FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/HNA/2019/0165**
Property	**:**	**16 Norfolk Road, London E17 5QS**
Applicant	**:**	**Mrs Maureen Uyinmwen**
Representative	**:**	**None, accompanied by Mr Matthew Uyinmwen**
Respondent	**:**	**London Borough of Waltham Forest**
Representative	**:**	**Mr Riccardo Calzavara (Counsel)**
Type of application	**:**	**Appeal against financial penalty under section 249A and schedule 13A of the Housing Act 2004**
Tribunal members	**:**	**(1) Judge Amran Vance** **(2) Mr T Sennett MA FCIEH** **(3) Judge N Carr**
Date and venue of hearing	**:**	**28 February 2020 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**11 March 2020**

DECISION

Decision

1. The decision of the London Borough of Walthamstow ('the Council') to impose a financial penalty in the sum of £12,000 against the appellant

is confirmed. The Appellant must pay this sum to the Council within 28 days of the date of issue of this decision.

Application

2. By application dated 13 November 2019, the appellant seeks to challenge the imposition by the Council of a financial penalty in the sum of £12,000.

Background

3. References in square brackets below are to the section **[§]** and page numbers of the hearing bundle supplied by the Council.

4. The appellant, and her husband, Matthew Uyinmwen are the freehold owners of 16 Norfolk Road, London, E17 5QS ("the property"). They were registered as such at HM Land Registry on 4 March 1996 **[§6 1-2]**.

5. The Property is a mid-terraced Victorian house on two floors, comprising a ground floor kitchen, located in a single storey, lean-to extension, rear living room, and ground floor bedroom, with a bathroom and further two bedrooms on the first floor. There is a garden at the back enclosed by fencing, and a hard-standing at the front. With effect from 1 April 2015, the Council exercised the powers available to it under part 3 of the Act to designate the whole of its borough as a selective licensing area. The effect of that designation was to require, amongst other things, that all privately rented property in the borough requires a Private Rented Property Licence ('PRPL') from the Council.

6. Sometime in 2015, the appellant's husband, Mr Matthew Uyinmwen, sought to licence the property in accordance with the Council's scheme. On 21 December 2015, the Council proposed issuing a licence for a limited period of one year, on grounds of "*reports of antisocial behaviour and loud music*" and "*reports of* [the property] *being filthy and verminous"* **[§3 5-6]**.

7. On 23 December 2015, after an inspection of the property, Mr Waseem Hussain, Licensing Enforcement Officer, wrote to Mr Uyinmwen **[§3 2-4]** to bring to his attention a list of 23 concerns about the property of varying degrees of severity, together with a list of other necessary works that required remedy within 28 days, or the provision of an action plan. Amongst the identified defects were: lack of an automatic fire detection system; inadequate fire safety equipment and fire doors in the property; the presence of polystyrene ceiling tiles in several rooms;

defective roofing (visible gaps); a number of defects to windows (inoperable in a number of rooms); defective plasterwork in the hallway and dining room ceiling; and a poorly constructed kitchen and ground floor rear bedroom. Various documentation including an Energy Performance Certificate ("EPC"), Domestic Electrical Periodic Report and Gas Safety certificate were requested.

8. On 8 February 2016, "*Mr Matthew Yinmwen*" was granted a licence for the period of one year "based on the information that has been supplied in the application" **[§3 13]**.

9. A reminder that the licence had expired, and required renewal, was sent by letter dated 12 May 2017, in which it was stated that the Council would, in considering whether to renew, "*take account of the extent to which the proposed licence holder has complied with their legal obligations during the licence period*" **[§3 21]**.

10. On 19 September 2017, the appellant applied for a licence of the property in her name. She asserted on that application that the property had one fully checked/inspected heat and smoke alarm, one gas appliance, and a NICEIC, or ECA approved, electrical safety certificate from within the last 5 years **[§3 41]**, although copies of that documentation do not appear to have been included with her application **[§3 47]**. As confirmed in the appellant's documents, on 19 October 2017, a licence was granted to her "*based on the information that has been supplied in the application*".

11. Mr Hussain again inspected the property and confirmed in his letter of 10 November 2017 to the appellant, that the majority of the defects raised in his letter to Mr Uyinmwen dated 23 December 2015 remained outstanding. He allowed 14 days for the appellant to provide an action plan to address the identified hazards and defects, failing which further action might be taken. He enclosed with his letter a copy of the 23 December 2015 letter to Mr Matthew Uyinmwen **[§3 52-57]**.

12. By emails of 20 November 2017, and 21 November 2017 respectively, the appellant provided a Gas Safety Record, dated 17 November 2017, and page 1 (of 10) of an Electrical Installation Condition Report, dated 25 July 2017. She asserted that the EPC and "*others [sic] necessary work have been arrange [sic]*" **[§58-61]**.

13. On 29 November 2017, Mr Hussain wrote, under cover of an email to the appellant, requesting access to the property on 5 December 2017, and again requested the EPC, Fire Safety Evaluation and any tenancy agreement/references **[§3 63-64]**. That visit went ahead, and there are photographs provided by Mr Hussain, said to have been taken on that visit at **[§3 66-72]**. In his witness statement dated 6 January 2020, Mr Hussain states that the appellant did not attend that visit and that he gained access from the tenants at the property. He also states that at

the visit he found that no significant works had been undertaken to address the hazards previously identified, that there was evidence of a bedbug infestation at the property, and that there was no fixed heating present.

14. On 16 May 2018, Mr Hussain sent a further letter under cover of an email to the appellant notifying of his intention to visit the property on 24th May 2018, under the provisions of section 239 of the Act, to ensure the appellant's compliance with the PRPL. He again requested copies of any tenancy agreement/references **[§3 74-75]**.

15. In his witness statement Mr Hussain states that he then received correspondence from the occupants of the property requesting to reschedule his visit. They stated they had just moved in and were carrying out some works themselves due to the property's poor condition. Mr Hussain carried out his further inspection on 30 May 2018, and met with the occupants who were carrying out some decorative works. He observed that the stairway now had a bannister, but that no other significant works had been undertaken arising from the letter sent to the appellant. He took photographs **[§3 77-96]**. After his visit, one of the occupants emailed Mr Hussain further evidence of a bedbug infestation in the property **[§3 97-106]**.

16. Mr Hussain's evidence is that on 18 July 2018 he served on the appellant (both by 1st class post to her identified address provided on the license application, and to her email address) an improvement notice ("the Improvement Notice") pursuant to sections 11 and 12 of the Act, identifying the following category 1 and 2 hazards linked to the conditions in the property: Excess Cold, Damp and Mould; falls between levels; asbestos; electrical hazards; fire hazards; domestic hygiene pests and refuse; and risk of entry by an intruder.

17. Schedule 2 of the notice identified the remedial action required to be commenced by 15th August 2018, to be completed by 10 November 2018. This included : re-siting and redevelopment of the kitchen area (to include removal of the single storey rear extension currently incorporating the kitchen, and the provision of a new kitchen); damp-proofing works; inspection and removal of the roof covering of the rear extension by a specialist licensed asbestos removal company; works to the garden door; fire-safety measures; electrical works; provision of full gas central heating with thermostatic controls; removal of polystyrene ceiling tiles and replacement with plasterboard; and repair and/or renewal of the windows **[§3 107 – 124]**.

18. On 30 July 2017, Mr Hussain served a notice under section 83 of the Public Health Act 1936, requiring the appellant to remedy the bedbug infestation by cleansing and disinfecting the property within 14 days **[§3 124-127]**.

19. There is no evidence to suggest that the appellant responded to either of these notices, either to raise an appeal or to engage in a discussion about the works to be carried out.

20. Mr Hussain sent a further letter to the appellant, under cover of email of 11 September 2018, seeking a response to the improvement notice and seeking engagement with the works to be carried out **[§3 129-130]**. Again, there is no evidence of the appellant responding.

21. On 3 January 2019, Mr Hussain emailed to the appellant a letter notifying her that a further inspection was necessary, for which she was required to provide access pursuant to section 239 of the Act, and that this had been scheduled for 10th January 2019 **[§3 131-133]**. It appears from the notice of intent to impose a financial penalty under section 249A of the Act ('Notice of Intent') that there was a visit on 10th January 2019 in accordance with this email **[§5 4]** in which new/additional matters were discovered (including a leak through the living room ceiling and damp in the rear bedroom). Mr Hussain followed this up with a further email on 14 January 2019, seeking a response and reminding the appellant that a failure to respond could result in further enforcement proceedings **[§3 134]**.

22. On 26 June 2019, in light of the appellant's failure to comply with the Improvement Notice, and the inspection on 10 January 2019, and after a review of the case Ms Elizabeth Killey, Team Manager of the Private Sector Housing and Licencing sent the appellant a Notice of Intent, citing the failure to comply with the Improvement Notice, and proposing a penalty of £12,000 in accordance with the Council's policy matrix **[§5 1-8]**.

23. In an email on 3rd July 2019, in response to that Notice of Intent, the appellant asserted that she had done all the works that she had been told to do on Ms Killey's first inspection, that she had an EPC and electricity certificate, and that there was no gas at the property. She invited Ms Killey to "*come and meet me in the property and see for yourself*" **[§5 9]**.

24. By 4 July 2019 Mr Hussain had established telephone contact with the appellant, and they mutually agreed an inspection date for the property on 17 July 2019 **[§3 135]**.

25. On 16 July 2019, the appellant called Mr Hussain to cancel the inspection, as she had not been able to obtain permission from the tenants of the property to allow access. On the same day, Mr Uyinmwen called and spoke to Mr Hussain to explain that he had been unable to speak with the tenant of the property to obtain her permission to enter, and that while he had spare keys he did not want to arrive unannounced. The appellant followed up with a further email requesting cancellation. Mr Hussain also tried to call the tenants to

arrange access, however this was unsuccessful and he therefore cancelled the inspection **[§3 136]**.

26. An inspection was finally arranged for 8 October 2019, and Mr Hussain attended in the company of Mr Uyinmwen and the appellant, and Ms Killey to check on the progress of the required works. Mr Hussain discovered that no further works had been undertaken, and that further hazards were present (no smoke alarms installed; rear garden fence panel not secure). Mr Hussain provides photographs of that visit at **[§3 137 – 172]**.

27. On 18 October 2019, Ms Killey sent to the appellant the Council's notice of its decision to impose a financial penalty of £12,000 ("Final Notice") on the grounds that the appellant had committed an offence under section 30 of the Housing Act 2004 ('the Act'), namely failure to comply with the Improvement Notice **[5 10-15]**.

28. The appellant appealed to the tribunal by application dated 13 November 2019. She relied on three grounds in her application:

    (a) that she had previously been granted a licence by the Council to rent out 16 Norfolk Road, London E17 5QS ('the property');

    (b) that she has an electricity and EPC certificate for the property;

    (c) that the property is in very good condition.

29. On notification of the appeal, on 6 December 2019 Mr Hussain inspected the property again, in the company of Ms Anne Hillier (Private Sector Housing and Licensing Team Manager). At that inspection, Mr Hussain found that although the roofing material over the lean-to kitchen had been replaced, the corrugated roof material had been dumped in the rear garden. The rear fence panel had also been replaced, but saving those two measures no other work had been undertaken. He provides further photographs in relation to that visit **[§3 173-207]**.

30. The Council arranged for the appellant to meet Ms Killey and Ms Julia Morris, Private Sector Housing and Licencing Service Manager, at the Council's offices. On 11 December 2019 a meeting took place, and the appellant was shown the photographs of the property taken on 8 October 2019. The appellant maintained that the property was in good condition.

Law

31. Section 30 of the Act provides that, where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it (s30(1)). Compliance, where there is no appeal against the improvement notice, means beginning and completing any remedial action specified in the notice not later than the dates specified in the notice for beginning and completing the remedial action respectively (s30(2)(a) and s13(2)(e) & (f)).

32. An improvement notice becomes operative at the end of a period of 21 days beginning with the day on which it is served (section 15(2)). If no appeal is made against the improvement notice within the time period for appealing it, the notice is final and conclusive as to matters which could have been raised on appeal (section 15(6)).

33. Section 249A of the Act permits a local housing authority to impose a financial penalty on a person if it is satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England. A failure to comply with an improvement notice under section 30 is a relevant housing offence by section 249A(2)(a). Only one financial penalty may be imposed under the section on a person in respect of the same conduct, and that penalty is to be determined by the housing authority but must not exceed £30,000 (section 249A(3) – (4)).

34. Schedule 13A of the Act deals with the procedure for imposing financial penalties and appeals against financial penalties Paragraph 10 of that Schedule states:

> (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.

The Hearing

35. At the hearing, the appellant appeared unrepresented, supported by her husband and joint-owner Mr Matthew Uyinmwen. The Council was represented by Mr Riccardo Calzavara of counsel, who was accompanied by Ms Aleksandra Wolek from Sharpe Pritchard, solicitors, and Mr Pillay Jaciambrun, a trainee Environmental Health Officer. Mr Hussain appeared to give evidence in person, and Ms Hillier attended to adopt the evidence of Ms Killey.

36. The tribunal asked the appellant to clarify her case, as in her letter to the tribunal dated 3 February 2020, she has stated that the pictures provided in the Respondent's bundle were not of the property. Asked to clarify which particular photographs, at which particular page numbers in the bundle she disputed were not photographs of the property, she stated that those at **[§3 207]** and **[§3 174]** were not. Mr Uyinmwen stated that since they had not been there when the photographs had been taken, they could not confirm that any of the photographs were of the property.

37. However, when the tribunal asked her to compare the photograph at **[§3 158]** with that at **[§3 174]**, the appellant conceded that these photographs both showed the roof over the external kitchen extension ("lean to") of the property, and that a woman shown in the photograph at **[§3 158]** was her. She and Mr Uyinmwen agreed that the second picture demonstrated the roof works that had undertaken between October and December 2019.

38. In her letter of 3 February 2020, the appellant had stated that the tribunal was welcome to visit the property, but she also said that she had been unable to send any 'pictures' as her tenant would not permit her access. Before us, she stated that she had no idea if the tribunal would be able to gain entrance to the property if it decided to conduct a site visit.

39. The tribunal indicated that it would not inspect the property given the appellant's concession that the photographs of the lean-to referred to above were photographs of the property, and because of the considerable uncertainty as to whether access would be granted. The tribunal also considered it would not be proportionate to the issues involved to do so. We indicated that we would keep that decision under

review during the hearing after hearing evidence, but in the event, saw no reason to change our initial decision.

Evidence

40. Mr Hussain affirmed his witness statement, which was permitted to stand as his evidence. He further gave oral evidence to the tribunal that he had visited the property on four occasions: 5 December 2017; 30 May 2018; 8 October 2019; and 6 December 2019. On each occasion he had taken digital photographs of what he found. He said that copies of those digital photographs were in the bundle, and had not be enhanced or manipulated. Mr Calzavara took him through the photographs for each visit and asked Mr Hussain to identify what was depicted and what hazard he had identified in it.

41. Under cross-examination by Mr Uyinmwen and the appellant, Mr Hussain accepted that he had not given notice of his inspection in 2015, (during the period in which Mr Uyinmwen was the licensee). He could not recall whether he had given notice of the inspection of the 5 December 2017 visit. He said that he had not deliberately taken a picture of the appellant during the 8 October 2019 inspection. When asked by Mr Uyinmwen what was meant by 'demolition' of the lean-to, Mr Hussain explained that it meant it had to be taken down and removed.

42. Mr Uyinmwen further asked Mr Hussain what the tenant had told Ms Killey about the bed-bugs at the inspection at the property on 8 October 2019. Mr Hussain could not recall having overheard such a conversation. Mr Uyinmwen asserted that during it, the tenants had stated that they had not notified the appellant of the bed-bugs.

43. The appellant further asked Mr Hussain to explain why it was that she had been granted a licence to rent out the property if it was not in good condition. Mr Hussain was unable to assist with that question, as his department does not deal with PRPL licensing.

44. Ms Hillier adopted Ms Killey's evidence, in so far as it was within her knowledge. After explaining that she would have come to the same decision that Ms Killey had made, she answered the appellant's question in Ms Killey's stead. Ms Hillier explained that where a selective licence was applied for, properties were not routinely inspected before the commencement of the licence, though they were likely to be so inspected during the licence period. The application was made and searches were conducted on the individual licence applicant's name as against the Council's rogue landlord database, indicators of any internal prosecutions, and checked for any markers and known associates. The check was not on the property itself at that stage, rather on the applicant and any known associates. The property had not, therefore, been inspected before the licence had been granted.

45. Mr Calzavara invited the tribunal to consider in particular **[§3 5, 52, 58, 65 – 72, 77-105]** of Mr Hussain's evidence. He further relied on Mr Hussain's evidence at paragraph 30 **[§2 4]** in which Mr Hussain stated he had visited the property again in January 2019, and identified that none of the required work had been carried out. He relied on the Improvement Notice at **[§3107 – 118]**, in particular the start and finish dates for the work, and the operative date of 8 August 2019, and on each of the Notice of Intention and Final Notice, together with Ms Killey's evidence at paragraphs 15 – 16 **[§4 3]**. He asked the tribunal to consider the way in which the Council had calculated the penalty, in accordance with its policy at **[§6 46]** which resulted in an offence at the lower level of the mid-range, and which considered the aggravating features of multiple hazards, some of which were severe/extreme.

46. Mr Calzavara submitted that after receiving the appellant's representations, the respondent had visited the property twice. As addressed by Mr Hussain in his witness statement at paragraph 36 **[§2 5]**, even on the last visit in December 2019, none of the works in the Improvement Notice had been completed, save for repair of the garden fence. A new roof had been placed over the lean-to, but that was not the work required by the Improvement Notice, which required the lean-to to be demolished and internal reconfiguration works to be carried out to accommodate a new kitchen, and the roof works to be undertaken to the main roof. The Respondent relied on Mr Hussain's photographs of the further inspections on 8 October 2019 and 6 December 2019, and paragraphs 20 and 28 of Ms Killey's witness statement **[§4 3-4]**. Mr Calzavara asked the tribunal to take note that the last visit had been after the appeal had been lodged on made. In particular, paragraph 37 of Mr Hussain's witness statement was a succinct statement of the Council's case.

47. In the evidence of the appellant and Mr Uyinmwen, given simultaneously with each other, they asserted that they had carried out the works that the Council had asked them to do in the letter of 2015. However, when taken through the Improvement Notice by the tribunal, the appellant, and Mr Uyinmwen, admitted that they had not complied with it. In particular, they had not employed a licensed asbestos specialist to remove the roof over the lean-to. Instead, they stated that they had used a builder. Although they asserted that this person was qualified, they acknowledged that the roof had just been dumped in the garden as shown in the photograph at **[§3 180]**. They acknowledged that they had not demolished and removed the lean to and stated that they did not understand why they had to do so. They stated that the lean-to was in keeping with the rest of the properties along the street, and it did not leak.

48. Nor had they not obtained a damp inspection from a qualified specialist company as required by the Improvement Notice. They stated that the property had not been damp when the tenant was living in it, but that water damage had occurred because the seal between the bath and the

wall had been removed in the bathroom. They said that they had arranged for a builder to do plastering to make good, but agreed that they had not obtained the services of a damp specialist.

49. The appellants also acknowledged that they had not carried out any works to the main roof, as also required by the Improvement Notice. Mr Uyinmwen claimed that they had asked a roofer to look at the roof who had confirmed that the roof was fine and was not leaking. They stated that the tenants had not complained about leaks from the roof into the property, only from the bathroom into the downstairs of the property.

50. They agreed door to the rear garden had not been replaced as was required by the Improvement Notice. The appellant stated that she and Mr Uyinmwen had spent thousands of pounds on installing a staircase with bannisters and did not understand why the Improvement Notice required them to replace the kitchen in the lean-to with a new kitchen, nor why a new partition wall was needed between the stairway and the new kitchen.

51. The appellant agreed that she had not obtained a full electrical condition report after the date of the Improvement Notice. She said that one had been obtained in 2017 and that they thought it lasted 5 years. Neither she nor Mr Uyinmwen understood why the Notice stated that new one was needed.

52. The appellant acknowledged that she had not installed gas-fired heating in the property, as was required by the Improvement Notice. Instead, electric convection heaters were still in place. The Improvement Notice required the applicant to remove polystyrene ceiling tiles in the rear living room, first floor bedroom and bathroom, and to replace them with plasterboard. Mr Uyinmwen stated that they had removed some polystyrene tiles from the area in the living room, when the ceiling had to be plastered following the bathroom leak, but agreed that polystyrene tiles remained in the bathroom and the bedrooms.

53. The Improvement Notice also required works of repair or renewal to the windows in the bedrooms, including eliminating gaps, installing missing window handles and installing suitable safety catches. Mr Uyinmwen and the appellant asserted that all the window works had been carried out. He said that they had used a builder who said that the double glazing was “alright”. They did not remember the name of the builder. He said that the builder had installed handles, but maybe the tenants had removed them. No independent evidence was provided.

54. A number of builders’ merchants’ receipts were provided for a period between March 2018 – December 2018. When asked by the tribunal for the list of other works that Mr Uyinmwen and the appellant asserted

that they had done, they said that they had done all of the windows, had done the roof and in particular that over the kitchen, had laid laminate flooring in the small 1st floor back bedroom, and had done "*all necessary work*". Anything else would have to wait until the tenants had moved out.

55. The tribunal invited the appellant to make representations on the level of the penalty imposed. The appellant said that it was unfair. They had done enough to rent the property out in good condition. The estate agents were happy to rent it out and the tenants had never complained. They stated that they had always used a letting agent to rent the property out to avoid problems from the Council. Mr Uyinmwen asserted that the estate agents were 'well known'.

56. The tribunal asked whether the appellant had anything to add concerning the imposition of the penalty. She asserted that it was unfair of the respondent to issue them with a £12,000 penalty. She said that they had asked her to do a job, and it had been done to their own requirements. They had spent thousands of pounds on a new staircase, which money would have been spent on other things if they had known, as the money spent on the staircase added up to more than the costs of all the other work the Council required. She said that they had installed the staircase for the health and safety of the tenants.

Decision and Reasons

57. The tribunal finds as fact that, given the cogent and persuasive evidence of Mr Hussain, together with the fact that the photographs of the lean-to and rear of the property (shown in the photographs taken by Mr Hussain during his October 2019 visit, in which the appellant admits she is depicted) are clearly of the same property as that shown in photographs taken by Mr Hussain during his other visits, that all of Mr Hussain's photographs relate to the property. We see no reason to doubt Mr Hussain's evidence that this is the case, and conclude that the appellant's initial assertion, prior to her concession, that his photographs of the rear of the property were of a different property, casts doubt on the credibility of her evidence.

58. The tribunal is satisfied beyond reasonable doubt that an offence under section 249A(2)(a) has been committed by the appellant, namely failure to comply with the Improvement Notice. The evidence is overwhelming even based on the appellant's admissions alone. She did not appeal the Improvement Notice, and no issue as to service arises, receipt having been acknowledged by the appellant herself. There having been no appeal, section 15(6) of the Act provides that the Improvement Notice is itself conclusive of the matters laid out in it.

59. Contrary to the requirements of the Improvement Notice, the required works were not completed by 10 November 2018. Apart for some

possible works in respect of the windows, and the removal of polystyrene tiles in one out of three rooms, the evidence of the appellant and her husband was that none of the works specified in the Improvement Notice had been carried out. That this is correct is also substantiated by Mr Hussain's oral evidence and the photographs he took of the property after the Improvement Notice was served.

60. The tribunal is also satisfied that the Notice of Intention and Final Notice are in proper form, were properly served, and again acknowledged by the appellant in (in relation to the former) her representations of 3 July 2019 **[§5 9]** and (in relation to the latter) by her appeal of 14 November 2019.

61. In relation to the penalty, the tribunal is satisfied that the respondent has had proper regard to its policy and applied its matrix, taking into account the seven identified factors set out in the Ministry of Housing, Communities and Local Government Guidance on Civil Penalties under the Housing Act ('the Guidance'), most recently updated in 2018, namely: severity of the offence; culpability and track record of the offender; harm caused to the tenant; punishment of the offender; deterrence of the offender from committing a repeat offence; deterrence of others from committing a similar offence, and removal of any financial benefit the offender may have obtained as a result of committing the offence.

62. The starting point in the Respondent's matrix, as set out in Ms Killey's witness statement, having due regard to the Respondent's Enforcement Policy at paragraph 7.8, and in respect of a landlord controlling five or fewer properties, was that this was classed as a serious offence (band 3) attracting a penalty of between £10,000 and £19,999. In Ms Killey's assessment aggravating features in this case were the number of multiple hazards present, with one extreme hazard (excess cold). In her assessment a penalty of level to £12,000 was appropriate.

63. The tribunal concurs with Ms Killey's assessment. We agree that failure to comply with an Improvement Notice is a serious offence. The evidence strongly suggests that almost all the issues concerning the condition of the property raised by the Council in 2015 remain unresolved, nearly five years later. Having due regard to the respondent's policy, and the Guidance, the tribunal agrees that the classification of this offence as a band 3 offence is appropriate.

64. Given the number of multiple hazards present, the tribunal sees no reason to interfere with the Council's decision to impose a penalty of £10,000, plus £2,000 for the aggravating features she identified.

65. The tribunal is satisfied from Mr Hussain's evidence that the property is, and has been for several years, in a very poor condition. Given the almost complete failure to comply with the Improvement Notice, we

gave serious consideration as to whether a higher penalty than that imposed by the Council was appropriate. The Council's scheme permits for further generic aggravating features to be considered, including previous history of non-compliance, irrespective of whether this has been the subject of separate formal action. However, the appellant has only been the licence holder since late 2017, although it appears that she was aware of communications between the Council and Mr Uyinmwen before that date. In all the circumstances we will not interfere with the Council's decision, and confirm the financial penalty in the sum of £12,000, such sum to be paid within 28 days.

Name: Amran Vance **Date**: 11 March 2020

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).