



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

Case reference : **CAM/26UB/HNA/2020/0032**

HMCTS code : **V: CVPREMOTE**

Property : **26 King Edward Road, Waltham Cross, Hertfordshire EN8 7HZ**

Applicant : **Hass-Cicek Properties Ltd**

Representative : **Kemal Has, Director**

Respondent : **Broxbourne Borough Council**

Representative : **Laura Phillips, Counsel**

Type of application : **Appeal against a financial penalty
Section 249A & Schedule 13A to the
Housing Act 2004**

Tribunal members : **Judge David Wyatt
Mrs M Hardman FRICS IRRV (Hons)**

Date of decision : **19 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are those described in paragraph 3 below. We have noted the contents.

Decision

The tribunal hereby varies the final notice dated 29 October 2020 to impose a total financial penalty of £5,000.

Reasons

The appeal

1. On 25 November 2020, the Applicant freehold owner of the Property applied to the London office of the tribunal to appeal against a financial penalty in the total sum of £12,000. This had been imposed by the Respondent local housing authority under section 249A of the Housing Act 2004 (the “**Act**”) by a final notice dated 29 October 2020.

Procedural history

2. In December 2020, the application was forwarded to the Eastern region of the tribunal. The original application form attached various documents, which were forwarded to the Respondent. On 12 January 2021, a procedural judge gave case management directions. These required the Respondent to produce a bundle of the documents they relied upon, including specified items, and the Applicant to produce a bundle of the evidence they relied upon in answer.
3. The Respondent produced a bundle consisting of a witness statement from Mykia Angus BSc (Hons) MCIEH, environmental health officer, with an index and exhibited documents. This did not include various key documents. The Applicant did not produce their bundle when required by the directions. The tribunal office sent a warning about this and on the morning of 21 April 2021 the Applicant sent two PDF bundles (one of 46 pages, including an unsigned document described as a witness statement and one of 56 pages) by e-mail. Most of the contents had been provided with the original application form. On the afternoon of 21 April 2021, the Respondent sent written submissions from Laura Phillips of Counsel and the Respondent’s civil penalty policy dated June 2019. On the morning of 22 April, shortly before the hearing, the Applicant sent written submissions.
4. There was no inspection. The procedural judge had indicated in the directions that they did not consider an inspection was necessary. Neither party requested an inspection and photographs from both parties were produced in the Respondent’s bundle. We are satisfied that an inspection is not necessary to resolve the issues in this case.
5. At the hearing on 22 April 2021, the Applicant was represented by Mr Kemal Has, with Mr Tuncay Cicek (the other Director) in attendance. The Respondent was represented by Miss Phillips. Mr John Rekoumis attended for the Respondent, whose lawyer had written on 19 April 2021 to say that Ms Angus no longer worked for the Respondent.

6. Neither party had produced a signed witness statement from any of the witnesses in attendance. Accordingly, we asked questions of both parties to clarify the documents they had produced and they then made their submissions. We have carefully considered the written evidence of Ms Angus, although this carries less weight because she did not attend to be cross-examined. In accordance with the overriding objective, we allowed both parties to give limited oral evidence to clarify or amplify the contents of their documents.

Background

7. The Applicant owns the freehold title to the Property. It is a three-storey building, probably originally constructed around the 1960s. The ground floor is a shop, which has been leased to third parties. This dispute is about the residential accommodation on the first and second floors.
8. The statement from Ms Angus indicates that after historical concerns the Respondent was contacted in June 2020 by Hertfordshire Police, who referred to four flats (A-D) above the shop. The Respondent noted that Flat D did not have a separate meter, so might not be registered for council tax. Ms Angus visited on 22 June 2020 and spoke to a Cadent engineer, who was concerned about an external gas supply and sealed it off. Ms Angus returned the next day with another council officer and police officers to inspect in more detail. In her statement, she describes various alleged defects which are considered below when examining each of the penalties.
9. On 1 July 2020, Ms Angus wrote to the Applicant. She asserted that the Property was a House in Multiple Occupation as defined by the Act (“**HMO**”), so must comply with the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (the “**Management Regulations**”). She enclosed a schedule listing alleged “*Deficiencies*” and remedial works to be carried out within 28 days.
10. Mr Cicek called Ms Angus on 3 July 2020. She returned his call on 6 July 2020. That afternoon, following their discussion, Mr Cicek sent a building control certificate and referred to various matters, querying whether the Property was an HMO. The Applicant then sent other supporting documents. After further correspondence, Ms Angus wrote on 18 August 2020 to assert that because the planning and building regulation certification was only for three units, not four, the certification produced by the Applicant was “*invalid*”. She repeated this in the subsequent correspondence, without any further explanation. Mr Has replied on 20 August 2020 to confirm that a fire risk assessment had now been carried out (as required by Ms Angus), providing copies of the assessment and further documents relating to work carried out. He said the Applicant had been unable to gain access to the second-floor flat and might not be able to do so until the tenant could be evicted. In further correspondence, he asked for more time.

11. On 3 and 4 September 2020, Ms Angus visited the Property again. She noted various matters (in the communal/external areas and the flats) which “*still*” had not been resolved. On 8 September 2020, the Respondent served a notice of intent to impose a total financial penalty of £18,500. The notice referred to the inspection on 4 September 2020 and alleged that the Property was an HMO. It alleged (in effect) the offence of failure to comply with the Management Regulations and explained the proposed penalty as:

“Regulation 4 £3,000.00;

Regulation 5(1)(a)(b)(2)(3)(4)(5) £2,500.00

*Regulation 7(1) for units 1 to 6, 8 and landlord’s supply
£8,000.00*

Regulation 8(1)(2)(3) £2,000.00

*Items 2, 3 and 4 of the schedules of Defects and Remedial
works £3,000.00”*

12. On 6 October 2020, Mr Cicek wrote to the Respondent to make representations. The following day, Ms Angus responded to his representations, clarifying the proposed penalties.

13. On 20 October 2020, Ms Angus carried out a further inspection. It was said that some of the remedial works had then been carried out, but others remained outstanding. Mr Rekoumis said that, as a result, the penalties were reduced in the final notice. On 29 October 2020, the Respondent served a final notice imposing a total financial penalty of £12,000. The notice explained the penalty as:

“Regulation 5(1)(a)(b)(2)(3)(4)(5) £2,000.00

*Regulation 7(1) for units A, B, C and none for landlord’s
or Unit D supply £5,000.00*

Regulation 8(1)(2)(3) £2,000.00

*Items 2, 3 and 4 of the schedules of Defects and Remedial works
£3,000.00”*

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

The basis for the financial penalties

15. By subsection 249A(1) of the Act: “*The local housing authority may impose a financial penalty on any person if satisfied, beyond reasonable doubt, that the person’s conduct amounts to a relevant housing offence in respect of premises in England.*” By subsection

249A(2), the offences alleged by the Respondent are relevant housing offences. Section 234 gives the appropriate authority power to make regulations for satisfactory management of HMOs of a description specified in those regulations. By subsection 234(3), subject to a reasonable excuse defence in subsection (4), a person commits an offence “*if he fails to comply with*” such a regulation. As noted above, the Respondent relied on the Management Regulations, which impose duties on the manager. It was not disputed that the Applicant was the manager of the premises. Management Regulations 2 to 11 apply to any HMO in England which is an HMO to which section 257 of the Act applies.

16. By subsection 254(1) of the Act, a building or part of a building is an HMO if it meets one of the usual tests set out in section 254, or it is a converted block of flats to which section 257 applies. Section 257 defines a converted block of flats as a building or part of a building which has been converted into, and consists of, self-contained flats. It applies to a converted block of flats if: “*...building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them...*” (and less than two-thirds of the self-contained flats are owner-occupied). Subsection 257(3) defines the “*appropriate building standards*”, by reference to the time the conversion work was carried out.

The Property

17. It was not disputed that the first and second floors of the Property were a building or part of a building, had been converted ultimately into four self-contained flats and are rented out, not owner-occupied. Nor was it disputed that the appropriate building standards were the Building Regulations 2010 (the “**Building Regulations**”). The issue was whether the conversion work did not comply with those Building Regulations and at the relevant time still did not comply with them.
18. On 3 February 2014, the Planning Inspectorate dismissed an appeal by the previous freeholder against refusal of planning consent for change of use from an HMO to “*...4 No. 1 bedroom flats*”. On 28 August 2014, planning consent was granted to the previous freeholder for: “*...conversion of HMO into 2 no. studio apartments and 1 no. one bed flat with rear dormer and windows to front elevation and increase the width of the crossover...*”.
19. On 19 April 2017, a final certificate was issued by Building Control Partnership Ltd pursuant to section 51A of the Building Act 1984 for: “*Conversion of HMO Unit into 3 No. Flats (2 No. Studio Flats & 1 No. One Bedroom Flat) with Loft Conversion with Rear Dormer...*”. It stated that the work had been completed, referred to the Building Regulations and confirmed: “*This certificate is evidence (but not conclusive evidence) that the requirements specified in it have been complied with.*” This corresponds with Building Regulation 17(4).

20. The first-floor flats were described as Flats A and B (or 1 and 2). It was not disputed that there had been no relevant change to these after the conversion described above.
21. The Applicant claimed the single flat on the second floor had been converted by a previous tenant into two separate dwellings, Flats C and D (or 3 and 4). Mr Has said he thought this conversion of the top-floor flat into two flats had been undertaken in 2019. The Respondent disputed this. It said this conversion work must have been in 2017, soon after the Building Regulations certificate had been issued, because an e-mail dated 2 June 2017 from a council tax investigator (Gerry Murray) indicated he had visited the Property and noted that above the shop were: “...flats A B C D ... According to the store owner the building works finished late last year and since December all of the flats have been occupied, which looks like the case. I managed to speak to the local postman who also confirmed the flats are all occupied...”. The Applicant said the second-floor flat would be reinstated “once the tenant ... is evicted.”
22. In their representations on 6 October 2020, the Applicant said: “Please bear in mind that the 3 units which have been converted are all legal. Especially the 2 units at the First-floor level. I have also acknowledged the fact that the second floor flat has been converted into two units and currently in breach of planning...”. Responding to the assertion from Ms Angus that the Building Regulations certificate was invalid because it referred to three flats, not four, the Applicant said: “I reject this as only Second floor flat which is been converted and requires Housing Act 2004 (Section 257).” The Applicant attached a copy of these representations to its appeal application form. At the hearing, Mr Has confirmed the Applicant accepted that section 257 applied to the second-floor flats C and D, and the communal areas, because the relevant conversion work did not comply with the Building Regulations. He disputed that Flats A and B were part of the section 257 HMO, relying on the final Building Regulations certificate produced for the conversion work in respect of them.
23. We referred the parties to the confirmation from the Upper Tribunal in Sutton v Norwich City Council [2020] UKUT 0090 at [92] that: “The absence of a certificate does not relieve the Council of the burden of proving beyond reasonable doubt that the building did not comply with the 2010 Building Regulations...”. The case management directions had specifically required the Respondent to produce in its bundle details of the alleged conversion and how it was said the relevant building work did not comply with the appropriate building standards, with copies of those building standards, but the Respondent had failed to do so. As a result, Miss Phillips was unable to say which (if any) of the Building Regulations had not been complied with, or in which respect(s). She submitted that the entire first and second floors were part of the HMO because the relevant conversion work was not in accordance with the final Building Regulations certificate supplied.

Conclusion

24. We are not satisfied beyond reasonable doubt that Flats A and B are part of the HMO under section 257 of the Act. The final certificate indicates that the building work undertaken in connection with the conversion of these flats complied with the Building Regulations. Moreover, despite the directions, the Respondent failed to provide sufficient particulars (and evidence) of any alleged non-compliance with the Building Regulations in relation to Flats A or B. Accordingly, we proceed on the basis that Flats C and D and the communal areas are part of the section 257 HMO, but Flats A and B are not.

Reasonable excuse

25. Before examining the specific alleged offences, we should note the main matters referred to by the Applicant which might be said to constitute a reasonable excuse for (and so, under section 234(4), a defence to) the alleged offences. If the Respondent proves beyond reasonable doubt that the components of a relevant offence have been made out, it is for the Applicant to prove on the balance of probabilities that it has a reasonable excuse. We bear in mind the general matters referred to by the Applicant (as summarised below) when we consider each of the alleged offences.
26. First, the Applicant said (in effect) that they could not access Flat D to carry out works because the tenant, Mr Nellas, would not co-operate. They said they had endeavoured to seek possession of the Property to enable the necessary works and because he had not paid his rent. On 16 July 2020, solicitors instructed by the Applicant wrote to Mr Nellas at Flat D, alleging that the rent for June and July was outstanding and he had changed the lock without permission. They demanded a spare key. On 7 October 2020, the Applicant instructed a different firm of solicitors to represent them in seeking to recover possession of Flat D. The relevant client care letter notes that Flat D was let to Mr Nellas under an assured shorthold tenancy agreement dated 5 October 2019 at a rent of £900 per month. It explained that as a result of the restrictions put in place to deal with the Coronavirus pandemic the requisite notice requiring possession could not expire until April 2021. It pointed out various legal requirements which had not been complied with in relation to the tenancy and would need to be addressed before such notice could be given. On 8 October 2020, those solicitors wrote to Mr Nellas at Flat D to assert that the locks had been changed without permission, request copies of the keys and require access to implement a “*door slow release*” as a fire safety measure. On 20 October 2020, the Applicant wrote to Mr Nellas again to request access for this work and to “*implement*” child locks on windows. At the hearing, Mr Has accepted that the Applicant had let Flat D to Mr Nellas, knowing that the relevant conversion work had not complied with the Building Regulations. He said that Mr Nellas was still occupying the flat. He said the Applicant had attempted to return Mr Nellas’ deposit, but he had not cashed their cheque. Over the past few months, some of his

rent had been paid by housing benefit and Mr Nellas had paid the rest. Mr Has said Mr Nellas was still not allowing access for works. Both he and Miss Phillips noted that Mr Nellas had been willing to co-operate with Ms Angus; he suggested this was deliberately difficult behaviour on the part of Mr Nellas.

27. Second, the Applicant said the approach taken by Ms Angus had been unhelpful. Mr Cicek characterised her correspondence as producing “*terms and conditions*” rather than explaining in simple terms what needed to be done. Mr Has said Ms Angus had upset the other tenants by coming to inspect their flats without warning, producing a message about this from one of the tenants. He said Ms Angus had not co-operated or communicated effectively and pointed to some delayed responses. Third, Mr Has emphasised that the Applicant had invested in modernising the Property and improving the area. He described a substantial development and the benefit of the local shop on the ground floor. He said the Coronavirus pandemic had made it very difficult to carry out work, with contractors not wanting to come or quoting high prices. He said the Applicant had tried to do as much as possible.

General law in relation to financial penalties

28. By subsection 249A(3) of the Act, only one financial penalty may be imposed on a person in respect of the same conduct. When considering imposition of financial penalties, the Respondent was required by paragraph 12 of Schedule 13A to the Act to have regard to the MCHLG guidance: *Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities*. The key relevant provisions are set out (in different terms, but for the purposes of this appeal to substantially the same effect) in the Respondent’s policy, as summarised below.
29. Miss Phillips referred us to London Borough of Waltham Forest v Marshall and Another [2020] UKUT 0035 (LC), which gives guidance on the respect that the tribunal should afford the local authority’s policy when hearing an appeal from a financial penalty imposed by the authority. Further, in Sutton, the Upper Tribunal confirmed at [245] that: “*If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision.*”
30. The Respondent referred to its “*Civil Penalty Policy June 2019*”. This states that every case will be decided on its own merits, taking into account all the evidence available. It describes in different places the level of the financial penalty and says when determining this the Respondent will consider factors including:

“*The severity of the offence...*”

“The culpability, history and compliance of the offender.”

“The harm caused to the tenant/s and other relevant people.”

“The ‘real term’ economic impact that a civil penalty punishment will have on the offender.”

“The deterrent value that the civil penalty is likely to have on preventing the offender from repeating the offence or failing to meet their legal obligations in future.”

“The deterrent value that the civil penalty is likely to have on other landlords committing similar offences.”

“Removal of any financial benefits gained by the offender having committed the offence.”

31. The policy confirms: *“Where no actual harm has resulted from the offence the Council will consider the relative danger that persons have been exposed to as a result of the offender’s conduct, action or inaction in addition to the likelihood of harm occurring and the gravity of the harm that could have resulted.”* It sets out further guidance in relation to assessment of harm and culpability.
32. The policy provides that where a penalty is *“deemed appropriate”*, the amount of the penalty will be determined using the matrix and principles in appendix 1 to the policy as a starting point. Appendix 1 describes factors for different levels of culpability and harm and then sets out the matrix. It then gives examples of aggravating and mitigating factors which may lead to adjustment of the starting point. It then refers to review of the offender’s financial means, saying the penalty must be proportionate to their financial circumstances. However, it adds: *“The council may conclude that the offender is able to pay any penalty imposed unless the offender has supplied financial information to the contrary. It is for the offender to disclose to the council such data relevant to his/her financial position.”*

“Regulation 5(1)(a)(b)(2)(3)(4)(5) £2,000.00”

33. By Management Regulation 5(1)(a) and (b), the manager must ensure that all means of escape from fire in the HMO are kept free from obstruction and maintained in good order and repair. By Management Regulation 5(2), the manager must ensure that any fire-fighting equipment and fire alarms are maintained in good working order. By Management Regulation 5(3), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the common parts of the HMO that enable them to be clearly visible to all the occupiers. By Management Regulation 5(4), the manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to the design of the HMO, the structural conditions in the HMO and the number of flats or occupiers in the HMO. Management Regulation 5(5) adds specific provisions where roofs/balconies are unsafe or window sills are at or near floor level.

34. Ms Angus described in her witness statement the matters she was concerned about from her inspections on 22 and 23 June 2020, as summarised below. The schedule of remedial work sent by Ms Angus on 1 July 2020 included procuring a fire risk assessment and indicated the types of fire detection and alarm system that would be required. It required construction of a fire resisting cupboard around electricity meters in the communal area and installation of fireproofing partitions/additions, referring to various other matters. The Applicant procured a fire risk assessment dated 6 July 2020, which identified specific work to be carried out. As noted above, the penalty was based on the matters identified by Ms Angus on 4 September 2020. Miss Phillips said these were the defects identified in June 2020 that had not been remedied. Ms Angus had exhibited her inspection notes as MMA/156 and her photographs as MMA/157-183. She said the electricity meter cupboard, "*right behind communal front door and, on the primary means of escape*" was "*still not sufficiently fire proofed*", referring to MMA/162-5. Her statement recorded that the fire doors for each flat were not fitted adequately because the gaps around them were "*still too great*", referring to MMA/168-9.
35. Mr Rekoumis confirmed this penalty was based on: (a) lack of fire proofing for the electricity meter cupboard; (b) lack of fire separation, gaps around fire doors and fire doors not fully self-closing; (c) lack of an adequate fire detection and alarm system, with appropriate smoke and heat detectors of the types referred to in the extracts from the LACORS Guidance produced in Ms Angus's witness statement; (d) lack of fire-fighting equipment; (e) lack of notices for means of escape from fire; and (f) inadequate escape routes through flats and over the external staircase, which was said to be "*rusty*".
36. Mr Has accepted that the work to fire-proof the electricity meter cupboard had not been done at the relevant times. After consulting with a contractor during a break, he told us it had now been done. He said that, similarly, all the work required by the fire risk assessment had now been carried out apart from item 4, which required maintenance of the fire detection system. He said this work would be done within the next two to three weeks. He did not dispute any of the alleged instances of non-compliance except for the allegations relating to escape over the external staircase, pointing out that it was difficult to see what else should be provided.
37. We are not satisfied beyond reasonable doubt that the allegations made by the Respondent about the escape routes and staircase constitute non-compliance with any part of Management Regulation 5. The correspondence and evidence from Ms Angus about this was unclear and Mr Rekoumis could not explain to us precisely what was wrong or what changes should have been made. The other matters relied upon by the Respondent (as summarised in (a) to (e) of paragraph 35 above) were not disputed and on the evidence produced we are satisfied beyond reasonable doubt that in these respects the Applicant did not comply with Management Regulations 5(1), (2), (3) and (4).

38. We are not satisfied that the Applicant had a reasonable excuse for these failures to comply. As to any difficulties with securing access to Flat D, most of these matters related to the communal areas and Flat C, not solely Flat D. Further, even on its own case, the Applicant let Flat D to Mr Nellas in 2019 knowing that the conversion work did not comply with the Building Regulations. The partial difficulties with communication with the Respondent are not sufficient to give the Applicant a reasonable excuse and nor (in these circumstances) do the difficulties with having work carried out during the Coronavirus pandemic; the Applicant did not show that it had done enough within a reasonable time. Even taken together, these matters do not constitute a reasonable excuse, but we take them into account below.

Penalty

39. Mr Rekoumis explained that culpability had been assessed as “*medium*” and harm had been assessed as “*low*”. This would give a starting point of £2,000 under the matrix in the Respondent’s policy. Mr Rekoumis said the Respondent believed this was the appropriate penalty, with no adjustments for aggravating, mitigating or other factors. Mr Has said it would be unfair to impose any penalty and this was not justifiable. He said that during the pandemic some of the flats had not been paying their rent. He questioned a fine of £2,000 “*just because of fire safety issues*”, saying he meant that if there was anything that could be done, he would do it, but the pandemic had not helped and nor would a fine. He said the Applicant had acted as soon as it could and neither the Respondent nor Mr Nellas of Flat D had co-operated.
40. We concur with the Respondent’s assessments of culpability and potential harm, giving the starting point of £2,000 under the policy. In relation to the relevant offences, the matters described by the Applicant are not sufficient as mitigating factors to justify reducing this. We considered the factors described in the policy, including the severity of the offences, punishment of the offender, deterrence and removing any financial benefit from commission of the offence. As to the financial means of the Applicant, it seems likely that the Applicant received or expected to receive approximately £20,000 per year in rent in relation to Flats C and D, since we know that the rent for Flat D was £900 per month and Mr Has told us that the average rent was £800/£850 per month. The Applicant did not produce any actual evidence of rent received or its financial circumstances, beyond the assertion from Mr Cicek that the Applicant/Property represented their “*life savings*” and the assertions from Mr Has that some of the tenants had not paid all the rent and £2,000 was a lot of money to them.
41. In all the circumstances, having weighed all these factors, we consider that it would not be appropriate to adjust the penalty from the starting point. Items (a) to (d), at least, were serious fire safety matters. The Applicant failed to attend to them within a reasonable time from July 2020 and even at the time of the hearing still had not carried out one of

the items required by their own fire risk assessment from July 2020. They are likely to have saved money by not carrying out the work promptly, even if the delay was only caused by waiting for better prices. We would have increased this penalty but for the overlap with the other penalties imposed below. In the circumstances summarised above, it is appropriate to treat the Applicant as having the means to pay the penalty. We confirm the £2,000 penalty/element imposed by the Respondent for these offences.

“Regulation 7(1) for units A, B, C and none for landlord’s or Unit D supply £5,000.00”

42. Miss Phillips explained this was a typographical error and was intended to refer to regulation 7(3). Management Regulation 7(1) refers to gas appliance test certificates, but there are no such appliances in these flats. Miss Phillips pointed out that other correspondence from Ms Angus, including her response on 7 October 2020 replying to the representations made by the Applicant in respect of the notice of intent to impose the penalties, referred correctly to regulation 7(3).
43. Management Regulation 7(3) requires the manager to ensure that every fixed electrical installation is “...inspected and tested at intervals not exceeding five years...” by a qualified person, to obtain a certificate from that person, specifying the results of the test, and to supply that certificate to the local housing authority within seven days of receiving a request in writing for it from that authority. The parties agreed that the Respondent had provided the requisite test certificates for Flats A to C. Most recently, these comprised electrical installation condition reports from 19 August 2020, which gave overall assessments of the installations as “satisfactory”.
44. As Ms Angus pointed out in her correspondence (since 1 July 2020 when she first requested these certificates and again in her e-mail of 7 October 2020), the Applicant had not provided certificates for Flat D or the “landlord’s supply” (i.e. the supply to the communal areas). Mr Has accepted that an electrical installation certificate was required for Flat D and the meter cupboard/communal area, but had not been provided. He said he could get that done, but could not yet obtain access to Flat D.
45. We are satisfied beyond reasonable doubt that the Applicant did not comply with Management Regulation 7(3) in relation to Flat D and the communal supply area in the first-floor entrance lobby. We are not satisfied that the Applicant had a reasonable excuse. It had ready access to the communal area. As Miss Phillips submitted, the certificate for Flat D should have been obtained at the beginning, before the tenant was allowed into occupation. Similarly, and for the same reasons as those given in relation to Management Regulation 5, we are not satisfied that the other matters referred to by the Applicant gave it a reasonable excuse for these failures to comply.

Penalty

46. Mr Rekoumis said culpability had been assessed as “*high*” (in view of the failure even in October 2020 to provide the certificates requested in July 2020) and harm had been assessed as “*medium*” (because, he explained, the Respondent did not know what the harm level was). This would give a starting point of £8,000 under the matrix in the Respondent’s policy. Mr Has said the correspondence from the Respondent had not been clear and again pointed to delays on their part. He said the Applicant had focussed on the need to get a new separate meter for the landlord’s supply for the communal areas (rather than continuing an informal arrangement for one of the tenants to pay a lower rent because the supply for these areas came through their meter), but could only produce a letter from April 2021 indicating that a quotation had been requested for this.
47. We have given weight to the Respondent’s assessments, but we are satisfied that culpability was “*medium*”, not high. The Applicant had failed to provide either of these certificates, but it had promptly provided certificates in relation to the other three flats. The Applicant’s culpability for the failure to comply with Management Regulation 7(3) is comparable to its culpability for the fire safety offences in respect of Management Regulation 5, where the Respondent rightly assessed culpability as “*medium*”. In relation to potential harm, we bear in mind that we do not know whether the rewiring certificate shown to us from 2017 for Flat C related to what are now Flats C and D or only what is now Flat C, or what electrical work was done to split flats C and D. Even allowing for the uncertainties involved with this type of offence, in view of the Respondent’s assessment of potential harm from the known fire safety risks under Management Regulation 5 as “*low*” and the evidence from the Respondent about the actual electrical safety problems it had identified (considered below), we consider that harm is “*low*”. This gives us a starting point of £2,000 under the policy matrix, which we vary to £1,000 in view of the uncertainties and the potential overlap with the actual electrical safety issues identified and penalised separately below.

“Regulation 8(1)(2)(3) £2,000.00”

48. By Management Regulation 8(1), the manager must ensure that all common parts of the HMO are maintained in good and clean decorative repair, maintained in a safe and working condition and kept reasonably clear of obstruction. Management Regulation 8(2) adds specific provisions in relation to handrails, banisters, stair coverings, keeping windows and other means of ventilation in the common parts in good repair, light fittings and (subject to Management Regulation 8(3) in relation to items outside the control of the manager) keeping fixtures, fittings and appliances used in common by two or more households within the HMO maintained in good and safe repair and in clean working order.

49. The Respondent said in its written submissions that this penalty was based on failure to keep the communal hallway in repair. At the hearing, Mr Rekoumis said it was based on: (a) cracks in the communal hallway, which he said could cause hygiene problems or indicate structural problems; (b) residential doors not closing correctly; (c) the communal staircase coverings being “threadbare” and; (d) the “rusty” condition of the external metal staircase. He said culpability had been assessed as “medium” and potential harm as “low”. Mr Has disputed these allegations and said the approach taken here was harsh.
50. On the evidence produced by the Respondent, we are not satisfied beyond reasonable doubt that the Applicant did not comply with Management Regulation 8 in relation to the matters alleged. We considered what was said by Ms Angus in her written evidence, although again that carries less weight because she was not exposed to cross-examination. The photographs show a small number of very minor cracks, which appear to be purely cosmetic and generally out of reach, in the hallway. Mr Rekoumis had not seen the Property and accepted that the problems with the self-closers on the residential doors were properly dealt with as part of the penalty in respect of Management Regulation 5 (as above), not this penalty. We were not pointed to any real evidence of any problem with the internal stair covering. No functional problem was identified in relation to the external stairs, which (based on the photographs) comprise a metal handrail and steps resting on masonry or some other solid structure, with no corrosion showing in the photographs produced to us. Accordingly, we cancel this penalty/element.

***“Items 2, 3 and 4 of the schedules of Defects and Remedial works
£3,000.00”***

51. This refers to the schedules sent by Ms Angus to the Applicant on 1 July 2020. The “defects” schedule alleged:
- “2. Disrepair and/or defective electrical installation; this includes, wiring, lights, sockets and switches across all floors within the curtilage. Regulations 7 and 8.” [5, 7(3), 8(2)(f), 9(2)(b)]*
- “3. Defective windows (above ground level) and doors. Regulations 3, 5, 8 and 9.” [5(4), 8(1) and 9(2)(c)]*
- “4. Defects to the waste/soil pipes serving the dwellings inside 26 King Edward Road... Regulation 6.” [6(1)]*
52. Miss Phillips put this differently/more precisely in her written submissions, referring respectively to the Management Regulations shown in square brackets beside each quotation above.
53. As to item “2”, the electrical installations in Flats C and D, Mr Rekoumis said the Applicant relied on: (a) sockets being too close to appliances, pointing to a socket in Flat C which was near a slow/rice cooker and a socket in Flat D which was too close to a hob (he

explained that sockets must be at least 30cm away); (b) a curtain over a fixed electric convection heater, saying in effect that this heater was in the wrong place or was the wrong type of heater to be placed under a window/curtains, in Flat C; and (c) another electric convection heater, in Flat D, saying this was partially behind a wardrobe and other “*combustible material*”. Miss Phillips also referred us to the list prepared by Ms Angus of the items she had noted as outstanding on 4 September 2020 because, in addition to the above matters, they noted that electric heaters were plugged in rather than wired in. We observed that the photographs indicated this only appeared to have been the case in Flats A and/or B, not Flats C or D (where the heaters seemed to be wired in). The Respondent could not refer us to any evidence of any such issue in Flats C or D. Mr Has confirmed he was not responsible for portable appliances. He queried how close the socket in Flat D was to the heat sources on hob, depending on how it was measured, but also said that he would move the socket. He said that would be simple and if Ms Angus had been clearer about what she wanted he would have been able to remedy this sooner. He said he thought the curtains over the heater in Flat C belonged to the tenant and would have replaced a blind which did not drop below the window the heater was positioned under. He also said he thought the wardrobe in Flat D must have been moved by the tenant.

54. As to item “3”, the windows, Mr Rekoumis said the reason these were defective was they did not have working restrictors. One photograph from June 2020 shows wide-open windows from the inside of a flat. Mr Has said he thought this was one of the first-floor flats, not Flat C or D, but it is clearly on the second floor. Further, an external photograph from 23 June 2020 shows top-floor windows wide open. Ms Angus said in her witness statement that in September 2020 windows “*still*” had defective or damaged window restrictors, referring to MMA/173. Mr Has said the Applicant had now remedied the window restrictors for Flats A to C, and sent evidence of this to the Respondent. He said this had not been possible for Flat D, again because they had been unable to obtain access. As to item “4”, neither Mr Rekoumis nor anyone else could explain what was said to be wrong with the soil pipe. The Respondent appeared in the documents to be saying it was too close to a window, or too low. Mr Cicek said it had not been moved (although of course the conversion may have required a change) and Mr Has said the tenants would have complained if there were any problems, but had not.
55. We are satisfied beyond reasonable doubt that the Applicant did not comply with Management Regulation 5(4) in relation to the socket near the hob in Flat D and the electric heater under the window in Flat C. On the balance of probabilities, we are not satisfied that the curtains over the heater were changed by the tenant. Mr Has accepted that this electric convection heater was directly under the window and his explanation at the hearing was unlikely. Accordingly, we are not satisfied that the Applicant had a reasonable excuse in relation to this heater or the socket near the hob. We are satisfied beyond reasonable

doubt that the Applicant did not comply with Management Regulations 5(4) and 9(2)(c) in relation to the lack of window restrictors. For the same reasons as those given in relation to Management Regulations 5 and 7, we are not satisfied that the matters referred to by the Applicant gave it a reasonable excuse for any of these proven failures to comply.

56. We are not satisfied beyond reasonable doubt that the Applicant failed to comply with any other of the Management Regulations in relation to these or the other matters alleged by the Respondent. The Respondent did not explain how it was said these matters constituted non-compliance with any of the other Management Regulations referred to in the documents. The socket in Flat D appears to be a reasonable distance from the worktop and on the evidence produced the Applicant is not responsible for the portable slow/rice cooker near it. The heaters in Flats C and D appear to be wired into wall installations, not sockets, and the Respondent could not produce evidence to show otherwise. The Respondent could not explain what was said to be wrong with the soil pipe and this is certainly not clear from the documents produced to us.

Penalty

57. Mr Rekoumis explained that culpability had been assessed as “*medium*” and harm had been assessed as “*low*”. Again, this would give a starting point of £2,000 under the matrix in the Respondent’s policy. Neither he nor anyone else could explain why this had been increased to £3,000. Mr Has accepted the Applicant had made mistakes but said they had not known about matters such as the sockets. He said the Applicant wanted to do things correctly and had co-operated as best it could in the circumstances.
58. We concur with the Respondent’s assessments of culpability and potential harm, giving the starting point of £2,000 under the policy. The matters proven in relation to this penalty are not quite as serious as those proven in relation to the main penalty above for non-compliance with Management Regulation 5, but there is some overlap between them and we would have increased that penalty if it were not for this separate penalty. Taking this into account and following the same analysis as described in relation to the main penalty for non-compliance with Management Regulation 5, we vary the penalty/element imposed by the Respondent for these offences to £2,000.

Name: Judge David Wyatt

Date: 19 May 2021

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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