the licensing offence, it is not proportionate in accordance with RBG's policy to assess them as 'serious' in this case. We determine that the level of harm is therefore 'moderate' in accordance with RGB's matrix, and give it a score of **20** (10x2).

(87) The third stage is concerned with **punishment of the offender**. The policy states that RBG will consider:

I. Whether there was any attempt to cover up the offence, mislead officers, or harass occupants and witnesses.

II. A landlord's … refusal to accept or respond to the Royal Borough's… advice and recommendations regarding their responsibilities.

III. Did the offence relate to any other crime, e.g. illegal eviction, harassment, enviro crimes, modern slavery, prostitution, drug production/distribution etc.

(88) In the matrix this is condensed to the concept of 'infractions' vs crime, perversion of the course of justice, and cooperation.

(89) Again, Ms Weir placed this is the 'serious' category, "*significant other crime, offender made attempts to pervert and hostile to cooperation*". Her justification for this was as follows:

"*The premises was converted without the approval of planning permission or building control. Mr Adegburin has been hostile to the tenants and the council. Up until 18 June 2021, Mr Adegburin failed to provide a forwarding address, correspondence received by our department from him has marked under the subject premises even though he clearly does not live at the address.*"

(90) We asked Mr Nyunt to explain how this fell into the category of 'serious other crime' when looked at through the lens of the policy, and asked for evidence of attempts to pervert and hostility. Mr Nyunt again relied on the want of building control compliance.

(91) There is no evidence in the bundle of hostility to tenants or to RBG. There is no evidence of 'significant other crime' though of course the want of building control may be an aggravating feature. It is clear from Mr Adegburin's general approach to RBG and to this appeal that he is not willing to cooperate (despite his protestations), but we are not satisfied that there was a conscious campaign to pervert simply by communicating from the property address. He readily gave his own address at interview.

(92) We are satisfied that this element falls in the moderate (**10**) category on the scale – "*Minor previous infractions, attempts to pervert, unwilling to cooperate.*"

(93) The fourth stage is **financial benefit.** It is again double-weighted in the policy, which describes the following considerations:

Remove any financial benefit gained in committing the offence(s).

The Royal Borough considers this aspect particularly significant and will make a financial assessment of the costs associated with committing the offence(s). The level of penalty applied will always be higher (subject to the maximum level of £30,000) than the financial benefit gained from committing the offence…

(94) That policy statement seems unworkable in practice, in an exercise that has more than a single stage to be taken into account. Nothing is added by the descriptors for the levels of penalty on the matrix for this category, there being no definition of e.g. 'medium', 'large' or 'maximum'. Indeed, reading the policy, 'maximum' seems to be the only available category and the other descriptors appear meaningless. Nevertheless, Ms Weir put this at 'serious' with a '*large financial impact*'. The resulting score of 15 was double weighted to 30. She gave the following reasons:

"*The property has remained unlicensed for over two years. The subject does not appear to be registered with a government backed deposit protection scheme. Checks indicate that Mr Adegburin is associated with other properties within the borough.*"

(95) That last sentence does not appear to fit within the policy for this stage. There is in any event no evidence provided by RBG in this case for such 'association', save for Mr Adegburin's own home address. There is no evidence of searches undertaken in respect of tenancy deposits, but there is evidence in each of Mr Biafra and Mr Osemwegie's statements that they do not believe their deposits to have been protected. As we have found, Mr Adegburin is guilty of the licensing offence beyond reasonable doubt for the period in question. During that period, there were three families who paid rent (with the change of tenant in the upstairs flat in January 2020). No doubt a significant income was derived from that – Mr Adegburin himself described the failure by Mr Biafra to pay rent over s period (for which he has the benefit of a county court judgment) as depriving him of his 'pension'.

(96) In the circumstances, we uphold the assessment at **30**.

(97) The fifth stage is **deterrence of the offender and others.** In its policy, RBG says it will "consider whether the level of penalty imposed would act as a deterrent to the offender and others…". Ms Weir assessed this as the maximum score of 20 on the matrix, for which the descriptor is "Publicity

inevitable via numerous methods. Massive deterrence to reoffending and to wider landlord community". In her narrative, however, she wrote the descriptor for a score of 15 "Publicity will be sought".

(98) Mr Nyunt stated that inevitably RBG would seek publicity, and that this would be a massive deterrent to the circa 80% of additional HMO landlords still operating unlicensed in the borough. On balance, we are satisfied with Mr Nyunt's description for the reasons he provided. We are also satisfied that is appropriate for deterrence of Mr Adegburin from the commission of any further breaches of the Act (which we consider appropriate, as he now tells us he has sought to license the property as a single dwelling). We therefore uphold the score of **20**.

(99) At the sixth stage the policy requires and assessment of Mr Adegburin's **assets and income**. What is says is that "*in setting the level of penalty, the Royal Borough will take into account the offender's income and assets and adjust accordingly. The guiding presumption will be that the penalty will not be revised downwards simply because an offender has (or claims to have) a low income. The value of the offender's assets, e.g. their rental portfolio, as well as their income, will be considered in determining the appropriate penalty. For example, a landlord with a large portfolio where a low level penalty is initially assessed will have the penalty level adjusted upward to reflect the value of their assets*."

(100) In the matrix there is substantial weight put on the portfolio of the landlord.

(101) In Ms Weir's assessment, she placed Mr Adegburin in the 'moderate' category (score 10). The descriptor is "*small portfolio landlord… (less than five properties) and/or other moderate assets/income*". Ms Weir's assessment at this stage states: "*Mr Adegburin owns one other property in the borough and seems to manage others which appear to be owned by his wife*."

(102) No evidence of properties in Mr Adegburin's wife's name, or his management of them, has been adduced. No evidence is provided to suggest that Ms Weir had any information about Mr Adegburin's other income.

(103) There is no evidence before us of any other property than the one Mr Adegburin lives in, and the property in question. That seems to us to be apt to meet the descriptor "*Low asset value (e.g. single property landlord)*". We assess the score as **5** in this category.

(104) The seventh stage is to take into account any **mitigation**, stated in the policy to be:

I. Steps voluntarily taken to remedy the problem…

II. The offender is fully cooperative with the investigation.

III. Good record of maintaining the property and compliance with legislation, statutory standards prior to the offence(s).

IV. The offender self-reports (e.g. for failing to license), cooperates with the Royal Borough and accepts responsibility.

V. The offender has a mental disorder or disability which is linked to the commission of the offence.

VI. The offender has a serious medical condition(s) requiring urgent, intensive or long-term treatment, which was linked to the commission of the offence.

VII. Age and/or lack of maturity where it affects the Responsibility of the offender.

VIII. Any further factors that the offender wishes to draw to the Royal Borough's attention.

(105) We are satisfied, as Ms Weir was, that there is no mitigation to be taken into account in this case.

(106) We have discussed stage eight above. Stage nine is a review and check by a line manager, with a requirement that the process has been correctly applied and the resulting penalty is reasonable and proportionate. It is unclear whether that happened in this case, and if so by whom it was done.

Conclusion on the level of penalty

(107) Our conclusion on the level of penalty, for the reasons set out above, is that an overall score of 95 should be substituted by applying RBG's policy and matrix.

(108) The resulting penalty, in accordance with the ranges provided **[B188]**, is therefore reduced to **£5,000.**

Name: Judge N Carr **Date:** 20 June 2022

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).