



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

Case Reference	MAN/00BR/HNA/2021/0077
Property	91 Lower Seedley Road Salford M6 5WP
Applicant	Genesis City Ltd
Representative	Mr Mathew Eastman
Respondent	Salford City Council
Representative	Mr Paul Watley
Type of Application	Appeal against a financial penalty: Housing Act 2004 – Schedule 13A, paragraph 10
Tribunal Members	Judge Watkin Tribunal Member Sally Kendall
Date and Venue of Hearing	19 October 2022 - Manchester (remote hearing)
Date of Decision	19 October 2022

DECISION

Decision

The Final Notice which is the subject of this appeal is amended by the substitution of 10,850 pounds as the amount of the financial penalty imposed.

The Appellant must therefore pay a financial penalty of £10,850 to Salford City Council

INTRODUCTION

The appeal

1. On 27 May 2021, **Genesis City Ltd (the Appellant)** appealed to the Tribunal against a financial penalty imposed on it by Salford City Council. The financial penalty related to an alleged housing offence in respect of premises known as 91 Lower Seedley Road Salford M6 5WP (“the Property”), which is described as a residential apartment building.
2. The Respondent imposed a financial penalty of £11,550 for breaches of the Licensing and Management of Houses In Multiple Occupation (Additional Provisions) (England) Regulations 2007 (the “2007 Regulations”) including the following:
 - a. Failing to ensure that all means of escape from fire in the Property are:
 - i. kept free from obstruction;
 - ii. maintained in good order and repair pursuant to regulation 5 (1); and
 - b. Failing to ensure that any firefighting equipment and fire alarms are maintained in good working order pursuant to regulation (2).
3. The Appellant contends that the penalty was excessive as it has been cooperative and promptly dealt with any alleged contraventions.

The Hearing

4. The appeal was heard remotely on 19 October 2022.
5. The Appellant was represented by Mr Eastman, solicitor’s agent, and the Respondent was represented by Mr Paul Whatley of counsel.
6. The hearing comprised of oral submissions from the representatives only. The Appellant’s witnesses were not in attendance and whilst Liz Mann, Housing Standards

Officer, and Karina Daniels, Regulatory Services Officer, for the Respondent were in attendance, the Appellant had no questions to put to the Respondent's witness.

7. In addition, the Tribunal considered extensive documentary evidence provided by the parties in support of their respective cases.
8. The Tribunal did not inspect the Property.

THE LAW

Power to impose financial penalties

Housing Act 2004 - Management Regulations in respect of HMOs.

9. Section 234(1) and (3) of the Housing Act 2004 ("the 2004 Act) makes it an offence to fail to comply with regulations that i) exist to ensuring that there are satisfactory management arrangements in place; and ii) that satisfactory standards of management are observed.
10. Section 234(2) states that those regulations may, in particular—
 - (a) impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it.
 - (b) impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.
11. Section 234(4) states:

In proceedings against a person for an offence under subsection (3) it is a defence that it had a reasonable excuse for not complying with the regulation.
12. Section 249A provides:
 - (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
 - (2) In this section "relevant housing offence" means an offence under—
 - (a) section 30 (failure to comply with improvement notice),
 - (b) section 72 (licensing of HMOs),

- (c) section 95 (licensing of houses under Part 3),
 - (d) section 139(7) (failure to comply with overcrowding notice), or
 - (e) section 234 (management regulations in respect of HMOs).
- (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
- (4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority but must not be more than £30,000.
- (5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—
- (a) the person has been convicted of the offence in respect of that conduct, or
 - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
- (6) Schedule 13A deals with—
- (a) the procedure for imposing financial penalties,
 - (b) appeals against financial penalties,
 - (c) enforcement of financial penalties, and
 - (d) guidance in respect of financial penalties.
- (7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.
- (8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.
- (9) For the purposes of this section a person's conduct includes a failure to act.

13. Schedule 13A provides:

Notice of intent

- 1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority's proposal to do so (a “notice of intent”).

- 2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.
 - (2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—
 - (a) at any time when the conduct is continuing, or
 - (b) within the period of 6 months beginning with the last day on which the conduct occurs.
 - (3) For the purposes of this paragraph a person’s conduct includes a failure to act.
- 3 The notice of intent must set out—
 - (a) the amount of the proposed financial penalty,
 - (b) the reasons for proposing to impose the financial penalty, and
 - © information about the right to make representations under paragraph 4.

Right to make representations

- 4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.
- (2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

- 5 After the end of the period for representations the local housing authority must—
 - (a) decide whether to impose a financial penalty on the person, and
 - (b) if it decides to impose a financial penalty, decide the amount of the penalty.
- 6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.
- 7 The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.
- 8 The final notice must set out—
 - (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) information about how to pay the penalty,

- (d) the period for payment of the penalty,
- (e) information about rights of appeal, and
- (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

- 9 (1) A local housing authority may at any time—
 - (a) withdraw a notice of intent or final notice, or
 - (b) reduce the amount specified in a notice of intent or final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person to whom the notice was given.

Appeals

- 10 (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.

Recovery of financial penalty

- 11 (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

- (2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.
- (3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—
 - (a) signed by the chief finance officer of the local housing authority which imposed the penalty, and
 - (b) states that the amount due has not been received by a date specified in the certificate,
 is conclusive evidence of that fact.
- (4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.
- (5) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

Guidance

12 A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A.

GUIDANCE

14. In April 2018, the Ministry of Housing, Communities and Local Government issued guidance about imposition of financial penalties by housing authorities with a document entitled: ***Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities*** (“the Guidance”).

15. In addition to providing clarification on the law and sets out that the relevant burden of proof is the criminal standard

“...where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.”

16. the Guidance states that local housing authorities are expected to develop and document their own policy on:

- a. when to prosecute and when to issue a financial penalty and should decide which option to pursue on a case-by-case basis.

- b. determining the appropriate level of penalty in a particular case.

“Generally, we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord’s previous record of offending.” (page 13)

17. The Guidance also recommends that local housing authorities should consider the following factors to ensure that financial penalties are set at an appropriate level:

- a. Severity of the offence.
- b. Culpability and track record of the offender.
- c. The harm caused to the tenant.
- d. Punishment of the offender.
- e. Deterrence of the offender from repeating the offence.
- f. Deterrence of others from committing similar offences.
- g. Removal of any financial benefit the offender may have obtained as a result of committing the offence.

18. The Guidance suggests that:

“Local housing authorities should use their existing powers to, as far as possible, make an assessment of a landlord’s assets and any income they receive (not just rental income) when determining an appropriate penalty”

The Respondent’s Policy

19. Salford Council have adopted the policy devised by the Association of Greater Manchester Authorities on Civil Penalties as an alternative to prosecution under the Housing and Planning Act 2016 (“the Policy”). A copy of this policy has been provided at page 31 of the Respondents bundle.

20. The policy sets out the factors to be considered in determining the level of any civil Penalty.

ALLEGED OFFENCES

Licensing And Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

21. The Respondent alleges that the Appellant has breached regulations 5(1) and 5(2) of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (the “2007 Regulations”).

22. Regulation 5 states:

- (1) the manager must ensure that all means of escape from fire in the HMO are:
 - (a) kept free from obstruction
 - (b) maintained in good order and repair
- (2) the manager must ensure that any fire-fighting equipment and fire alarms are maintained in good working order.

Meaning of a house in multiple occupation

23. The meaning of a house in multiple occupation (“HMO”) is set out at sections 254 to 257 of the 2004 Act. The Respondent contends that the Property is a HMO under s.257

24. Section 257 applies where the Property has been converted into self-contained 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 2/3 of the self-contained flats are owner occupied.

Meaning of a “person managing”

25. The meaning of a “person managing” is defined at this section 263(3) of the 2004 Act which reads:

- (3) *In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—*

- (a) *receives (whether directly or through an agent or trustee) rents or other payments from—*
- (i) *in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and*
- (ii) *... ; or*
- (c) *would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the by virtue of which that other person receives the rents or other payments;*

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

(4) ...

(5) *References in this Act to any person involved in the management of a house in multiple occupation or ... include references to the person managing it.*

BACKGROUND

26. The Property is understood to have been converted into three self-contained flats in 1997, each of which is let under a 125-year lease from 25 December 1997.

27. It is understood that Flat 1 and the freehold to the Property are both owned by a gentleman known as Mr Sun Kam.

28. On the 15th of September 2020, an inspection of Flat 1 took place and, as a result, on 22 September 2020, the Respondent:

- a. wrote to the freeholder and stated that an inspection would be carried out on 30 September 2020 and invited the attendance of his representative; and
- b. served notices of intention to exercise power of entry to premises on the owner and the tenants of Flat 1.

29. On 30 September 2020, the Property was inspected by officers of the Respondent. At this time, those officers indicate that they noted the breaches of the 2007 Regulations.

30. During the inspection on 30 September 2020, Liz Mann, housing standards officer, noted:

“a representative attended the inspection to provide access to Flat 1 indicating that his company managed Flat 1 alone. When I asked who controlled the

common parts, he stated he did not know.”

Ms Mann Provides no further information as to the identity of this representative.

31. On 20 November 2020, the Respondent contacted Manny Yip, a representative of the Appellant. She confirmed the Appellant was the managing agent for the Property and forwarded contact details for the company director, Mr Him Shun Yip. Thereafter, details of the defects were sent to the Appellant, as was an invitation to complete a written interview under caution (a “PACE Interview”). The letter accompanying this invitation explained that the interview was an opportunity for the Appellant to provide a reasonable excuse for non-compliance with the regulations.
32. A response to the PACE Interview dated 16 November 2020 was completed by Mr Yip and returned to the Respondent. Mr Yip confirmed that he was a director for the Appellant which took over management of the Property in August 2020. He indicated that the Appellant was responsible for collecting the service charge for the common parts, that they were not aware of any fire safety issues with the building but that the Appellants would be fully responsible for addressing them. He also indicated that should any of the tenants have any issues, they should contact him and that he visits the Property every calendar month.
33. Thereafter, a full case review was conducted to determine the appropriate course of enforcement action and a Notice of Intention to issue a civil penalty was served on 17 March 2021.
34. No formal representations were made to the Notice of Intent. However, the improvements requested were carried out.
35. A further case review is understood to have been carried out and it was determined that a civil penalty was still considered appropriate but with a 30% reduction due to corrective action having been taken in a timely and appropriate manner (prior to service of the final notice), in circumstances where the category of culpability has been assessed as low or medium.
36. A final notice dated 30 April 2021 and signed by Mr Peter Openshaw (the “Final Notice”) was served upon the Appellants. The Final Notice specified breaches of regulation 5(1) and 5 (2) of the 2007 Regulations and a financial penalty notice in the sum of £11,550 was attached to the Final Notice.
37. Within the Final Notice, it was alleged that a Regulatory Services Officer at Salford City Council had inspected Flat 1, 91 Lower Seedley Road for the purposes of issuing an

accommodation certificate and, on doing so, had found “a number of defects with regards to health and safety”. As such, the accommodation certificate was refused. This had prompted a further HHSRS inspection of the whole Property.

38. Thereafter, the notice states that an inspection of the whole building had been carried out on 30 September 2020.

39. The Final Notice states that the following breaches regulation 5(1) management regulations (means of fire escape) were identified at the inspection. These are set out in the wording as used in the Final Notice:

- c. there was evidence of clutter to the escape route on the first-floor landing.
- d. the cellar fire door was damaged, would not close and had missing cold smoke seals, intumescent strips, and overhead closure.
- e. the cellar had no compartmentation whatsoever to the ground floor escape route as it had never been boarded out.
- f. the floorboards and joists along the ground floor escape route which clearly visible from the cellar. Original lathe and plaster were damaged on the stair spandrel

40. The Final Notice states that the following breaches regulation 5 (2) to management regulations (firefighting equipment and fire alarms) were identified at the inspection. These are set out in the wording as used in the Final Notice:

- g. Lights indicating a fault to alarm system in zone 2.

41. The Respondent states that it is satisfied that the Appellant has committed the offence by failing to take reasonable care to ensure the Property was operating “with the correct licence or exemption” and assesses the harm and culpability as medium for the following reasons:

a. medium harm

- i. no actual physical injury caused but the defects expose occupants/visitors to a serious risk of harm
- ii. poorly maintained escape route/cellar fire door in disrepair and not closing/clutter on the escape route/the cellar had no compartmentation to the ground floor - ... never been boarded out and the floorboards and

joists along the ground floor escape route were visible from the cellar.

iii. the Property is an HMO as defined by section 257 of the 2004 Act

iv. the harm level was reduced from high as the Property had the correct alarm system.

b. medium culpability

i. the manager had failed to consult national guidance or take any professional advice regarding the correct specification of the fire safety in the Property despite having the option to commission an independent fire risk assessment if they felt they did not have the understanding or experience.

ii. the manager visits the Property every month. As such cannot have failed to see the defects within the Property

iii. culpability had been reduced from “high” as the manager had only recently taken over.

c. in addition, within the Final Notice, the council accepts that the Appellant has secured all necessary improvements to the Property since receiving the Notice of Intent. As such, a 30% reduction to the penalty as prescribed by the AGMA policy on civil penalties has been applied.

42. The Appellants appealed to this Tribunal by proceedings dated 27 May 2021 but received at the Tribunal on 15 June 2021. A question arose as to whether the appeal had been made in time.

43. In the event that the appeal was made out of time, the Tribunal may only allow it if it is satisfied there was a good reason for not a) making the appeal within time; and b) any delay in applying for permission to appeal out of time.

44. The Appellants representatives were notified of this on 9 December 2021. At this time, they were requested to provide a written explanation within 14 days. As no such written explanation was received, the appeal was struck out by Deputy Regional Judge Holbrook on 12 January 2022.

45. Thereafter, Mr Gooding on behalf of the Appellant contacted the Tribunal explaining that the reason for the delay was a failure to access the link within the 28 day period. As a result, Judge Bennett extended the time for receipt of the Appeal and allowed it to

proceed.

46. The Appellant provided a Statement of Case and exhibits by e-mail dated 29 July 2022 and, on 9 August 2022, the Respondent provided a response. Within this Statement of Case, the Appellant stated, for the first time, that:
- a. the freehold of the Property and the leasehold title of ground floor Flat 1 is owned by Mr Sun Kam.
 - b. that the Appellant was appointed by the landlord to let and manage Flat 1 only.
 - c. that the Appellant's responsibility includes tenant introduction and day-to-day tenancy management of Flat 1 only.
 - d. That the Appellant is a company offering a professional letting/management service but that its services do not extend to block management.
 - e. Letbid Estate Agents Limited are appointed to manage the Property and the communal areas
 - f. That the fire engineer deemed that the fault displayed on the fire alarm panel was as a result of a minor fault which did not impede the function of the system.
47. By statement in response, again undated and unsigned, the Respondent indicated:
- a. Letbid Estate Agents Limited as the Property manager had not been referred to previously.
 - b. that the Respondent can only act on information received directly from the Appellant and, at no point, was it advised that it was pursuing the wrong company
 - c. The Respondent states that as the Respondents investigations determined that the Appellant was in control of the building, it was therefore the Appellants responsibility to ensure compliance with the relevant standards.
 - d. The address stated on the contract provided by the Appellant is the Property.
48. From a review of documents EX1, it is noted that the agreement between Mr Sun Kam is stated to relate to the Property. However, it is noted that the terms of the contract appear to relate to the letting of an individual Property. The wording does not lend itself to Property management in relation to a larger apartment block with communal areas. Thus, document EX1 is not in and of itself entirely clear.

49. The Appellant also provided document EX2. This document indicates that Mr Sun Kam appointed Letbid Estate Agents Limited to provide a block management service from 17 June 2020. The contract for services is stated to be for a term of six months minus one day and, thereafter, will continue if not terminated. Therefore, the initial term will have lasted until 15 December 2020 and will cover the period when the Final Notice was served.
50. Irrespective of the above, at the hearing, the Appellant has confirmed, through Mr Eastman, that it acts as property manager for the Property and has been since August 2020.

GROUNDINGS OF APPEAL

51. The grounds of appeal were not readily identifiable from the documentation provided. The Appeal Notice stated only:

“We believe the penalty to the defendant is excessive on the basis of the defendant has been cooperative and have promptly dealt with any alleged counterventions” (sic)
52. However, whilst it is not mentioned within the appeal notice, within the PACE Interview, the Appellant states:
 - a. “This property is 3 flat, as far as we notices it is NOT HMO”
53. Finally, within the Appellant's Statement of Case, the Appellant contends that it should not be responsible for the breach as it’s *“scope of responsibility ceased outside the confines of the Flat 1 of the address under the agreement, Genesis’ duty as a property manager does not extend to the management of any communal part of the address.”*
54. Thus, prior to the hearing, the Tribunal had understood that there were three issues to be determined:
 - a. whether the Property is an HMO which is subject to the 2007 regulations
 - b. whether the Appellant is responsible as property manager.
 - c. Whether the penalty is excessive

SUBMISSIONS

55. The hearing of this matter took place at 10:00am on 19 October 2022. At the hearing, the

Appellants were represented by Mr Matthew Eastman and the Respondents were represented by Mr Paul Whatley

56. Unfortunately, there was no attendance on behalf of the Appellants witness, Mr Yip. Attempts were being made to join the hearing by a Mr Tou, who is believed to be connected with Mr Yip. However, Mr Tou did not manage to join the hearing.
57. On behalf of the Respondents, both Ms Karina Daniels and Ms Liz Mann were present and available to give evidence. However, no questions were asked of them.
58. At the commencement of the hearing, the chairman sought clarification as to the issues in dispute.
59. Mr Eastman confirmed that his instructions were that there was no challenge to the principle that a financial penalty be imposed. He clarified that the Appellant accepts that the Property is an HMO and that it has been the property manager for the Property since August 2020. It does not dispute that it was the property manager at the time of the alleged offences.
60. The hearing therefore proceeded in relation to the amount of the financial penalty only.
61. Mr Whatley was invited to put forward his submissions first. He outlined the basis upon which the financial penalty had been calculated by the Respondent. He referred to the Policy and indicated that the Respondent had assessed both harm and culpability as medium. As such, he indicated that the appropriate banding level for the financial penalty as set out in Appendix 1 of the Policy, was band 4.
62. As the Policy provides at paragraph 5 that the starting point for the penalty will be the midpoint of the relevant band, he agreed that the appropriate starting point was £16,500. It was noted that a different figure had been given within the documentation provided by the Respondents and the error was accepted by them.
63. From the starting point of £16,500, Mr Whatley indicated that the Respondents had previously allowed a reduction of £1000 due to the Appellant having accepted liability at an early stage. Thus, reducing the Liability to £15,500.
64. Thereafter, the Respondent had allowed a further 30% reduction to take account of the fact that the defect in the Property had been rectified promptly, decreasing the penalty to £10,850 pounds.
65. Mr Eastman then set out the Appellants position. The Appellant is to be commended for

accepting, at the hearing, the importance of compliance with the relevant regulations. However, Mr Eastman took the view that culpability should be assessed as lower than medium.

66. In respect of harm, Mr Eastman placed emphasis on the regulation 5(2) offence and referred to an engineer's report. The engineer's report was difficult to read but Mr Eastman's submission that the engineer reported that the defect did not impede the working of the system was accepted. Mr Eastman also referred to the regulation 8 breaches that have been referred to by the Respondent, but which were not set out in the Final Notice. In relation to these, Mr Eastman indicated that the breaches did not result in harm or a risk of harm.
67. Furthermore, Mr Eastman stressed that no financial benefit has been gained by the Appellants, no one has come to any harm as a result of the breaches and there are no vulnerable people who live within the Property, save for one tenant who lives alone and is vulnerable by virtue only of the fact that they live alone.
68. In relation to culpability, Mr Eastman submitted that the chronology of the matter was important. He indicated that the Appellants had only taken responsibility for the Property in August 2020. Therefore, it was not as if the Appellant had failed to deal with the defects for a significant period. Furthermore, he indicated that the Appellant did deal with the defect promptly upon being informed of them by the local authority.
69. Mr Eastman's primary submission was that the Policy was no more than a guideline from which the Tribunal could exercise its discretion to depart. Insofar as the Tribunal did not exercise that discretion, it was Mr Eastman's submission that the appropriate penalty should fall within band 3 and, therefore, that the starting point would be £10,500 pounds. Mr Eastman then contended that there should be 2 reductions as a result of mitigating due to i) the Appellant had only become involved in August 2020 (a maximum of some six weeks prior to the first inspection) and ii) that the Appellant had accepted liability promptly. These two reductions take the penalty down to £8,500.
70. Thereafter, allocating the additional deduction as a result of early compliance with the works, this would take the penalty, on the Appellant's case to £5,950.
71. The Tribunal questioned the intention behind the statement of case recently filed by the Appellant within which the Appellants seeks to renege from its previous admission. Mr Eastman explained that the Appellant no longer pursues the arguments set out within that statement of case, he described it as no more than a rant that should be disregarded.

72. In response, Mr Whatley confirmed that the only offences being considered were those under regulation 5(1) and 5(2) and explained that these relate to fire risks and, as a potential risk is treated the same as where harm has actually been suffered, the defects identified pose a serious risk of harm. He confirmed that the serious risk of harm arises from the breaches of regulation 5(1) alone and, therefore, that he did not consider that the assessment would change even if the offence in 5(2) could be shown to be a lesser offence due to the defect in the alarm system not posing a risk.
73. In relation to culpability, Mr Whatley indicated that there are categories of property manager and that where the property manager is a professional letting agency in receipt of fees for managing the property, the Tribunal should adopt a stricter approach. Indeed, he referred to a local authority that treats being a professional manager as an aggravating factor. Whilst that does not apply in the present case, he indicated that it was a matter which should be considered in considering the level of culpability.
74. Mr Whatley contended that a professional letting agent taking over the management of a business should inspect the property prior to taking on responsibility for it, he should have questioned the position and should ensure that it is properly managed from the outset. Mr Whatley strongly emphasised that it is not acceptable for a property manager to take no action for a period of six weeks in respect of defects that amounted to breaches of the regulations. He stressed that whilst he had considered the Appellant's recent Statement of Case and the documents attached thereto (which he noted appeared to have been signed by the same person but with different signatures) to be, in his words "dicey", as the Appellant is a professional property manager, who became the property manager in August 2020 or earlier, the property manager remains culpable, irrespective of the content of those documents.

DECISION

75. In light of the concessions by the Appellant at the commencement of the hearing, to the effect that the Appellant was challenging only the quantity of the financial penalty and not the principle, the only matter for the Tribunal to consider has been the amount of that financial penalty
76. However, the Tribunal did invite the parties to confirm their positions in relation to the two specific matters that had appeared to be in dispute from the documents contained within the hearing bundle. These were:
- a. Whether the Property is a house in multiple occupation; and

- b. Whether the Appellant was at the person managing the Property at the time the breaches were identified for the purposes

77. Mr Eastman confirmed that neither of those points is now being pursued.

78. Mr Whatley indicated that Respondent considers that the Property is a “house in multiple occupation” as a result of it having been converted into a block of flats without compliance with appropriate building standards and within which less than 2/3 of the self-contained flats are owner occupied pursuant to section 257.

79. The Tribunal raised a concern in relation to the question of whether the Appellant was in fact the property manager due to the content of the contracts with the freeholder produced to the court as exhibits EX1 and EX2 which appear to indicate that, as at June 2020, the Appellant was not the property manager. Mr Eastman clarified that there has been a large amount of confusion between the two companies that have been involved in the management but that the question has now been clarified and the Appellant is satisfied that it was at the property manager from August 2020 onwards.

80. In light of the above, the Tribunal is satisfied that the potential defences that could have been put forward by the Appellants have been investigated by the Tribunal in so far as is appropriate by making enquiry at the hearing. In light of those matters not being pursued before the Tribunal and the Appellants accepting, in principle, that they are liable for the breaches, the Tribunal is satisfied, beyond reasonable doubt, that the Appellants conduct amounts to an offence under section 234(3) of the 2004 Act and the Tribunal is required only to consider the amount of the financial penalty imposed.

81. The Tribunal has considered all documents within the hearing bundle and heard detailed submissions in relation to the quantification of the financial penalty from Mr Eastman on behalf of the Appellant and Mr Whatley on behalf of the Respondent.

82. On balance, the Tribunal concludes:

- a. having had regard to the Respondent's Policy, that the policy is reasonable, well set out and fit for purpose. On this basis, whilst the Tribunal is aware that the Policy is no more than a guideline from which it may depart, the Tribunal does not consider it appropriate for it to do so.
- b. the risk of harm arising from the breaches of regulation 5(1) in themselves amount to a medium risk. The reason for this conclusion is that the regulation relates to fire safety. Where proper measures are not put in place to protect the occupiers and visitors from a risk from fire, a serious risk of harm is posed.

Therefore, there is no need for the Tribunal to have any regard to the breach of regulation 5(2) or the breaches of regulation 8 which were dealt with separately to the imposition of a financial penalty.

- c. due to the Appellant being a professional property manager who has been responsible for the Property for, on its own case, a period of six weeks, the Tribunal concludes that it should have carried out an early inspection of the Property upon, if not prior to, taking on the property management contract.
- d. whilst the Appellant acted promptly in carrying out the works upon having been advised of them by the Respondent, the Tribunal considered that, if it were not for the involvement of the Respondent, the breaches may not have been identified and remedied. For this reason, the Tribunal assesses the level of culpability as medium.
- e. In light of the above, the correct banding level is band 4. Therefore, the starting point for the financial penalty is £16,500.
- f. The question of whether a deduction should be allowed due to the mitigating factor of the Appellant's early acceptance of liability in this matter, has been considered in depth by the Tribunal. There is a very real concern that whilst liability may have been accepted at an early stage, the Appellant did then appear to have resiled from that position. Whilst that change in position caused inconvenience to the Tribunal and, no doubt, to the Respondent, the Appellant did then, prior to the hearing, revert to its original position without putting the Respondents and the Tribunal to a full trial on all issues. Therefore, on balance, the Tribunal feels it appropriate, on this occasion, for this Appellant to be allowed to retain the benefits it received for its early acceptance of liability And the Tribunal will allow be further decrease of £1000 pounds to remain, reducing the financial penalty to 15,500 pounds.
- g. Finally, there is no dispute with regard to the Appellant being allowed a further reduction of 30% as a result of early compliance in carrying out the works upon being notified of them. Therefore, this further deduction is allowed taking the overall financial penalty to £10,850 pounds

SUMMARY OF OUTCOME

83. For the reasons explained above, the decision of the Respondent to impose a financial penalty is upheld. The Tribunal is satisfied that the Respondent's policy is

an appropriate policy for the valuation of the financial penalty. However, upon review of the application of the policy, it has been noted that the policy was not entirely correctly applied. This was accepted by the Respondent and, accordingly, the amount of the financial penalty is hereby adjusted within the Final Notice to £10,850.

APPEAL

84. If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin (Chairman)

Tribunal Member Sally Kendall