FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HNA/2018/0010**
Property	**:**	**17B Kings Gardens, London NW6 4PU**
Applicant	**:**	**thecityrooms.com Limited**
Representative	**:**	**Ms Lisa Weston, counsel and Mr Xingjian Zhou, director**
Respondent	**:**	**London Borough of Camden**
Representative	**:**	**Mr Edward Sarkis, solicitor and Ms Silvia Suarez, environmental health officer**
Type of application	**:**	**Appeal against a financial penalty – Section 249A & Schedule 13A to the Housing Act 2004**
Tribunal member	**:**	**Judge Timothy Powell Mr Anthony Harris LLM FRICS FCIArb**
Date and venue of hearing	**:**	**12 June 2017 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**6 July 2018**

DECISION

Note: the numbers in square brackets referred to the pages in respect of the hearing bundles, so that [A1] is page 1 of the applicant's bundle and [R1] is page 1 of the respondent's bundle.

Decisions

(1) We dismiss the appeal by thecityrooms.com Limited against the financial penalty notice imposed on 21 February 2018 in respect of the

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company's control or management of a House in Multiple Occupation without a licence, on 17 October 2017;

(2) We therefore confirm the financial penalty imposed in the sum of £4,000, which should be paid within 28 days of the date of this decision.

Appeal

1. By an application received on 22 March 2018, the applicant company thecityrooms.com Limited ("Cityrooms") appealed under section 249A of the Housing Act 2004 against a financial penalty imposed by the respondent local housing authority, the London Brough of Camden ("Camden"). The original financial penalty notice was dated 20 February 2018, but this was withdrawn the following day due to an error in the content of the notice. A fresh notice was served on the 21 February 2018, imposing a financial penalty of £4,000.

2. The alleged offence was that Cityrooms, on or about 17 October 2017, being a person having control of or managing a House in Multiple Occupation ("HMO") at 17B Kings Gardens, London NW6 4PU ("the Property") did commit an offence in that the said HMO which was required to be licensed was not licensed, contrary to section 72(1) and 61(1) of the Housing Act 2004 [R303].

Hearing and subsequent procedural history

3. We heard the appeal at an oral hearing on 12 June 2018. Cityrooms was represented by Ms Lisa Weston of counsel and a director of the company, Mr Xingjian Zhou. Camden was represented by Mr Edward Sarkis, solicitor, and Ms Silvia Suarez an environmental health officer in Camden's Private Sector Housing Team.

4. The applicant's bundle in support of the appeal contained a witness statement by Mr Xingjian Zhou, dated 14 May 2018, a copy of the tenancy agreement made by the head leaseholder of the Property, TKE Limited ("TKE"), and Cityrooms, dated 8 May 2017, an addendum to that agreement, various pieces of correspondence between Cityrooms and Camden, and other relevant documents.

5. Camden's bundle contained a witness statement from Silvia Suarez, giving the council's reasons for opposing the appeal, and numerous exhibits relating to the Property, including statements and agreements of short-term subtenants in the Property, photographs, correspondence with Cityrooms and TKE, and documents relating to the imposition of the financial penalty.

6. There was a delay to the start of the hearing as Ms Weston of counsel had attended on behalf of the applicant but was without papers. Having spoken with the parties, the tribunal agreed to postpone the start of the hearing by nearly an hour. Ms Weston indicated that she would be applying for an adjournment of the hearing, in due course, in any event. She also emphasised a central plank of the appeal, namely that Cityrooms was not "in control of or managing" the Property and could not be so, because Camden's HMO licensing manager maintained in correspondence that Cityrooms was only "an interested party" but could not be nominated as the proposed HMO licence holder.

7. In response to this indication, the tribunal drew counsel's attention to the decision of HHJ Behrens in the Upper Tribunal (Lands Chamber) on 5 March 2015 in *Urban Lettings (London) Limited v London Borough of Haringey* [2015] UKUT 104 (LC), but counsel said she was already aware of that decision.

Application for an adjournment

8. At about 10.55am, the hearing commenced and counsel handed in an additional bundle of documents comprising: an unsealed and undated claim form (under Part 8 of the Civil Procedure Rules) expressed to be in the County Court at Central London, a witness statement of Mr Xingjian Zhou dated 6 June 2018 and particulars of claim with exhibits, also dated 6 June 2018, all in support of the county court proceedings. Ms Weston applied for an adjournment of that day's tribunal hearing pending the outcome of the proceedings in the county court, which she confirmed had been issued on 6 June 2018, although the proceedings had not at that stage been served upon Camden.

9. The county court claim sought a declaration that Cityrooms "cannot be prosecuted for any offence under section 72(1) of the Housing Act 2004" where, it was said, "pursuant to section 263 of the same Act", the landlord [TKE] and its agent were deemed respectively to be "in control of" and "in control of and managing" the unlicensed Property, where Cityrooms had an assured shorthold tenancy with the landlord and Camden had deemed Cityrooms merely to be "an interested party".

10. On behalf of Camden, Mr Sarkis opposed the application for an adjournment. He said that it had been made late in the day. The First-tier Tribunal is an expert body well able to deal with the issue before it. Indeed, it was often the case that the county court, even the magistrates court, would adjourn their own proceedings pending a tribunal determination as to the status of an HMO. He also doubted that the court could in fact grant a declaration in the wide terms sought.

11. Having heard further argument, in particular in relation to the meaning of being "in control of or managing" property, we retired for a few minutes and then gave our decision orally to the parties. The tribunal

decided not to adjourn the oral hearing. The reasons for its decision were that: the county court proceedings were very recent and had not yet been served on Camden; there was no guarantee that they would be pursued or how long they would take; we are an expert tribunal and can answer the points raised in the Part 8 claim form and, if necessary, there could be an appeal to the Upper Tribunal, all of which was likely to be heard more quickly than Part 8 proceedings; the tribunal application was first in time by several months and it was even possible that the court would stay its own proceedings and make a reference to the tribunal for a determination; and, although it was said that the court's determination would benefit the tribunal, we felt that it was equally if not more likely that our eventual decision would assist the court.

12. We therefore began the oral hearing, as originally planned.

Facts

13. TKE Limited is the registered proprietor of the long leasehold interest of the Property, held on a lease dated 12 December 2006 for 999 years from 5 August 2005 [R29-30]. TKE employs another company, Messila Residential ("Messila") as its managing agents. By a tenancy agreement dated 8 May 2017 [A19], TKE let the Property to Cityrooms for a term of 36 months from 22 May 2017. Although in the county court claim form that agreement was characterised as being an assured shorthold tenancy under the Housing Act 1988, that cannot of course be the case because Cityrooms is a limited company and not "an individual": see section 1(1)(a) of the 1988 Act. Be that as it may, the tenancy agreement grants exclusive possession of the Property to Cityrooms for a rent of £1,993.33 per calendar month, to be paid directly into TKE's designated bank account [A6].

14. The permitted use of the Property is "that of a private residence" but the occupation must be such that it does not create an assured tenancy under the Housing Act 1988 [A12].

15. By an addendum dated 11 May 2017 signed by Mr Xingjian Zhou on behalf of Cityrooms and Mr Ayad Kazanji on behalf of Messila, TKE agreed that Cityrooms could sublet the Property "on a room to room basis" with permission being given to convert the reception room into a bedroom and to erect a partition wall to create an extra room [A21]. TKE was to provide electricity and gas certificates but, crucially, there was no mention in the addendum (or, for that matter, in the original tenancy agreement) of the provision of an HMO licence.

16. The tenancy agreement and addendum reflected Cityrooms' business model, described by Mr Xingjian Zhou as "the business of sub-letting properties to individuals in flat shares on a room by room basis having taken out tenancies with landlords and freeholders" [A1]. As will be

seen, the Property was just one of a large number in Cityrooms' property portfolio in London.

17. Cityrooms proceeded to let individual rooms on short-term assured shorthold tenancies, as follows: on 6 June 2017, to Mr Lino Zielo with 3 other persons at a rent of £845 per month [R77]; on 27 June 2017, to Miss Laura Jo Boyle, for 7 months at a rent of £780 per calendar month [R44]; and on 9 July 2017, to Miss Maddison Hufton with 3 others initially for 4 months, then extended to February 2018, at a rent of £953.33 per month [R81, 88 & 121]. The total rental income for the Property was therefore £2,578.33 per calendar month.

18. On 17 October 2017, Ms Silvia Suarez, an environmental health officer employed by Camden inspected the Property to discover that there were three bedrooms in the flat, occupied by four people sharing a kitchen and bathroom, that the tenants were unrelated, had moved in at different times and had separate tenancy agreements [R9-10]. She formed the view the Property was an HMO within the meaning of the Housing Act 2004.

19. Previously, on 15 June 2015, Camden had designated the whole of the borough for "additional licensing" of HMOs, a designation which came into force on 8 December 2015 [R14 & 193]. Camden made the designation in exercise of its powers under section 56 of the Housing Act 2004; and the designation applied to all HMOs in the borough, as defined by section 254 of that Act, that were occupied by three or more persons comprising two or more households. Importantly, every HMO of the description specified within Camden was required to be licensed under section 61 of the Act and the Public Notice of the designation made clear that "a person having control of or managing a prescribed HMO must apply to the London Borough of Camden for a licence. Failure to apply for a licence in the designated area is an offence under section 72(1) of the Housing Act 2004, punishable on conviction by payment of unlimited fine" [R193].

20. At the hearing, it was not disputed by the applicant that the Property was an HMO, nor that it required to be licensed.

21. Civil penalty notices are financial penalties imposed by local authorities on organisations or individuals as an alternative to prosecution for certain housing offences under the Housing Act 2004. They were introduced by the Housing and Planning Act 2016.

22. By letter dated 17 October 2017 [R137-143], Ms Suarez wrote to both TKE and Cityrooms notifying them of an alleged offence in the following terms: "a person commits a criminal offence carrying an unlimited fine, if he/she is the person having control of or managing a house in multiple occupation (HMO) which is required to be licensed under Part 2 of the Housing Act 2004, but it is so not licensed (section

72(1) of the Act)". Each letter requested further information about the status of the respective companies, their relationship with each other, their responsibility for the letting and management of the Property, the treatment of the rental payments and any other information that either company wished to provide. Both companies responded: Cityrooms, on or before 19 October 2017, by filing an application for an HMO licence [R145]; and TKE by denying their involvement in the management of the Property but confirming receipt of the monthly rent from Cityrooms [R157].

23. On 1 December 2017, Ms Suarez wrote to Cityrooms with a notice of intention to impose a financial penalty of £10,000 for the offence of being a person having control of or managing an HMO which was not licensed and invited representations. Following receipt of those representations dated 22 December 2017 [R265-268], Ms Suarez wrote to Cityrooms on 20 February 2018 with a final notice imposing a reduced financial penalty of £4,000, a notice which was superseded the following day by a fresh final notice, dated 21 February 2018, in the same amount. It is the appeal against that second financial penalty notice that is before the tribunal.

24. For information only, a financial penalty of £2,000 was imposed on TKE, which was not subject to an appeal and which, it is understood by the tribunal, had been paid by TKE.

The applicant's arguments

25. As mentioned, the applicant accepted that the Property was an HMO and that it required to be licensed. However, Cityrooms did not accept either that it was "in control of" or that it was "managing" the Property. The applicant relied heavily upon statements made by Ms Suarez and by the council's HMO licensing team in response to the HMO licence application it had made on 19 October 2017. In particular, in her email of 19 October 2017, Ms Suarez questioned whether it was appropriate for Cityrooms to be the proposal licence holder and proposed manager of the Property, rather than the landlord/owner, TKE, which would be "the only ones with authority to approve remedial works ... that may be required as a result of compliance with the council's HMO Standard and other housing legislation" [R317-318]. More recently, Ms Abimbola (Michelle) Ojo, Camden's HMO licensing manager, wrote to Mr Ayad Kazanji of Messila, on 15 March 2018, with a copy to Mr Zhou at Cityrooms, stating that "... you cannot nominate Cityrooms to be the Proposed licence holder because they are your tenants .... Thecityrooms.com ltd may be an interested party but not the licence holder ...." [R319].

26. Simply put, Ms Weston said that, on the one hand, Camden was saying that Cityrooms was in control of or managing the Property (and had therefore committed an offence) but, on the other hand, the council

refused to accept that Cityrooms was either in control of or managing the Property, so that it could be the HMO licence holder of it. Not only was this unfair, but it made Cityrooms' status extremely unclear and imposed an existential threat to its business model. This was, Ms Weston said, an important point of law that needs to be resolved by a way of declaration in the county court.

27. In short: how can Cityrooms be in control of or managing the Property if they cannot be a licence holder?

28. Ms Weston made subsidiary points as to the time allowed to landlords in the borough to apply for licences, suggesting that Camden had acted hastily in the present instance in issuing a financial penalty notice; criticising the methodology adopted by Ms Suarez in determining the appropriate level of penalty, initially at the higher level, but even then when reducing it to £4,000; questioning why Ms Suarez had not considered action against TKE's agent, Messila, rather than Cityrooms and suggesting that this was an error on her part and unfair given that Messila "was a major player" in the arrangements; and criticising Ms Suarez for not taking into account sufficiently the capability of others generally and the subsequent level of co-operation from Cityrooms in relation to this and other properties in Camden, following receipt of the financial penalty notice.

29. Mr Xingjian Zhou also gave evidence and spoke to his witness statement. He said that he honestly did not know that there had been a designation of Camden as an area of additional licensing, or that this Property or other properties in the borough needed HMO licenses. His company was based in Tower Hamlets, where there was no such designation.

30. He said that, over the past three years, he had been involved with about 8 to 10 properties in Camden; and he had previously dealt with a company called London Residential, which had ensured all necessary licences were in place. The current Property was arranged via Messila and he blamed them for not advising the head leaseholder, TKE, to obtain a licence. Mr Xingjian Zhou said that it was not fair that he should have to pay a financial penalty. He assured the tribunal that his was respectable company. It relied upon its reputation for fair dealing and he wanted the company to be a good example to others. He had responded to the financial penalty notice by trying to regularise the position, applying for an HMO licence and then pressing Messila and TKE to obtain a licence, but with very little co-operation from them. However, if he had to pay a financial penalty, he thought £1,000 to £2,000 would be an appropriate amount. He assured the tribunal that in future he would check that appropriate licences are in place first and unless the owner had a licence he would not proceed to enter an agreement.

31. In response to questions, Mr Xingjian Zhou confirmed that his company found the short-terms tenants to occupy the Property. He also agreed that Cityrooms paid the rent direct to TKE and not Messila. He accepted that the total rental income from the Property in October 2017 was £2,578.33, but said that Cityrooms made a loss on this Property, once expenses had been taken into account.

The tribunal's decision

32. The tribunal dismisses the appeal against the financial penalty and confirms that the penalty of £4,000 is payable by Cityrooms and that it should be paid to the council within 28 days of the date of this decision.

Reasons the tribunal's decision

33. There is no dispute that TKE, acting by its agent Messila, is the owner of the Property and that Cityrooms are its tenants. It is agreed that relevant date of the alleged offence is 17 October 2017 and on that date the Property constituted an HMO. It is also common ground that Camden had introduced additional licensing by which the HMO required to be licensed; that the Property was not licensed on the relevant date and that rooms were let by Cityrooms to short-term tenants on the relevant date, while the Property was unlicensed.

34. The question is whether on the relevant date we are satisfied beyond reasonable doubt that Cityrooms had committed an offence under section 72(1) of the Housing Act 2004. The relevant parts of section 72 read as follows:

> "**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.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) 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."

35. The meaning of "person having control" and "person managing" is to be found in section 263 of the 2004 Act, which reads as follows:

"**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."

36. More than one person can have control of an HMO and therefore can commit an offence under section 72(1): that is the import of paragraph 13 of the *Urban Lettings* decision in the Upper Tribunal (ibid), where the earlier finding of the First-tier Tribunal to this effect was unchallenged and did not attract adverse comment of the Upper Tribunal. In the present circumstances, the tribunal is satisfied beyond reasonable doubt that both TKE (who are not concerned in this appeal) and Cityrooms both received the rack-rent of the premises from their respective tenant(s) on the relevant date and, therefore, both of them were persons "having control of" the Property.

37. The tribunal is also satisfied beyond reasonable doubt that Cityrooms was the "person managing" the Property on the relevant date, being the person who, as tenant of the premises from TKE, received the rents from the persons who were in occupation as subtenants in the various parts of the Property (having also been solely responsible for the selection of such occupants and the signing of the short-term tenancy agreements with them).

38. Accordingly, on the relevant date, the tribunal is satisfied beyond reasonable doubt that Cityrooms had committed an offence under section 72(1) of the 2004 Act.

39. The arguments raised by Cityrooms in relation to the difficulties they had experienced in obtaining an HMO licence are beside the point. The offence which Cityrooms committed was not that it had failed to licence the premises, but that the company was in control of and managing premises that were not licensed. There is no requirement under section

72(1) for a person committing an offence to otherwise be a licence holder. The fact that Cityrooms were apparently unaware that it was a requirement for there to be an HMO licence is also beside the point; and none of the circumstances of this case amount to a statutory defence in subsection (4) or (5).

40. The offence having been established, Camden was within its rights to impose a financial penalty on Cityrooms. The tribunal's task now is to consider whether the amount of such penalty is reasonable in the circumstances of this case. On behalf of Cityrooms, both Mr Xianjian Zhou and Ms Weston of counsel said that the level of the penalty was unreasonable and it should be reduced.

41. The procedure followed by Camden to impose a financial penalty and the amount of that penalty are described in paragraphs 25-38 of the witness statement of Ms Suarez [R15-20]. Ms Suarez had regard to Camden's "Enforcement Policy Amendment for Civil Penalties" [R197-205], which provides guidance to council officers on the offences for which penalty notices maybe issued and on the amount of the fines to be issued, having regard to the severity of those offences.

42. We remind ourselves that we are re-hearing Camden's decision to impose the financial penalty on Cityrooms. In doing so, we have regard to the comments of the Deputy President Martin Rodger QC in *Clark v Manchester City Council* [2015] UKUT 0129 (LC), when he said at paragraph 41:

"On a rehearing an appellant is entitled to expect that the F-tT will make up its own mind. In doing so it is not required to adopt the approach advocated by Mr Madden of starting with a blank sheet of paper, and it is entitled to have regard to the views of the local housing authority whose decision is under appeal. How influential those views will be is likely to depend on the subject matter; Buxton LJ's recommendation that a county court judge should be slow to disagree with the views of the authority does not seem to me to apply with the same force to a specialist tribunal".

43. In the present case, Camden used a matrix to categorise offences into 6 bands, 1 and 2 being of "moderate" severity, 3 and 4 of "serious" severity and 5 and 6 of "severe" severity. A band 1 offence would attract a penalty in a band width of £0 to £5,000; a band 2 offence a penalty in a band width of £5,001 to £10,000; and so on, up to band 6, which attracts a penalty in the top range of £25,001 to £30,000 [R16].

44. In the present case, Ms Suarez considered that the offence committed by Cityrooms was of serious severity within band 4, attracting a penalty of £15,001 to £20,000. She applied the factors in the policy that led to this finding, namely that Cityrooms controlled a significant property

portfolio of rent-to-rent properties and that it was familiar with the need to apply for an HMO licence or should have been.

45. The "severity of offence" matrix was Camden's implementation of one of the factors in the Guidance for Local Housing Authorities in relation to "Civil penalties under the Housing and Planning Act 2016", produced by the Department for Communities and Local Government in April 2017 [R209-228]. In addition to considering the severity an offence, Ms Suarez also followed the national guidance to consider other factors to be taken into account when deciding on the level of the civil penalty. That Guidance advises that the following factors must be taken into account when deciding on the level of civil penalty [R221-222]:

    - Severity of an offence
    - Culpability and track record of the offender
    - The harm caused to the tenant
    - Punishment of the offender
    - Deter the offender from repeating the offence
    - Deter others from committing similar offences

46. While the tribunal accepts that no harm was caused to the short-term subtenants in the Property as a result of the offence, the tribunal takes the view that the level of culpability on the part of Cityrooms is high. In particular, Cityrooms are professional estate agents with an apparently large portfolio of properties across Greater London, including 8 to 10 properties in the last three years in Camden alone, and they knew or ought to have known that they would be in breach of their legal responsibilities, if they were in control of or managed an unlicensed HMO.

47. The evidence of Ms Suarez in relation to past offences by Cityrooms was unchallenged: although there were no known offences against section 72 of the 2004 Act, the company and its director were prosecuted by Camden council in 2015 for offences under section 234 of the Act (in relation to the management of HMOs) and were found guilty. Additionally, on the same day that this property was inspected, Camden found another unlicensed HMO run by Cityrooms within the borough (9 Linnell House).

48. When considering the punishment of an offender, the tribunal considers it right to have regard to the economic impact of any penalty imposed. Cityrooms earns £585 per month for the Property (the rent of £2,578.33 per month paid by the occupying subtenants, less the £1,993.33 paid to TKE), or £7,020 a year. Although in his evidence Mr Xianjian Zhou said that his company lost money on this property (and, somewhat surprisingly, on up to 20% of the properties in its portfolio), Cityrooms' income was still over £1.744m for the period ending 31

August 2016, according to the accounts filed at Companies House and obtained by Ms Suarez. When the financial penalty was originally proposed at £10,000, it was at a level significantly higher than the annual income from the Property; however, it was still minimal by comparison to the scale of the Cityrooms' business operation.

49. While the tribunal is satisfied that a hefty penalty would encourage Cityrooms to comply with HMO legislation in the future and would therefore deter further offending - and it would have a deterrent effect on others - the tribunal is also mindful of the very rapid response from Cityrooms to the initial letter of an alleged offence, their apparent willingness to co-operate with the council in regularising the position, with regard to this and other properties with which they are involved, and their attempt, albeit unsuccessful, to apply belatedly for an HMO licence.

50. The tribunal was also impressed by Mr Xianjian Zhou when he gave evidence that this was not a deliberate attempt to avoid HMO regulation and there was no economic advantage to Cityrooms by not having a licence. However, the obvious sincerity of Mr Xianjian Zhou's approach did not detract from the failings in the management of his company that allowed this situation to arise in the first place; and the tribunal is not satisfied that any corrective steps would have been taken, had Camden not discovered the offence and imposed a financial penalty notice.

51. Taking into account all these factors, while the tribunal is satisfied that a penalty of £10,000 could have been justified in this case, there were sufficient mitigating factors that would justify a reduction of the penalty to £4,000; and this was a level of penalty which, in the tribunal's view, struck the appropriate balance between punishment and deterrence, on the one hand, and recognition of the lack of harm caused to tenants and the change of behaviour of the offender, on the other.

52. For these reasons, the tribunal not only confirms the financial penalty imposed by Camden, but also the amount of such penalty at £4,000, which should be paid to the council within 28 days of the date of this decision.

53. Finally, in response to the complaint by Cityrooms that they were caught in an unfair and unreasonable situation, having contracted to take a tenancy of the Property for three years and to sublet to short-term tenants, but being unable themselves to obtain an HMO licence (or, it seems, to persuade TKE to do so), we can only reflect the comments of HHJ Behrens in paragraph 33 of the *Urban Lettings* decision (ibid), namely that Cityrooms should not have entered into an

arrangement with TKE whereby they would have control of or manage premises, which required to be licensed but did not have a licence.

Name: Timothy Powell **Date:** 6 July 2018

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.