FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference:	**MAN/00FF/HNA/2019/0095**
Property:	**19 Main Road, Bilton, Hull HU11 4AP**
Applicant:	**Chevin Group Holdings Limited**
Representative:	**Geldards LLP**
Respondent:	**Hull City Council**
Type of Application:	**Appeal against financial penalty- Section 249A and Schedule 13A to the Housing Act 2004**
Tribunal Members:	**Judge J.M.Going** **P.E.Mountain**
Date of Deliberations:	**22nd January 2020**
Date of Decision:	**30th January 2020**

DECISION

The Decision and Order

The Final Notice is to be varied by amending the financial penalty to £4000, to be paid within the period of 28 days beginning with the day after that on which this Decision is posted to the parties.

Preliminary

1. By an application dated 6th September 2019 the Applicant ("Chevin") appealed to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under paragraph 10 of Schedule 13A of the Housing Act 2004 ("the Act") against the Respondent ("the Council")'s issue on 13th August 2019 of a Penalty Charge Notice ("the Final Notice") requiring Chevin to pay a penalty charge of £26,250, having been satisfied that Chevin had failed to comply with an Improvement Notice under section 30 of the Act relating to the property.

2. The Tribunal gave Directions.

3. Both parties provided a bundle of relevant documents including written submissions which were copied to the other.

4. The Tribunal made its deliberations on 22nd January 2020.

The Property

5. The Tribunal did not inspect the property but understands it is to be a three bedroomed semi detached two storey house built in the 1930s.

Facts and Submissions

6. None of the following matters have been disputed, except where specifically referred to.

7. Following a referral by a social care adviser on 13th November 2018, concerned about the state of the property and in particular "the state of the bathroom, front door and … that there has never been any plumbing in the kitchen for…a washing machine" the Council's Enforcement Officer Chris Huggins visited the property on 26th November 2018, met with the tenant Mrs Jackson, aged 98, and undertook an inspection under the 2004 Act using the Housing Health and Safety Rating System (HHSRS).

8. Ms Huggins' witness statement, which includes certain photographs, refers to identifying various defects. They were scored under the HHSRS and included a Category 1 hazard of excess cold and six Category 2 hazards. There was a lack of fixed heating to the dining room, kitchen, and two of the bedrooms. Ms Huggins noted that although the lounge had a gas fire there were

also portable heaters in the room which she took as confirmation that the tenant was obviously cold. Ms Huggins reported that Mrs Jackson said that she had to leave the heating on overnight because she was cold in the property, particularly when she woke during the night to use the bathroom.

9. A Remedial Notice under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 dated 30th November 2018, followed by two Improvement Notices under sections 11 and 12 of the 2004 Act each dated 20th December 2018 were served by the Council on Chevin.

10. The Improvement Notices specified that remedial works should be begun no later than 19th January 2019 and completed within a period of 28 days after that date i.e. before 16th February 2019. The first Improvement Notice specified works to remedy the Category 1 hazard of excess cold by extending the existing system so as to provide an efficient whole house heating system. The specified works in the second Improvement Notice referred to remedying the leaky joint between the bath and tiled surround, removing and replacing the floor covering in the kitchen, taking up and repairing defective areas of paving in the rear garden, providing additional switched socket outlets so as to provide the main living room and kitchen each with six twin socket outlets, the dining room, breakfast room and small bedroom each with three twin socket outlets, and the double bedrooms each with four twin socket outlets, testing the electrical system, providing a cooker space with at least 300 mm of work surfaces on both sides, the removal of the potentially flammable ceiling tiles in the bathroom and rear bedroom, the boarding up of the open fire spaces in the rear bedroom and dining room, and commissioning a structural engineers report and any necessary works.

11. Various emails between the parties (including one sent by Chevin on 2nd January 2019) confirmed its fitting of a smoke and carbon monoxide alarms at the property.

12. John Fearnehough a director of Chevin emailed Ms Huggins on 11th January 2019, confirming (inter alia) that the Improvement Notices had been reviewed following the return to work after the Christmas break, that Chevin was not aware of the defects or that it was responsible for all of the items, and refuted the assertion that a meeting had been declined to discuss the property's condition. The email concluded "that said, we are a responsible landlord and will carry out improvements required that are our responsibility. Given the fact that the Notice was served one day before our office closed for two weeks for the Christmas break, I'd just ask that you allow us a little flexibility on the 28 days to start the works?" The email was received but not replied to.

13. Chevin did not appeal either of the Improvement Notices.

14. Ms Huggins revisited the property on 28th February 2019. Her witness statement up confirmed "the two Improvement Notices had not been complied with. Mrs Jackson stressed how cold she continued to be, and her son Paul Jackson confirmed contractors had visited approximately three weeks earlier to measure up for the radiators but had not returned"

15. On 26th March 2019 Chevin's main contractor, Robert Booth, with some assistants and an electrician and a heating engineer undertook various works at the property.

16. On 29th April 2019 Chevin emailed the Council with copies of electrical installation certificates. Mr Fearnehough also emailed the Council on 14th May 2019 confirming that the heating had been installed and the wiring upgraded.

17. By a letter and Notice under section 3 (1) and Schedule 3 part 2 paragraph 4 of the 2004 Act, ("the Notice in default") each dated 8th May 2019 , the Council had stated that it was not satisfied that Chevin was making reasonable progress towards complying with the requirements of the Improvement Notice relating to the category 2 hazards within the stipulated timescales, which had expired, and that if the outstanding works were not started within seven days the Council would make arrangements for work to be carried out by one of its nominated contractors. In the notes to the Notice in default it was confirmed that "After the end of the seven day period …it is an offence for any persons who have been served with this notice to be at the address specified in the notice for the purpose of carrying out works"

18. Mr Booth in his witness statement refers to returning to the property with two assistants in the week commencing 20th May 2019 to complete the required building works.

19. On 24th May 2019 Mr Fearnehough sent an email timed at 10:29 to Ms Huggins confirming "we have now completed the improvement works…"

20. Also on 24th May 2019 the Council having made the decision to propose a financial penalty of £26,250, sent a Notice of Intent to Chevin.

21. Ms Huggins revisited the property on 11th June 2019, and her notes of the visit stated that "outstanding is the cooker location with work surfaces either side, fires to dining room and bedroom have not been boarded up, no structural engineers report received and electrical sockets to the three bedrooms have been placed in unusable places". Her witness statement also stated "the concrete path to the rear has been repaired in parts but not further down the path"

22. Representations were received from Mr Fearnehough in a letter dated 13th June 2019, stating his belief that "any fine imposed for failing to complete works in time under the Improvement Notice is grossly unfair and the fine for £26,250 completely ridiculous". He confirmed that he had assumed from the lack of a response to his January email requesting flexibility on the start time that it was reasonable for Chevin to mobilise contractors to start as soon as it was able which it did in early March. He also referred to Mrs Jackson having become quite exhausted and distressed by having contractors permanently in her house and that it was agreed to give her some time following the heating and wiring works before returning to "the other minor works". He stated "I really don't think you understand the logistics of carrying out all this work in a short period of time in the presence of 98 year old lady that has lived in the house for 70 years. Our contractors had to work sympathetically, had to be

careful with dust sheets, the tenant fell over regularly and became exhausted. We didn't delay the completion of works because it suited us, we were merely acting sympathetically, to do the right thing in a sensible timeframe".

23. Ms Huggins revisited the property 8th July 2019 and discussed the outstanding works with Mrs Jackson and her granddaughter. "Mrs Jackson agreed she did not want works to the kitchen carrying out as she only uses a microwave and the additional sockets that were needed to comply with the Improvement Notice was not currently necessary as she was the sole occupant. It was agreed default works would include further repairs to the garden path and works to the additional electric socket"

24. Andrea Towse the Council's principal Environmental Health officer in an email dated 24th of July 2019 responded to Mr Fearnehough representations, confirming the Council's belief as to why the timescales set in the Improvement Notices were reasonable, pointing out that the tenant's age was a particular concern, and confirming that the penalty charge was calculated using guidance adopted by number of local authorities within the northern region, the Government's statutory guidance, and worked out using a matrix. She confirmed that the Council acting in accordance with the guidance had identified that there was both high culpability and a high harm outcome.

25. The Final Notice was issued and dated 13th August 2019. (A previous Final Notice dated 26th July 2019 was withdrawn after an error had been identified by the Council). The amount of the financial penalty remained unchanged at £26,250.

26. On 16th September 2019, Ms Huggins revisited the property with Alan Hamilton a structural surveyor from Norfolk Property Services ("NPS") and a structural survey was completed. Mr Hamilton's report confirmed clear evidence of differential settlement and lateral movement but also that "in respect of the gable wall, I am of opinion that this movement is likely to be of a long-standing nature, even though it is possibly still taking place at a reduced rate". Happily Mr Hamilton was also able to conclude "there are currently at this time no concerns in respect of the stability of this property. The property, as a result of the observed structural movement, is not considered to be in a dangerous condition". He did however also recommend the cutting back of a hedge, further investigation to determine foundation depths and the property being monitored for a period of 12 to 24 months.

27. Chevin's application to the Tribunal referred to the matters mentioned above and its belief that the timescales set in the Improvement Notices were unreasonable, the imposition of a fine was unjustified and that the Council had, in any event, erred in its calculations of the same. It was stated that the works to remedy the Category 1 hazard had been completed on 25th March 2019 and the remaining works on 24thMay 2019. Mr Fearnehough in his witness statement, maintained that Chevin had previously undertaken voluntary works to the property at the request of the tenant's family, had taken all reasonable steps to engage appropriate contractors as swiftly as possible, and that Mrs Jackson and her family had not complained that the property was excessively cold. He called into question the speed of the Council's own actions, confirmed

that Chevin had not received a reply or an objection to the request for flexibility as to timescales in his email of 11th January 2019, and a conscious decision had been taken to try and coordinate the most pressing and disruptive works to minimise the tenant's discomfort. Both Mr Fearnehough's and Mr Booth's witness statements state that the decision to temporarily suspend the completion of works on 25th March 2019 was for compassionate reasons, because of the tenant's reaction. Mr Booth's witness statement refers to a telephone call to Mrs Jackson's son on the same day which he interpreted as being consent to that course of action. He also stated when referring to the works undertaken on the return to the property in May that "some of the outstanding works with the outside of the property involved breaking out the yard and footpath. This work can only be carried out in dry conditions in the absence of frost and therefore was not carried out during our earlier visit when the weather conditions had not been as favourable."

28. The Council in its statement of case argued that it has been reasonable in its actions, referring to, in support of its assessments of high harm and culpability ratings, the Office of National Statistics statistical analysis of 50,100 excess winter deaths in 2017/2018 and such deaths being higher in females aged 85 and older, and extracts from the NHS website identifying that the natural ageing process means that older people have an increased risk of having a fall, and that falls are the most common cause of injury related deaths in people over the age of 75. Witness statements were provided both by Ms Huggins and Ms Towse together with a further witness statement from Mrs Jackson's son in which he clearly states that "I dispute that at any time the builder, or Chevin were advised to suspend works, and why would you when you've been waiting two years for it to be carried out".

The Statutory Framework and Guidance

29. Section 249A(1) of the 2004 Act (inserted by the Housing and Planning Act 2016) states that a "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…"

30. A list of relevant housing offences is set out in Section 249A(2),which includes the offence, under Section 30 of the 2004 Act, of failure to comply with an Improvement Notice. Section 30(4) states that "it is a defence that he had a reasonable excuse for failing to comply with the Notice".

31. Section 249A(3) confirms only one financial penalty may be imposed in respect of the same conduct and subsection (4) confirms that whilst the penalty is to be determined by the housing authority it must not exceed £30,000. Subsection (5) makes it clear that the imposition of a financial penalty is an alternative to instituting criminal proceedings.

32. The procedural requirements are set out in Schedule 13A of the 2004 Act.

33. Before imposing a penalty the local housing authority must issue a "Notice of intent" which must set out

- the amount of the proposed financial penalty,
- reasons for proposing to impose it, and
- information about the right to make representations. (Paras 1 and 3)

34. Unless the conduct which the penalty relates (which can include a failure to act) is continuing the Notice of intent must be given before the end of the period of 6 months beginning on the first day on which the authority has sufficient evidence of that conduct. (Para 2)

35. A person given Notice of intent has the right to make written representations within the period of 28 days beginning with the day after that on which the Notice was given. (Para 4)

36. If the housing authority then decides to impose a financial penalty it must give a "Final Notice" imposing that penalty requiring it to be paid within 28 days beginning with the day after that on which the final Notice was given. (Paras 6 and 7)

37. The Final Notice must set out: –

- the amount of the financial penalty,
- the reasons for imposing it,
- information about how to pay it,
- the period for payment,
- information about rights to appeal; and
- the consequences of failure to comply with the Notice. (Para 8)

38. The local housing authority in exercising its functions under Schedule 13A or section 249A of the 2004 Act must have regard to any guidance given by the Secretary of State.(Para 12)

39. Such guidance ("the Guidance") was issued by the Ministry of Housing Communities and Local Government in April 2018 and is entitled "Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities".

40. Paragraphs 3.3 and 3.5 of the Guidance confirm that the local housing authority is expected to develop and document their own policies on when to prosecute and when to issue a civil penalty and the appropriate levels of such penalties and should make such decisions on a case-by-case basis in line with those policies.

41. The Guidance states "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. Local housing authorities should consider the following factors to help ensure that the… penalty is set at an appropriate level:

- severity of the 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,....
- remove any financial benefit the offender may have obtained as a result of committing the offence...

42. The Council has documented its own "Private Housing Standards-Intervention and Enforcement Policy" ("the Council's policy") and included a copy of that in the papers. The Tribunal makes further reference to the Council's policy later in these reasons.

43. A person receiving a Final Notice has the right of appeal to the Tribunal against the decision to impose a penalty or the amount of the penalty (under paragraph 10 of Schedule 13A of the 2004 Act).

44. The Final Notice is suspended until the appeal is finally determined or withdrawn. (Para 10(2))

45. The appeal is by way of rehearing, but the Tribunal may have regard to matters which the local authority was unaware of. (Para 10 (3))

46. The Tribunal may confirm, vary or cancel the Final Notice but cannot impose a financial penalty of more than the authority could have imposed. (Paras 10 (4) and (5))

The Tribunal's Reasons and Conclusions

47. There are three substantive issues for the Tribunal to address: –

- whether the Tribunal is satisfied beyond reasonable doubt that Chevin has committed a "relevant housing offence" in respect of the property,
- whether the Council has complied with all the necessary procedural requirements relating to the imposition of the financial penalty, and
- whether a financial penalty is appropriate and, if so, has been set at the appropriate level.

Dealing with each of these issues in turn:-

48. Chevin has readily admitted that it did not comply with all of the conditions attaching to the Improvement Notices within the timescales set, and the Tribunal finds that it did not have a reasonable excuse for this failure. On the evidence before it, the Tribunal is clear that Chevin, a construction company as well as a professional landlord with a portfolio of over 100 rented properties, could and should have invested more urgency in completing necessary remedial works, particularly because of the age and vulnerability of the tenant. Chevin as the owner and the landlord of the property has a responsibility to ensure that relevant legislation is complied with.

49. The Tribunal is satisfied, beyond reasonable doubt, that Chevin's conduct amounts to an offence under section 95(1).

50. The Tribunal carefully reviewed the actions taken by the Council and the timing and information set out in its different Notices and concluded that it has satisfied the necessary procedural requirements to be able to impose a financial penalty.

51. The Tribunal then considered the appropriateness and amount of a penalty.

52. The Tribunal is satisfied that it is appropriate to impose a financial penalty in respect of the offence. It considered whether, rather than impose a financial penalty, a caution would been sufficient, but decided that such a sanction would be inadequate in terms of its likely punitive and deterrent effect.

53. The Tribunal began the task of assessing the appropriate amount of the fine by a review of the actions of the parties and an evaluation of the evidence.

54. Ms Huggins' HHSRS scores attached to the different hazards were as follows: –

the category 1 hazard: – requiring a whole house heating system	3275
the category 2 hazards : –	
requiring removal of trip hazards and installation of additional electrical sockets,	689
requiring removal of ceiling tiles in the bathroom and rear bedroom,	199
fireplaces open for use without certificates or carbon monoxide detectors,	164
potential earth leakage in the electrical system, and	29
potential for structural collapse	6

55. The evidence from the witness statements appears to show that the most urgent works were completed all in one 10 hour working day on 26th March 2019.

56. The Tribunal's initial reaction (mirroring that of Mr Fearnehough, but possibly for different reasons) was that a fine close to the maximum possible set by the legislation simply could not be justified particularly when the Guidance clearly states "Generally we would expect the maximum amount to be reserved for the very worst offenders". The property clearly had a need for improvement, but the Tribunal has seen no evidence to suggest that it was anything like as bad as many other properties that both the Council and the Tribunal have had experience of.

57. Ms Towse's and Ms Huggins' witness statement confirms that the decision to impose a fine and its calculation was agreed a joint meeting on 3rd April 2019 with Sue Roberts, the Council's Housing Services and Policy Manager, based on factors specified in the Council's policy. In assessing culpability and harm they concluded that there should be both a high harm rating and a high culpability rating, and applied those ratings to the following table set out in the Council's policy for the initial level of fine determination:

Determination of civil penalty level

Level of culpability	**Level of Harm**			**Minimum fine level** (when considering mitigating factors)
	High	**Medium**	**Low**	
High	£25,000	£15,000	£7,500	£6,000
Medium	£15,000	£10,000	£5,000	£4,000
Low	£7,500	£5,000	£2,500	£2,000

58. The papers show that having started with the figure of £25,000, they added a further 10% for what they assessed as being 2 aggravating factors, the first of which was referred to as being motivated by financial gain, and the second because they assessed the number of items of non-compliance as being more than three. The resultant figure of £27,500 was reduced to £26,250 to take account of what was seen as the 1 mitigating factor of Chevin having cooperated with the investigation.

59. The Tribunal is concerned that an overreliance on a particular matrix (particularly when it is clear that different authorities have in some cases decided upon markedly different parameters and weightings) is not sufficient in itself. Whatever system is used, it is essential, as the legislation dictates, that any formulaic answer is reviewed particularly in the light of new evidence not available when an initial decision/calculation is decided upon. A matrix is a useful tool, but it is clear that very different answers will inevitably result from differing assessments of the weightings to be attached to the different factors that it seeks to incorporate. It is perfectly logical for the Council to use the formula (indeed the legislation has mandated that it should have a policy), but it essential that it then review the answer given in a holistic way, to see if that answer in a particular case is able to pass the test of being reasonable and proportionate in all the circumstances. If as in this case the figure, which the Council refused to review, does not pass that test then one has to question whether either the wrong weightings have been attached or the policy itself has flaws. It is for example possible to question whether the Council's policy when it refers to harm both as a separate category and in judging culpability has provided a potential for double counting. Clearly authorities will need to review their policies in the light of experience.

60. It also appears that the figure of £26,250 was arrived at before the Council had been notified that any of the works had been completed and the amount was therefore presumably decided on the basis that none of the required works had been completed. If that assumption is correct, the Tribunal does not understand why the Council did not feel it appropriate to review and reduce the fine after it had learned that the most urgent works had been completed. The Statutory process clearly includes periods for review when new relevant information becomes available, and the Tribunal finds that the Council erred in not deciding to reduce the amount of the fine after it knew that the most urgent works had been completed.

61. The Tribunal sadly has the impression that, once the process had started each of the parties became more intent on following its own agendas rather than remaining fully focused on the most important objective being to ensure that the home of the 98-year-old was safe. Both parties could and should have done more to have had a meaningful dialogue.

62. However, having reviewed the evidence and the actions of the parties, the Tribunal reminded itself that it was not simply reviewing whether the Council's decisions were reasonable but conducting a rehearing and making its own determination.

63. The Tribunal in considering the amount of the penalty, has had particular regard to the 7 factors specified in the Guidance referred to in paragraph 41 above.

64. The tribunal assessed both the severity of the offence and the culpability and track record of the offender as being low.

65. A close examination of emails between Mrs Jackson's son and Mr Fearnehough in the year before the service of the Improvement Notices does not always show Mr Fearnehough in a good light. The Tribunal is left with the clear impression that he was reactive rather than proactive, and did not respond adequately to repeated requests for him to view the property properly.

66. Mr Fearnehough has throughout stated that the works were undertaken as soon as they could reasonably be arranged, but the Tribunal does not agree, particularly having regard to the nature of Chevin's business, the resources at its disposal, and the fact that the majority of the most important works were all apparently completed in a day.

67. However, the Tribunal reminded itself that the offence only took place when the time limits had expired (not beforehand), and would cease when the necessary works were done. The Tribunal asked itself as to what fine it would have sought to impose if the necessary works had all been completed but one day late, and the short answer was none. It is clear that the amount of the delay needed to be a factor in the decision-making.

68. The Tribunal felt that in deciding upon the amount of delay, it was reasonable to take into account that there is a general shutdown by the building trade of two weeks over Christmas. Having factored that in, it decided that Chevin had effectively been approximately 4 weeks late in completing the most important works.

69. The Tribunal decided credit should be given to Chevin for confirming throughout that the works would be attended to, and for not appealing the Improvement Notices which would have been the easiest way to ensure that there was more time to complete the same. Whether it knew it or not, Section 15(5) of the 2004 Act confirms that an Improvement Notice is suspended whilst an appeal is dealt with.

70. From the evidence before it the Tribunal found that the most important works had been completed on 26th March 2019. In assessing the severity of the offence and in the light of Ms Huggins subsequent inspection notes, the agreement with Mrs Jackson that a number of the other works were unnecessary, and NPS finding that the property was not structurally dangerous, the Tribunal concluded that the only specified outstanding matter of continuing significance was the eradication of the trip hazards and in particular the completion of the levelling of the garden path. In making its assessment the Tribunal was also aware that by serving the Notice of default, albeit in its opinion perversely, the Council had put a veto on Chevin undertaking further works after 16th May 2019.

71. The Tribunal has also taken into account that the Council will as a consequence of the Notice in default be charging Chevin with the costs of doing the outstanding works and presumably its reasonable costs for any related administration costs.

72. Having made its assessment of the severity of the offence and the culpability and track record of the offender the Tribunal went on to make an assessment of the harm caused to the tenant. The Guidance is clear that an assessment of harm must also include the potential harm.

73. The Tribunal fully understands why general statistics are useful and indeed vital in the making of HHSRS assessments, but the imposition of a financial penalty must be focused on the individual circumstances of the case. Statistics also need to be treated with care and proper analysis. The Council has emphasised the number of excess winter deaths in 2017/ 2018. Nevertheless it is of note that the same statistics do on closer analysis state that "the relationship between excess winter mortality and temperature is complex… Increased EWD are not always coupled with unusually cold winters and conversely winters with decreased EWD are not always coupled with milder winter temperatures, indicating factors other than temperature, such as influenza are also relevant in explaining trends…".

74. It is not insignificant that Mrs Jackson, obviously a very remarkable lady, whom the Tribunal salutes (is still living independently in her own home at the age of 98, apparently without a veto from her family, and vigorous enough to be intent on regularly visiting her greenhouse and) has lived continuously in the same environment for over 70 years. This must be a factor in the Tribunal's evaluation of risk and potential harm.

75. That having been said the Tribunal is clear that Mrs Jackson would be more vulnerable during the winter months and Chevin did and does have a legal responsibility to ensure that the property can be kept warm, and free of obvious trip hazards.

76. The Tribunal after carefully considering all these matters assessed the harm caused or potential harm risked to Mrs Jackson as being medium.

77. Whilst there was no hard evidence of actual harm caused to Mrs Jackson or any evidence of Chevin obtaining a financial benefit by being late in complying, the importance of a failure to obtain to meet the timescales set in the Improvement Notices should not however be understated. The delay clearly posed a potential for harm and as referred to in the Guidance there is the need to consider deterring an offender from repeating the offence and deterring others from committing similar offences.

78. Taking all these matters into account the Tribunal made its own calculation of the appropriate amount of the penalty at £4,000.

79. Although not bound by it, the Tribunal was content to use the Council's policy as a tool to review its own decision making.

80. Adopting the matrix in that policy, and having found the harm to be medium, but the severity of the offence, and Chevin's culpability and track record to be low, the Tribunal's starting point was £5,000. It then went on to consider any aggravating or mitigating factors. An aggravating factor was Chevin's lack of proper engagement with the tenant prior to the council's involvement, but in mitigation no evidence has been provided to infer that this is anything other than a first offence, readily admitted, and the most serious remediation works were completed within a month of the reasonably adjusted deadline date. The ambiguity of Council's lack of a reply to the request for flexibility as to the set timescales must also be regarded as a mitigating factor. The offence does not appear to have contributed to any direct gain for the Chevin. The mitigating factors outweigh the aggravating factor and the Tribunal therefore decided that there should be a net reduction of 20% i.e. £1,000 from the starting figure suggested by the matrix in the Council's policy.

81. These calculations reaffirmed the figure of £4000, which the Tribunal is content is just and proportionate in all the circumstances.

82. The Tribunal has made its decision on the assumption and understanding that Chevin should and will have to pay for the costs of NPS structural survey and any further remediation works relating to the garden path, and the Council's own reasonable costs of having to organise the same, in addition to the financial penalty of £4000.

Tribunal Judge J Going
22 January 2020