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Mr. Kheng Chool Koay

In relation to the premises

**Mr Happy
53 Blossom Street
York
YO24 1AZ**

**Alleged failures to comply with the REGULATORY REFORM
(FIRE SAFETY) ORDER 2005**

Article 32 (2) (h) fail to comply with any prohibition or restriction imposed by a prohibition notice.

Article 8 (1) (a) Duty to take general fire precautions.

(Supported by Article 4, Meaning of “general fire precautions”)

Article 8 (1) (b) Duty to take general fire precautions.

(Supported by Article 4, Meaning of “general fire precautions”)

Article 9 (1) Risk assessment

1.0 ALLEGATION

1.1 It is alleged that between 13th May 2015 and 25th May 2017, Mr. Kheng Chool Koay the Responsible Person, failed to comply with the requirements of Regulatory Reform (Fire Safety) Order 2005.

1.2 It is alleged Mr. Kheng Chool Koay failed to comply with the following articles of the Regulatory Reform (Fire Safety) Order 2005.

a) Article 32 - Offences

Article 32 (2) (h) fail to comply with any prohibition or restriction imposed by a prohibition notice.

b) Article 8 Offences – Duty to take general fire precautions

- i. Article 8 (1) (a) failed to take such general fire precautions as will ensure so far as is reasonably practicable, the safety of any of his employees.
- ii. Article 8 (1) (a) failed in relation to relevant persons who are not his employees, to take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe.

Article 4 - meaning of “general fire precautions”

Article 4 (1) In the Order “general fire precautions” in relation to premises means;

- a) Measures to reduce the risk of fire on the premises and the risk of spread of fire on the premises.

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- b) Measures in relation to the means of escape from the premises
- c) Measures for securing that, at all material times, the means of escape can be safely and effectively used.
- d) Measures in relation to the means for fighting fire on the premises.
- e) Measures in relation to the means for detecting fire on the premises and giving warning in case of fire on the premises; and
- f) Measures in relation to the arrangements for action to be taken in the event of fire on the premises, including-
 - (i) measures relating to the instruction and training of employees; and
 - (ii) measures to mitigate the effects of fire.

c) Article 9 Offences – Risk assessment

Article 9 (1) The responsible person failed to make a suitable and sufficient assessment of the risks to which relevant persons are exposed for the purpose of identifying the general fire precautions he needed to take to comply with the requirements and prohibitions imposed on him by or under the Order.

1.0 BACKGROUND

2.1 On 25th May 2017 North Yorkshire Fire and Rescue Service attended Mr Happy, 53 Blossom Street, York, YO24 1AZ to carry out a scheduled fire safety audit. Concerns were raised by WM Jamison from White watch York. The concerns were about people sleeping above the takeaway shop.

2.2 People were found to be living on the first and second floors above the shop. The access and egress from the upper floors was via an external fire escape.

A number of other serious fire safety deficiencies were found which included;

- Fire alarm inoperable and did not cover 1st and 2nd floors
- No Fire Risk Assessment in place
- No Fire Safety Arrangements in place
- No emergency lighting on the upper floors
- Unsafe electrical plug socket
- No up to date maintenance of fire fighting equipment
- No staff fire safety training had been carried out.

2.3 A prohibition notice was served on the Responsible person Mr. Kheng Chool Koay, to prevent sleeping from continuing to take place in the premises. A Prohibition Notice is the most draconian formal notification available to be used by the Fire Authority. It is used only in cases where the risk to persons in the event of a fire is imminent. In the event of a fire it would be likely to result in death or serious injury. As such, this sanction is exercised sparingly and only in appropriate circumstances.

2.4 An enforcement notice was subsequently also served on Mr. Kheng Chool Koay, The Fire & Rescue Authority considered it appropriate to serve on the Responsible Person, an Enforcement Notice under the Regulatory Reform (Fire Safety) Order 2005.

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- 2.5 An Enforcement Notice is a formal notification available to be used by the Fire Authority. It is used only in cases where the risk to persons in the event of a fire is high. As such, this sanction is exercised sparingly and only in appropriate circumstances.
- 2.6 The Enforcement/Prohibition Notice has a right of Appeal to a Court of law if the Responsible Person considered the actions of the Fire Authority inappropriate. The Responsible Person, in this case, has not exercised this right.
- 2.7 The Enforcement Notice has been complied with within the specified time limit. The prohibition notice remains in force although there are no signs of people living above the shop.
- 2.8 The Fire and Rescue Authority always aims to ensure compliance with fire safety legislation through advice and education and by working in partnership with business and commerce. However, it uses legal sanctions sparingly and appropriately and where necessary, to ensure the safety of the public.

3.0 INSPECTION AND THE PREMISES

- 3.1 The premises consist of a basement, ground, first, and second floors. The basement is used for storage. The ground floor is used as a small restaurant and take away shop. The upper floors were in use as sleeping and storage accommodation.
- 3.2 Fire safety officers visited the premises on 25th May 2017 and due to failures with regard to fire safety; a prohibition notice was served.

Fire safety officers visited the premises on 26th May 2017 and due to failures with regard to fire safety; an enforcement notice was served.

- 3.3 On 25th May 2017 specific failures with regard to fire safety included;
1. On the first floor rooms had been created to make bedrooms, the construction was of poor quality with insufficient fire separation.
 2. There was no working fire detection system in the building. In the event of fire people living on the upper floors would not have been alerted to a fire in its early stages.
 3. No fire risk assessment had been carried out.
 4. No thought had been given to what fire safety arrangements were needed to be in place.
 5. No staff training had been carried out.
 6. There was an electrical item in a dangerous state with exposed live wires.
 7. The old internal stairs had been blocked off and floored over on the first floor but not to the required fire separation standard of a minimum of 30 minutes.

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- 3.4 Mr. Kheng Chool Koay did not have effective fire safety arrangements in place to ensure that the requirements of the Regulatory Reform (Fire Safety) Order 2005 were being complied with.
- 3.5 On 14th July 2017 a further visits to Mr Happy 53 Blossom Street York was carried out to check on compliance with the enforcement and prohibition notices, most of the fire safety deficiencies listed above were complied with.

4.0 INTERVIEW

- 4.1 Mr. Kheng Chool Koay, attended interview at York Fire Station on 28th June 2017. It was established that a private limited company had been set up called Mr Happy (YORK) limited; Requests where made to HMRC and this showed No Corporation Tax returns have been filed with HMRC by Mr Happy (YORK) Ltd for the period from 06/04/2015 to 05/04/2017. Also HMRC were unable to trace a Value Added Tax (VAT) record for Mr Happy (YORK) Ltd.
- 4.2 Mr. Kheng Chool Koay stated he was the owner of the business. Mr. Kheng Chool Koay admitted people where sleeping on the first and second floor from May 2015. He stated six to eight people slept at the premises.
- 4.3 On the 7th Dec 2017 City of York Council Licensing Enforcement Officer Mick Wilkinson attended Mr Happy, 53 Blossom Street, York with Immigration Officers. One person was found to living on the first floor, a Romanian male was in one of the first floor bedrooms. The male had his possessions in the room and was eating a meal at this time. When asked how long he had been at the premises he stated he had been living there a week. This is a breach of the prohibition notice which is inforce to prohibit people sleeping at the premises.
- 4.4 Mr. Koay and his family were living in a hostel in York; he has now been re-housed in York with his family.

5.0 THE DECISION TO PROSECUTE

- 5.1 The Fire and Rescue Authority consider that prosecution for the alleged contraventions of the Regulatory Reform (Fire Safety) Order 2005 is appropriate in the circumstances of this case.
- 5.2 The Fire and Rescue Authority consider that the decision to prosecute Mr. Kheng Chool Koay is a serious step and not one taken lightly.
- 5.3 The following factors have been taken into account in coming to its decision:
1. The Responsible Person was in a position of authority.
 2. The alleged contraventions were caused by an act or omission that should have been foreseeable to the Responsible Person.
 3. The alleged contraventions would, in the event of a fire, put relevant persons at risk of death or injury. The relevant persons having little control of the act or omissions that endangered them.
 4. The alleged contraventions are serious and not of a minor nature.

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5. The alleged contraventions would have continued had the Fire Authority not acted by serving an Enforcement and or Prohibition Notices on the Responsible Person.