FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AR/HNA/2020/0001 & 0004**
HMCTS code (paper, video, audio)	:	**V: VIDEO**
Property	:	**7 Hillrise Road, Romford RM5 3BG**
Applicant	:	**Carmen Florentina Bouaru**
Representative	:	**Forest & Co Solicitors**
Respondent	:	**London Borough of Havering**
Type of application	:	**Appeal against a financial penalty -** Section 249A & Schedule 13A to the Housing Act 2004
Tribunal members	:	**Judge Nicol** **Mr T Sennett FCIEH**
Date of decision	:	**3rd March 2021**

DECISION

The Tribunal determines that the Applicant shall pay penalties of:

- **£2,500 for managing an HMO that should have been licensed but was not, contrary to section 72(1) of the Housing Act 2004; and**
- **£5,000 for breaches of reg.4 of the Management of Houses in Multiple Occupation (England) Regulations 2006, contrary to section 234(3) of the Act.**

Relevant legislation is set out in the Appendix to this decision.

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Reasons

1. The subject property is a 4-bedroom semi-detached house. The Applicant and the joint freehold owner, Ms Zinaida Mereacre, let the property to tenants. The Respondent inspected the property on 9th May 2019 and allegedly found it to be an unlicensed HMO, subject to the Respondent's Additional Licensing Scheme. They decided to impose financial penalties on each of the Applicant and Ms Mereacre:

   - £2,500 for managing an HMO that should have been licensed but was not, contrary to section 72(1) of the Housing Act 2004; and
   - £5,000 for breaches of reg.4 of the Management of Houses in Multiple Occupation (England) Regulations 2006, contrary to section 234(3) of the Act.

2. The final penalty notice was served on 15th October 2019, although the Applicant says she only received it on 6th December 2019. The Applicant appealed to this Tribunal on 23rd December 2019. There has been substantial delay in hearing the appeal due to the restrictions imposed on the Tribunal's working by the COVID-19 pandemic.

3. The Applicant's appeal was heard by the Tribunal by video conference on 26th February 2021. In accordance with the Tribunal's directions issued on 30th January 2020, both parties produced a bundle of documents. The Respondent also submitted a Respondent's Reply, drafted by counsel.

4. The attendees at the hearing on 26th February 2021 were:

   For the Applicant:

   - Mr Clyde Darrell, counsel

   For the Respondent:

   - Mr Nick Ham, counsel
   - Ms Wendy Laybourn, witness and Senior Public Protection Officer with the Respondent.

5. The Tribunal heard evidence from Ms Laybourn and Mr Darrell cross-examined her. The Applicant did not attend and no other witness was presented in support of her case, although the Applicant's bundle did include statements from both her and Mrs Mereacre. Mr Darrell did not proffer an explanation.

6. On 27th March 2015 the Applicant became the joint freehold owner of the subject property with Ms Mereacre. They immediately rented it out to Mr Anton Oprea and his family until 2018. From 1st August 2018 they let the property to Mr Andrei Balan, who occupied the property with his wife and their two children, at a rent of £2,000 per month. It is worth noting for the purposes of these proceedings that the tenancy agreement contained no prohibition or restriction on sub-letting.

7. On 30th March 2019 the Respondent received a complaint about the property being an unlicensed HMO and the occupiers smoking cannabis in the rear garden, causing a nuisance. Having checked that there was no HMO licence for the property, the Respondent wrote to the Applicant on 2nd April 2019 to warn her of possible licensing offences. When there was no reply, the Respondent wrote again on 16th April 2019. Unfortunately, it appears the Applicant did not receive these letters as she moved home the same month and had no arrangements for picking up or forwarding post addressed to her at her old home or at the subject property. Later correspondence was correctly addressed to the Applicant and she must have received it because she responded to it.

8. At just before 8am on 9th May 2019 Ms Laybourn inspected the property on behalf of the Respondent, accompanied by Ms Marion Marston, a licensing officer, and police officers. The person who answered came from the side entrance because the front entrance was blocked and they said they did not have a key to the front door. Ms Laybourn found a number of occupants and got two of them to sign pro forma witness statements: Ms Mihaela Rusu, the partner of the tenant Mr Balan, and Ms Daiana Balan, Mr Balan's sister.

9. Ms Balan said that 11 adults and one child lived in the property but neither she nor Ms Rusu knew all their names. Ms Laybourn could see that there were multiple beds in the three first floor bedrooms and in the two ground floor living rooms. The entrance door to each room had a lock.

10. Ms Laybourn saw the blockage to the front entrance door. She noted that there were two battery-powered smoke alarms in the hall and top floor landing, no heat detector in the kitchen, no door between the kitchen and the hall and none of the internal doors were substantial enough for fire safety purposes. With the front door blocked and locked, the only escape route in the event of fire was through the room with the highest fire risk, namely the kitchen. She concluded that the property was overcrowded and had inadequate fire safety provision so that there was a breach of reg.4 of the Management of Houses in Multiple Occupation (England) Regulations 2006.

11. Following the inspection, Ms Laybourn, in consultation with colleagues, decided that the most appropriate action was to issue financial penalty notices to both the Applicant and Ms Mereacre. She applied a matrix which assigned points arising from 4 factors:

    (a) Deterrence and Prevention. Ms Laybourn took into account the Applicant's failure to respond to the two warning letters, albeit she now accepts they were not received, but decided there was actually a low risk of repeat offending. Out of the potential scores of 1, 5, 10, 15 or 20, she assigned 5 to this element.

    (b) Removal of Financial Incentive. After the inspection, Ms Laybourn consulted the National Anti-Fraud Network and identified that the Applicant had 5 active mortgage accounts. She assumed that one related

to the Applicant's own home and so assumed that there was a portfolio of 4 properties (the Applicant did not challenge these assumptions). She also took into account that the rent was £2,000 per month, above the market rate which she understood to be no more than £1,500 per month and which the Applicant's own valuer had put in the range of £1,600-£1,800 per month. She concluded that the fact that the rent exceeded the market rent so significantly suggested that the Applicant and Ms Mereacre had knowingly created conditions whereby the tenants would be encouraged to sub-let at least part of the property in order to subsidise their rental liability. She scored this element at 15.

(c) Offence History. Ms Laybourn noted that the Applicant had no past offences on her record. She scored this element at 1.

(d) Harm to Tenants. Ms Laybourn noted that the Government guidance placed the highest importance on this factor so that any point score had to be doubled. She found the property to be poorly managed, particularly in relation to the inadequate fire precautions. Apart from Mr Balan, none of the occupants had tenancy agreements. The poor state of the garden, including accumulations of rubbish, suggested a lack of any regular inspection regime which would have enabled such problems to be identified and addressed. She scored this element at 5, doubled to 10, for the licensing offence and 10, doubled to 20, for the breach of the management regulations.

12. The failure to licence attracted a total of 31 points on the Respondent's matrix, the bottom of the range for a fine of £2,500, and the breach of management regulations attracted a total of 41 points, at the bottom of the range for a fine of £5,000.

13. On 4th July 2019 Ms Laybourn sent Notices of Intention to Issue a Financial Penalty to both the Applicant and Ms Mereacre. The Applicant took up the invitation contained in the covering letter to make representations on behalf of both herself and Ms Mereacre. Her first (undated) letter was received on 18th July 2019. Ms Laybourn responded on 12th August 2019, extending the time to answer her questions and make further representations. The Applicant responded again on 16th August 2019. Ms Laybourn replied on 28th August 2019 and chased a response on 19th September 2019. The Applicant replied again on 24th September 2019.

14. In her letters, the Applicant made the following points:

(a) The property was let to a single family.

(b) She visited the property on 11th March 2019 with a valuer and on 8th April 2019 in order to have an EPC compiled. On each visit, she only saw the tenant and his family and the front entrance was not blocked.

(c) The valuer also did not identify any points of concern in his later report.

(d) She did not receive the warning letters in April 2019.

(e) A section 21 notice had been served. She later evicted some people from the property with the help of the police but without taking court proceedings. (Ms Laybourn pointed out in response that it would appear that this eviction was unlawful.)

(f) She tried to make contact with the tenant but had no reply.

(g) She had tried her best to maintain the property and it was "very hard to control people".

(h) A large quantity of mail had been retrieved from the property in many different names.

(i) In July 2019 the freehold of the property was transferred to Cornelius Asset Management Ltd ("Cornelius"), a company of which the Applicant, Ms Mereacre and two other people (from their names possibly their husbands) are the directors.

15. Ms Laybourn nevertheless remained of the view that the Applicant and Ms Mereacre had not properly managed the property and had failed to licence the property despite being informed of its nature as an HMO. On 15th October 2019 she sent Final Penalty Notices to the Applicant at both her home at 5 Elm Grove, from which she had responded before, and her business address, which remains to this day the address for her company, Cornelius.

16. By email dated 14th November 2019, the Applicant and Mrs Mereacre, apparently writing for Cornelius, queried why there were two lots of penalties, rather than one. They said they had paid Mrs Mereacre's penalties on the understanding that that would be the end of it. They asked if this could be checked for error.

17. Ms Laybourn emailed back to confirm that both the Applicant and Ms Laybourn were subject to their own penalties. By letter dated 2nd December 2019 the Applicant's solicitors claimed that she had not received the Penalty Notices addressed to her and so had not had the opportunity to make representations on them.

18. Ms Laybourn responded to point out that the Applicant had made representations in response to the Notices of Intention but nevertheless provided further copies of the Final Penalty Notices. She also said the Respondents would not object to a late appeal to the Tribunal.

19. The Applicant asserted at paragraph 11 of her statement,

> It is however a fact that the property did not and does not classify as a HMO, the property was never rented to more than 1 household by us and from what I understand from the current owners, it continues to be occupied by one family only.

20. It doesn't advance the Applicant's credibility to refer to "the current owners" as if they are independent of her, not least as she is not only a

director but actually purports to write on behalf of Cornelius. In any event, the nature of the original tenancy agreement is only one part of the factual circumstances to be considered. The issue is whether the property was in fact a house in multiple occupation.

21. The Tribunal is satisfied beyond any reasonable doubt that the property was an HMO at the following times:

(a) When the valuer inspected on 11th March 2019. He noted in paragraph 2.17 of his report dated 20th March 2019 that 2 of the 3 ground floor reception rooms were in use as bedrooms (in addition to the 3 bedrooms on the first floor and one in the converted loft space) and provided a photo of a "Typical Bedroom" which contained both a double bed and a single bed. None of this was consistent with use by a single family consisting of two adults and two children. The Applicant stated in her letter dated 16th August 2019 that she was present at the inspection and that having a bed in every room was normal. She also said she didn't see more than one bed in any bedroom but her valuer's photo contradicts her.

(b) When Ms Laybourn inspected on 9th May 2019. The Tribunal accepts that Ms Laybourn is a credible witness, perhaps even too willing to concede points contrary to her case, and that her observations were accurate. The evidence taken from the occupants, Ms Rusu and Ms Balan, is hearsay and the Tribunal has weighted it accordingly. However, the Tribunal agrees with Ms Laybourn that it is telling that they did not know the names of the other occupants. A property is not an HMO if all the occupants are related but the Tribunal is satisfied that not all the occupants here were.

(c) Continuing through July 2019. The Applicant's correspondence does not dispute that the property had become an HMO, even if that were not the intention of the original letting. Rather, what she says is only consistent with the property continuing to be an HMO. She refers to finding occupants who shouldn't have been there, including unlawfully evicting at least one with the help of the police, and a large volume of mail to a variety of different people.

22. Mr Darrell asserted that the Applicant was ignorant of the existence of the circumstances creating an HMO. As already mentioned, the Tribunal does not accept this. She claimed not to be responsible for the management of the property and Mrs Mereacre's statement claimed that she herself was responsible, not the Applicant. However, her aforementioned correspondence with the Respondent gives a completely different picture; it was also her signature on both Mr Balan's tenancy agreement and the section 21 notice referred to below. Moreover, the Applicant knew about the HMO at the latest when served with the Notices of Intention to which she responded in July 2019 but the property continued to be an HMO for some time after that.

23. In any event, ignorance of the existence of an HMO is not, by or of itself, a defence to a charge that an offence has been committed under section 72(1). If it were, landlords would be able to avoid liability by using arms-

length arrangements and deliberately avoiding any knowledge of the situation. Even if the valuer's observations did not by themselves definitively establish the existence of an HMO, they would have rung alarm bells with any conscientious landlord who would have investigated the situation further. The Tribunal agrees with Ms Laybourn that the evidence suggests there was no system of regular inspection which could have identified any issues.

24. Mr Darrell asserted that the Applicant had a reasonable excuse for permitting the property to continue as an HMO. If correct, this would have constituted a defence under sections 72(5) and 234(4) of the Housing Act 2004, although the burden of proof is on the Applicant (*IR Management Ltd v Salford CC* [2020] UKUT 81 (LC)). He said that the Applicant co-operated with the Respondent and took steps to end the multiple occupation by evicting the additional occupants.

25. In the Tribunal's opinion, Mr Darrell had a strange definition of "co-operation". The Applicant engaged with the Respondent in correspondence, which is certainly better than ignoring them, but only in order to deny any responsibility and to refute the facts contrary to the evidence.

26. Further, the Tribunal has no doubt that Ms Laybourn was correct to identify that the eviction described by the Applicant in her letters was unlawful. So long as Mr Balan's tenancy subsisted, as it would until a court order was lawfully enforced under the Housing Act 1988 or it was clearly surrendered, the Applicant should have known as a professional landlord that she had no power to remove any occupant. The Applicant did purport to serve a notice dated 1st June 2019 under section 21 of the Housing Act 1988 but it expired on 30th July 2019, within the requisite 2-month period, and was never followed by court proceedings. As a matter of principle, unlawful actions cannot be the basis of a reasonable excuse defence.

27. If the Applicant had genuinely wanted to co-operate and to remedy the situation, she would have applied for a licence and/or asked the Respondent for time to evict the occupants lawfully. The Respondent has the power to issue a Temporary Exemption Notice to give a landlord such time. Mr Darrell suggested that the Applicant may have been ignorant of such possibilities but she always had the option of taking legal advice, which she did later for the purposes of this appeal, or at the very least could have consulted the Respondent's own guidance freely and publicly available on their website.

28. Both the Applicant and Mrs Mereacre objected to their both receiving penalties. The Tribunal itself queried whether this situation was subject to the principle that the totality of the penalty sums should not exceed what is appropriate for that offence (*Sutton v Norwich CC* [2021] EWCA Civ 20). However, on hearing argument from both counsel, the Tribunal is satisfied that the Applicant and Mrs Mereacre each committed their

own separate offences under the legislation and penalising each of them does not offend against the totality principle.

29. For these reasons, the Tribunal is satisfied so that it is sure that the Applicant committed the offence of managing or controlling an unlicensed HMO under section 72(1) of the Housing Act 2004.

30. The Tribunal also accepts Ms Laybourn's observations of the deficiencies of the property in relation to fire safety. The Applicant claims that the front door was not blocked when she visited but, given her blindness to the signs of multiple occupation, the Tribunal has good reason to doubt her evidence. Even without the blockage to the front door, Ms Laybourn described other deficiencies (see paragraph 10 above). The Tribunal is satisfied so that it is sure that the Applicant was in breach of reg.4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 so that she committed an offence under section 234(3) of the Housing Act 2004.

31. This leaves the question of the quantum of the financial penalty to be imposed on the Applicant for each offence. Although the appeal is a rehearing and the Tribunal needs to reach its own conclusion on this issue, the Tribunal is entitled to have regard to the Respondent's views (*Clark v Manchester CC* [2015] UKUT 0129 (LC)) and must consider the case against the background of the policy which the Respondent has adopted to guide its decisions (*R (Westminster CC) v Middlesex Crown Court* [2002] EWHC 1104 (Admin)).

32. The Respondent's policy is in line with Government guidance and provides a careful balance, within the objectives of the legislation, between the various elements which make up the offences and their context. Considering all the circumstances of this case and the degree of the Applicant's culpability, the Tribunal is satisfied that the amount of each penalty determined by the Respondent was appropriate. Therefore, the Tribunal confirms that the Applicant is subject to the penalties referred to in paragraph 1 above.

Name: Judge Nicol **Date:** 3rd March 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).

Appendix of relevant legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

(1) 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.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

234 Management regulations in respect of HMOs

(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations–

(a) there are in place satisfactory management arrangements; and

(b) satisfactory standards of management are observed.

(2) The 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.

(3) A person commits an offence if he fails to comply with a regulation under this section.

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

249A Financial penalties for certain housing offences in England

(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.

263 Meaning of "person having control" and "person managing" etc.

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

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

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

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

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

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

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

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

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

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

SCHEDULE 13A
FINANCIAL PENALTIES UNDER SECTION 249A

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.

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.

Management of Houses in Multiple Occupation (England) Regulations 2006

4.— Duty of manager to take safety measures

(1) The manager must ensure that all means of escape from fire in the HMO are—

(a) kept free from obstruction; and
(b) maintained in good order and repair.

(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.

(3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.

(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—

(a) the design of the HMO;
(b) the structural conditions in the HMO; and
(c) the number of occupiers in the HMO.

(5) In performing the duty imposed by paragraph (4) the manager must in particular—

(a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and
(b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.

(6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.